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Commission on
State Mandates

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BETTY T. YEE
California State Controller

February 16, 2022

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Incorrect Reduction Claim
Interagency Child Abuse and Neglect (ICAN), 20-0022-I-02
Penal Code Sections 11165.9, 11166, 11166.2, 11166.91, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
Fiscal Years: 1999-2000, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, and 2011-12
City of South Lake Tahoe, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named IRC.

If you have any questions, please contact me by telephone at (916) 327-3138.

Sincerely,

Lisa Kurokawa

LISA KUROKAWA, Chief
Compliance Audits Bureau
Division of Audits

LK/ac

20894

P.O. Box 942850, Sacramento, CA 94250 ♦ (916) 445-2636
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RESPONSE BY THE STATE CONTROLLER'S OFFICE TO THE INCORRECT REDUCTION CLAIM (IRC) BY THE CITY OF SOUTH LAKE TAHOE

Interagency Child Abuse and Neglect Investigation Reports Program

Table of Contents

Note: References to Exhibits relate to the city's Incorrect Reduction Claim filed on May 13, 2021, as follows:

- Section 7 – Written Detailed Narrative – PDF pages 3-15
- Section 8 – Documentary Evidence and Declarations – PDF pages 17-19
- Exhibit A – Original Information provided to SCO Auditor – PDF pages 22-38
- Exhibit B – Additional Analysis of Time Component Based on 2015 Time Study – PDF pages 41-59
- Exhibit C – Auditor Work Paper Analysis Documents – PDF pages 61-70
- Exhibit D – A Guide to Reporting Child Abuse to the California Department of Justice – PDF pages 72-95
- Exhibit E – Case File Documentation – PDF pages 97-154
- Exhibit F – Commission on State Mandates' Statement of Decision and Parameters and Guidelines, Interagency Child Abuse and Neglect Investigation Reports Program, December 6, 2013 – PDF pages 156-250
- Exhibit G – City of South Lake Tahoe – Duty Statements/Class Specification Bulletin – PDF pages 252-256
- Exhibit H – Internet Documents for Clerical – PDF pages 258-261
- Exhibit I – SCO's Mandated Cost Claiming Instructions (July 1, 2015) – PDF pages 263-282
- Exhibit J – Title 2, Code of Federal Regulations (Office of Management and Budget Circular – PDF pages 284-428
- Section 9 - Exhibit 1 – SCO's Mandated Cost Claiming Instructions (April 28, 2014) – PDF pages 431-459
- Section 10 - Exhibit 2 –SCO's Final Audit Report (May 21, 2018) – PDF pages 462-517
- Section 11 - Exhibit 3 –City of South Lake Tahoe Reimbursement Claims for the Audit Period – PDF pages 520-640

Tab 1

OFFICE OF THE STATE CONTROLLER
3301 C Street, Suite 725
Sacramento, CA 95816
Telephone No.: (916) 327-3138

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

INCORRECT REDUCTION CLAIM (IRC) ON: *Interagency Child Abuse and Neglect Investigation Reports Program* Penal Code Sections 11165.9, 11166, 11166.2, 11166.91, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 2, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); Child Abuse Investigation Report Form SS 8583 (Rev. 3/91) CITY OF SOUTH LAKE TAHOE, Claimant	No.: IRC 20-0022-I-02 AFFIDAVIT OF BUREAU CHIEF

I, Lisa Kurokawa, make the following declarations:

1) I am an employee of the State Controller's Office (SCO) and am over the age of 18 years.

2) I am currently employed as a bureau chief, and have been so since February 15, 2018. Before that, I was employed as an audit manager for seven years.

3) I reviewed the work performed by the SCO auditor.

4) Any attached copies of records are true copies of records, as provided by the City of South Lake Tahoe, or retained at our place of business.

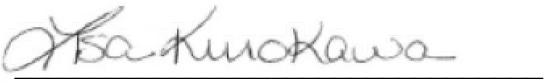
5) The records include claims for reimbursement, along with any attached supporting documentation, explanatory letters, or other documents relating to the above-entitled Incorrect Reduction Claim.

6) A review of the claims filed for fiscal year (FY) 1999-2000, FY 2000-01, FY 2001-02, FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, and FY 2011-12 started on October 14, 2016 (entrance start letter date), and ended on May 21, 2018 (issuance of the final audit report).

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: February 16, 2022

OFFICE OF THE STATE CONTROLLER

By: 

Lisa Kurokawa, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office

Tab 2

STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE TO THE INCORRECT REDUCTION CLAIM BY CITY OF SOUTH LAKE TAHOE

For Fiscal Year (FY) 1999-2000, FY 2000-01, FY 2001-02, FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, and FY 2011-12

Interagency Child Abuse and Neglect Investigation Reports Program
Penal Code Sections 11165.9, 11166, 11166.2, 11166.91, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that the City of South Lake Tahoe (City) submitted on May 13, 2021. The SCO performed an audit of the City's claims for costs of the legislatively mandated Interagency Child Abuse and Neglect Investigation Reports Program for the period of July 1, 1999, through June 30, 2012. The SCO issued its audit report on May 21, 2018 **(Section 10 – Exhibit 2 – pages 462-517).**

The City submitted reimbursement claims totaling $1,505,262—$41,826 for fiscal year (FY) 1999-2000, $50,456 for FY 2000-01, $54,747 for FY 2001-02, $82,086 for FY 2002-03, $89,251 for FY 2003-04, $97,914 for FY 2004-05, $107,032 for FY 2005-06, $121,565 for FY 2006-07, $119,724 for FY 2007-08, $164,803 for FY 2008-09, $242,544 for FY 2009-10, $232,871 for FY 2010-11, and $100,443 for FY 2011-12 (**Section 11 – Exhibit 3 – pages 520-640**). Subsequently, the SCO performed an audit of these claims and determined that $239,395 is allowable and $1,265,867 is unallowable because the City overstated the number of Suspected Child Abuse Reports (SCARs) cross-reported, overstated the number of SCARs investigated, misstated productive hourly rates, and overstated indirect cost rates.

The following table summarizes the audit results:

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 1999, through June 30, 2000			
Direct costs – salaries and benefits:			
Prepare policies and procedures	$ 146	$ 146	$ -
Train staff	192	192	-
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	559	559	-
Reporting to DOJ			
Complete an investigation	29,629	5,595	(24,034)
Prepare and submit reports to DOJ	333	333	-
Total direct costs	30,859	6,825	(24,034)
Indirect costs	10,967	1,317	(9,650)
Total program costs[1]	$ 41,826	8,142	$ (33,684)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 8,142	
July 1, 2000, through June 30, 2001			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 642	$ 642	$ -
Reporting to DOJ			
Complete an investigation	34,031	6,319	(27,712)
Prepare and submit reports to DOJ	382	382	-
Total direct costs	35,055	7,343	(27,712)
Indirect costs	15,401	1,991	(13,410)
Total program costs[1]	$ 50,456	9,334	$ (41,122)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 9,334	
July 1, 2001, through June 30, 2002			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 668	$ 668	$ -
Reporting to DOJ			
Complete an investigation	35,406	6,735	(28,671)
Prepare and submit reports to DOJ	432	432	-
Total direct costs	36,506	7,835	(28,671)
Indirect costs	18,241	2,900	(15,341)
Total program costs[1]	$ 54,747	10,735	$ (44,012)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 10,735	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2002, through June 30, 2003			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 843	$ 843	$ -
Reporting to DOJ			
Complete an investigation	50,920	7,824	(43,096)
Prepare and submit reports to DOJ	670	670	-
Total direct costs	52,433	9,337	(43,096)
Indirect costs	29,653	3,969	(25,684)
Total program costs[1]	$ 82,086	13,306	$ (68,780)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 13,306	
July 1, 2003, through June 30, 2004			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 901	$ 901	$ -
Reporting to DOJ			
Complete an investigation	55,447	6,808	(48,639)
Prepare and submit reports to DOJ	572	572	-
Total direct costs	56,920	8,281	(48,639)
Indirect costs	32,331	3,368	(28,963)
Total program costs[1]	$ 89,251	11,649	$ (77,602)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 11,649	
July 1, 2004, through June 30, 2005			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 983	$ 983	$ -
Reporting to DOJ			
Complete an investigation	59,885	9,349	(50,536)
Prepare and submit reports to DOJ	613	613	-
Total direct costs	61,481	10,945	(50,536)
Indirect costs	36,433	4,678	(31,755)
Total program costs[1]	$ 97,914	15,623	$ (82,291)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 15,623	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2005, through June 30, 2006			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 1,063	$ 1,063	$ -
Reporting to DOJ			
Complete an investigation	63,218	10,468	(52,750)
Prepare and submit reports to DOJ	829	829	-
Total direct costs	65,110	12,360	(52,750)
Indirect costs	41,922	5,204	(36,718)
Total program costs[1]	$ 107,032	17,564	$ (89,468)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 17,564	
July 1, 2006, through June 30, 2007			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 1,202	$ 1,202	$ -
Reporting to DOJ			
Complete an investigation	70,608	11,269	(59,339)
Prepare and submit reports to DOJ	869	869	-
Total direct costs	72,679	13,340	(59,339)
Indirect costs	48,886	5,250	(43,636)
Total program costs[1]	$ 121,565	18,590	$ (102,975)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 18,590	
July 1, 2007, through June 30, 2008			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 1,237	$ 1,237	$ -
Reporting to DOJ			
Complete an investigation	68,669	11,255	(57,414)
Prepare and submit reports to DOJ	852	852	-
Total direct costs	70,758	13,344	(57,414)
Indirect costs	48,966	5,599	(43,367)
Total program costs[1]	$ 119,724	18,943	$ (100,781)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 18,943	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2008, through June 30, 2009			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 1,641	$ 1,641	$ -
Reporting to DOJ			
Complete an investigation	94,122	6,877	(87,245)
Prepare and submit reports to DOJ	834	834	-
Total direct costs	96,597	9,352	(87,245)
Indirect costs	68,206	3,563	(64,643)
Total program costs[1]	$ 164,803	12,915	$ (151,888)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 12,915	
July 1, 2009, through June 30, 2010			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 2,172	$ 2,172	$ -
Reporting to DOJ			
Complete an investigation	128,540	29,841	(98,699)
Prepare and submit reports to DOJ	982	982	-
Total direct costs	131,694	32,995	(98,699)
Indirect costs	110,850	16,186	(94,664)
Total program costs[1]	$ 242,544	49,181	$ (193,363)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 49,181	
July 1, 2010, through June 30, 2011			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 9,164	$ 1,975	$ (7,189)
Reporting to DOJ			
Complete an investigation	131,069	22,689	(108,380)
Prepare and submit reports to DOJ	994	994	-
Total direct costs	141,227	25,658	(115,569)
Indirect costs	91,644	9,025	(82,619)
Total program costs[1]	$ 232,871	34,683	$ (198,188)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 34,683	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
July 1, 2011, through June 30, 2012			
Direct costs – salaries and benefits:			
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	$ 2,080	$ 2,080	$ -
Reporting to DOJ			
Complete an investigation	61,975	11,026	(50,949)
Prepare and submit reports to DOJ	540	540	-
Total direct costs	64,595	13,646	(50,949)
Indirect costs	35,848	5,084	(30,764)
Total program costs[1]	$ 100,443	18,730	$ (81,713)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 18,730	
Summary: July 1, 1999, through June 30, 2012			
Direct costs – salaries and benefits:			
Prepare policies and procedures	$ 146	$ 146	$ -
Train staff	192	192	-
Reporting between local departments			
Cross-reporting to county welfare and DA's Office	23,155	15,966	(7,189)
Reporting to DOJ			
Complete an investigation	883,519	146,055	(737,464)
Prepare and submit reports to DOJ	8,902	8,902	-
Total direct costs	915,914	171,261	(744,653)
Indirect costs	589,348	68,134	(521,214)
Total program costs[1]	$ 1,505,262	239,395	$ (1,265,867)
Less amount paid by the State[2]		-	
Allowable costs claimed in excess of amount paid		$ 239,395	

1 The city's claims for FY 1999-2000 through FY 2011-12 are initial reimbursement claims and were filed on time on July 15, 2014. The city then submitted an amended claim for FY 1999-2000 through FY 2011-12 on July 15, 2015. As the amended claims were filed after the filing deadline specified within the SCO's claiming instructions, they were subject to the late penalty as specified in GC section 17561, subdivision (d)(3), equal to 10% of the total amount of the initial claim without limitation. However, the allowable audited costs for each year of the audit period (FY 1999-2000 through FY 2011-12) are less than the amount originally claimed for each of these years. Therefore, a late penalty is no longer applicable to the city's claims.

2 Payment amount is current as of September 20, 2021.

I. INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS PROGRAM CRITERIA

Adopted Parameters and Guidelines–December 6, 2013

Various statutory provisions; Title 11, California Code of Regulations, section 903; and the Child Abuse Investigation Report Form SS 8583 require cities and counties to perform specific duties for reporting child abuse to the State, as well as record-keeping and notification activities that were not required by prior law, thus mandating a new program or higher level of service.

Penal Code (PC) sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) were added and/or amended by:

- Statutes of 1977, Chapter 958;
- Statutes of 1980, Chapter 1071;
- Statutes of 1981, Chapter 435;
- Statutes of 1982, Chapters 162 and 905;
- Statutes of 1984, Chapters 1423 and 1613;
- Statutes of 1985, Chapter 1598;
- Statutes of 1986, Chapters 1289 and 1496;
- Statutes of 1987, Chapters 82, 531, and 1459;
- Statutes of 1988, Chapters 269, 1497, and 1580;
- Statutes of 1989, Chapter 153;
- Statutes of 1990, Chapters 650, 1330, 1363, and 1603;
- Statutes of 1992, Chapters 163, 459, and 1338;
- Statutes of 1993, Chapters 219 and 510;
- Statutes of 1996, Chapters 1080 and 1081;
- Statutes of 1997, Chapters 842, 843, and 844;
- Statutes of 1999, Chapters 475 and 1012; and
- Statutes of 2000, Chapter 916.

This program addresses statutory amendments to California's mandatory child abuse reporting laws, commonly referred to as ICAN. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was expanded to include more professions that are required to report suspected child abuse (now termed *mandated reporters*), and in 1980, California reenacted and amended the law, entitling it the Child Abuse and Neglect Reporting Act. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index (CACI) which, since 1965, has maintained reports of child abuse statewide. A number of changes to the law have been made, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000.

The Act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The Act provides rules and procedures for local agencies, including law enforcement, that receive such reports. The Act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and District Attorney's (DA) offices. The Act requires reporting to the DOJ when a report of suspected child abuse is "not unfounded." The Act requires an active investigation before a report can be forwarded to the DOJ. As of January 1, 2012, the Act no longer requires law enforcement agencies to report to the DOJ, and now requires reporting only of "substantiated" reports by other agencies. The Act imposes additional cross-reporting

and record-keeping duties in the event of a child's death from abuse or neglect. The Act requires agencies and the DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the CACI. The Act imposes certain due process protections owed to persons listed in the CACI, and provides certain other situations in which a person would be notified of his or her listing in the CACI.

On December 19, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision **(Exhibit F, pages 156-250)** finding that the test claim statutes impose 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 (GC) section 17514. The Commission approved the test claim for the reimbursable activities described in the program's parameters and guidelines, section IV, performed by city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, DA's offices, and county licensing agencies. The Commission outlined reimbursable activities relating to the following categories:

- Distributing the SCAR form;
- Reporting between local departments;
- Reporting to the DOJ;
- Providing notifications following reports to the CACI;
- Retaining records; and
- Complying with due process procedures offered to persons listed in the CACI.

The program's parameters and guidelines **(Exhibit F, pages 156-250)** establish the State mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on December 6, 2013. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies in claiming mandated program reimbursable costs.

SCO Claiming Instructions

The SCO annually issues mandated cost claiming instructions, which contain filing instructions for mandated cost programs. The April 28, 2014 claiming instructions **(Section 9 – Exhibit 1, pages 431-459)** are believed to be, for the purposes and scope of the audit period, substantially similar to the version extant at the time the City filed its FY 1999-2000, FY 2000-01, FY 2001-02, FY 2002-03, FY 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, FY 2007-08, FY 2008-09, FY 2009-10, FY 2010-11, and FY 2011-12 mandated cost claims.

II. MISINTERPREATION OF ELIGIBLE ACTIVITES

(Finding 2 – Unallowable salaries and benefits – Reporting to the State Department of Justice: Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component)

The SCO determined that the City overstated costs by $737,464 for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component for the audit period **(Section 10 – Exhibit 2, page 480)**. The costs were unallowable because the City overstated the number of Suspected Child Abuse Reports (SCARs) investigated, estimated time increments, and misstated the productive hourly rates (PHRs) for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component. The City does not dispute the misstated PHRs relating to this cost component.

Issue 1: Audit Finding 2 – SCO determination of Ineligibility of ALL Law Enforcement Agency generated cases

In an IRC filed on May 13, 2021, the City disagreed with the SCO's determination that the SCARs initiated and investigated by the City of South Lake Tahoe Police Department (Law Enforcement Agency [LEA]) as the mandated reporter were ineligible for reimbursement for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component **(Section 7 – page 3)**.

SCO's Analysis:

The SCO determined that investigative costs claimed by the City for SCARs initiated and investigated by the LEA as the mandated reporter were ineligible for reimbursement. The City believes the SCO's determination is an excessively narrow interpretation of the program's parameters and guidelines.

Section IV – B.3.a(1)(ii) of the parameters and guidelines states, in part:

> ***Reimbursement is not required in the following circumstances:***
>
> > In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

The City believes that the level of investigation required to complete the SCAR Form SS 8572 was not sufficient to make a determination on whether the case was unfounded, substantiated, or inconclusive, or to complete the necessary information in the SS 8583 Report Form. The City requested that the SCO reassess and allow 10 LEA-generated SCAR cases, which would increase the percentage of eligible SCAR cases investigated. Also, the City believes that it should be reimbursed for LEA-generated SCAR cases that identify interviews that involve more than one party.

Following are the 10 LEA-generated SCAR cases the City believes should be reassessed and included in the percentage of eligible SCAR cases investigated **(Section 10 – Exhibit 2 – page 492)**:

FY 2008-09	FY 2009-10	FY 2010-11
0810-0181	0907-2506	1009-1848
0810-1766*	0909-2714	1010-0549
0904-0493		1104-1560
1003-1190		1106-2117

* Case number 0801-1766

During audit fieldwork, we reviewed the case file documentation that was provided for the 10 LEA-generated SCAR cases. Based on our review, we found the following **(Exhibit C – pages 62-70)**:

FY 2008-09 (Exhibit C – pages 62 and 63)

- Case Number 0810-0181: LEA-generated SCAR case. No SCAR on file. Father accused of hitting his daughter. The LEA spoke with victim, mother, and suspect. Allegations of child abuse was unfounded.

- Case Number 0810-1766 (Case Number 0801-1766 was transposed in the auditee's response identified in the final audit report and should be as noted): LEA-generated SCAR case. No SCAR on file. Father accused of beating his son. The LEA spoke with victim, suspect, and witness. Allegations of child abuse were unfounded.

- Case Number 0904-0493: LEA-generated SCAR case. No SCAR on file. Father accused of child abuse. The LEA spoke to the victim, suspect, victim's mother, and victim's sister. Supplemental report written at the request of the DA's Office. Allegations of child abuse were not confirmed.

- Case Number 1003-1190: LEA-generated SCAR case. No SCAR on file. Grandfather touched granddaughter's private parts. The LEA spoke with a Women's Center Advocate, mother, victim, and suspect. Allegations of sexual abuse were substantiated. The SS 8583 Report Form was on file.

FY 2009-10 (Exhibit C – pages 64-67)

- Case Number 0907-2506: LEA-generated SCAR case. No SCAR on file. Male accused of hitting stepsons. The LEA spoke to mother, victim (1 and 2), siblings, and suspect. Arrest made. The SS 8583 Report Form was not on file.

- Case Number 0909-2714: LEA-generated SCAR case. No SCAR on file. A father reported that his daughter and a female cousin may have been sexually abused by a male cousin. LEA spoke to mother, mother's sister, father, victim (1 and 2), and suspect. Allegations of sexual abuse substantiated. The SS 8583 Report Form was not on file.

FY 2010-11 (Exhibit C – pages 68-70)

- Case Number 1009-1848: LEA-generated SCAR case. No SCAR on file. Father who lives out of jurisdiction requests welfare check on his children. LEA checks residence and school and children are not located. Case is forwarded to CPS for follow up.

- Case Number 1010-0549: LEA-generated SCAR case occurrence date October 7, 2010. SCAR on file completed on October 8, 2010. Older brother sexually assaulted younger brother. The LEA spoke to the mother, father, victim, suspect, and older sister. Allegations of sexual abuse substantiated. No SS 8583 Report Form on file.

- Case Number 1104-1560: LEA-generated SCAR case. No SCAR on file. Father reported that mother physically abused son. Allegations of child abuse were substantiated. No SS 8583 Report Form on file.

- Case Number 1106-2117: LEA-generated SCAR case. No SCAR on file. Mother reported daughter was victim of sexual abuse by daughter's boyfriend. The LEA spoke to victim, mother, father, and suspect. Allegations of sexual abuse were unfounded.

Based on our review of the SCAR case files, one file included a completed SCAR Form SS 8572 and one included a completed SS 8583 Report Form. As such, the documentation in the case files does not support that the City prepared the required forms.

The City believes that although the SCAR case files did not always include the SCAR Form SS 8572 or the SS 8583 Report Forms required by the SCO, the City had records showing that the cases had been investigated. The City also believes that approximately 10 years had passed from the date the cases occurred to when the audit was conducted--and there was no prior notification of the requirement that the SCAR Form SS 8572 and the SS 8583 Report Form be kept as a condition to obtain reimbursement--making retention of the forms a requirement retroactively would violate Due Process.

The Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component provides reimbursement for costs associated with completing an initial investigation of SCARs for purposes of preparing and submitting the SS 8583 Report Form to the DOJ. Reimbursable activities are limited to reviewing the SCAR, conducting initial interviews, and writing a report about the interviews that may be reviewed by a supervisor. Additionally, time spent performing an initial investigation of a SCAR is reimbursable only for SCARs that were *not* initiated by the LEA (or other agency-generated SCARs).

For the audit period, the City claimed a total of 3,952 SCARs investigated. The City claimed investigation costs for LEA-generated SCARs investigated by the City of South Lake Tahoe Police Department and SCARs that were generated by another mandated reporter (other agency-generated) and cross-reported to the City of South Lake Tahoe Police Department to complete an investigation. During our audit fieldwork, the City provided us with a revised SCAR summary statistics report for each year of the audit period excluding FY 1999-2000 **(Tab 4)**. To verify the accuracy of the SCAR summary statistics report, we reconciled the counts to the detailed listing of SCARS from the Crime Analysis Results reports for FY 2008-09, FY 2009-10, and FY 2010-11. We found that the City's counts for these fiscal years were accurate. Therefore, we determined that it was reasonable to rely on the revised SCAR summary statistics report.

For testing purposes, we judgmentally selected a non-statistical sample of 148 SCAR cases (32 out of 163 in FY 2008-09, 66 out of 654 in FY 2009-10, and 50 out of 457 in FY 2010-11) to review **(Exhibit C – pages 61 -70)**. We calculated a weighted average using the number of other agency-generated SCAR cases, totaling 121 (26 for FY 2008-09, 54 for FY 2009-10, and 41 for FY 2010-11). We divided the amount by the sampled number of SCAR cases, totaling 148. The calculated weighted average for the other agency-generated SCAR cases was 81.76%. We multiplied the total number of SCARs for each fiscal year listed in the City's revised SCAR summary statistic reports by 81.76% to exclude the LEA-generated SCARs and to account for the other agency-generated SCARs.

The following table summarizes the claimed number of SCARs investigated, the number of SCARs investigated per the revised statistics report provided by the City, the calculated number of other agency-generated SCARs, and the calculated number of LEA-generated SCARs for the audit period:

Fiscal Year	Claimed Number of SCARs Investigated (a)	SCARs Investigated per Revised Statistics Provided by City (b)	Number of Other Agency-Generated SCARs (c) = (b) x 81.76%	Number of LEA-Generated SCARs (d) = (c) - (b)
1999-00	229	229	187	42
2000-01	241	250	204	46
2001-02	229	242	198	44
2002-03	277	261	213	48
2003-04	286	210	172	38
2004-05	286	273	223	50
2005-06	279	267	218	49
2006-07	315	289	236	53
2007-08	298	294	240	54
2008-09	377	163	133	30
2009-10	461	654	535	119
2010-11	460	456	373	83
2011-12	214	214	175	39
Total	3,952	3,802	3,107	695

Based on our analysis, we determined that 695 LEA-generated SCARs are ineligible for reimbursement for the Complete an Investigation for Purposes of the preparing the SS 8583 Report Form cost component for the audit period.

City's Response:

ISSUE 1: Audit Finding 2 – SCO determination of Ineligibility of ALL Law Enforcement generated cases

SCO stated on page 16 of its audit report, "…time spent performing an initial investigation of a SCAR is only reimbursable for those SCARs (Suspected Child Abuse Report) which were *not* initiated by the Police Department…" Exhibit C shows the spreadsheets the SCO used to determine which cases were deemed eligible (YELLOW highlighted cases were found allowable).

The City does not believe SCO correctly interpret Commission Statement of Decision and Parameters and Guidelines when they determined that ALL investigative time for ALL Child Abuse cases that were reported directly to the City of South Lake Tahoe Police Department (Law Enforcement Agency (LEA) generated cases) were ineligible for State Reimbursement.

It is the City's belief that Commission did not intend to completely disallow all time spent related to these LEA cases, as Instructions state:

Reimbursement is not required in the following circumstances:

ii. In the event that the mandated reporter is employed by the same child protective agency require to investigate and submit the "Child Abuse Investigation Report" Form SS 8583

> or subsequent designated form to the Department of Justice, pursuant to Penal Code Section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 ***is also sufficient*** to complete the essential information items required on the Form SS 8583…"

The city believed that for a number of cases, the level of investigation required to complete the form SS 8572 was NOT "sufficient to make the determination required to complete the items required to complete the Form SS 8583," which required investigation sufficient to determine whether the case was unfounded, substantiated, or inclusive. During the audit and in the Response to the Audit, the City requested that the SCO reconsider its assessment and allow some LEA cases be allowed in the population of allowable cases. (See Exhibit 1, page 2 of City's Response to the Audit Report and See Exhibit C for the SCO cases analysis file).

The Police Department explained that the SS 8572 process does not require contact and interview of suspects and witnesses. Nor does it bear the burden of conducting an investigation to determine the disposition of the case (founded, unfounded, or inclusive). Police Department staff told auditors that a mandated reporter form (SS 5872) could have been completed by one officer in approximately 15 minutes by talking to one reporting party. While the contested cases, it was shown that multiple officers had to interview multiple parties (victims, witnesses, suspects) to determine if the case was unfounded, substantiated, or inconclusive.

The SCO denied this request because:

1) "(t)here is no correlation between the severity of the case and the scope of information needed…"

2) "of the ten cases cited…only one completed SCAR (form SS 8572) was documented in the file, and none of the cases had completed SS 8583 forms in the file" (see Exhibit 2, page 31).

City's response to SCO reason number 1): Completion of Form SS 8583 **required** the interviews of 'victim(s), any known suspects, and witnesses" to determine case disposition (substantiated, unfounded or inconclusive) (see Exhibit D). SS 8572 only required the interview of one reporting party. Actual documentation (See Exhibit A) showed the number of eligible interviews performed per case as required by SS 8583. Then eligible time could have been allocated based on city's 2015 Time Study (36 minutes average time per eligible interview) less the time it would have taken to simply gather info from one reporting party and complete the SS 8572 (15 minutes).

City's response to reason number 2): State law requires a form SS 8583 only be prepared and sent to the Department of Justice (DOJ) if the investigation was completed and it was determined that the case was not unfounded. In addition, if a suspect was not contacted, the SS 8583 report was not to be prepared/sent to the DOJ (see Exhibit D, page 11). Since these criteria were not always met, the reports SCO sought would not even have existed for a majority of the cases.

While the City had records of the child abuse cases investigated, the file did not always retain copies of the SS 8572 and SS 8583 forms required by the SCO. Since about a decade had passed from the date the cases occurred and when the audit was conducted, and because there was no prior notification of the requirement that these forms be kept

as a condition to obtain reimbursement, it would violate Due Process to make this a requirement retroactively.

City requests that the eligible population be revised to include allowable cases that showed the number of eligible parties interviewed exceeded that which was required by taking a mandated reported form SS 8572 (greater than one interview).

SCO's Comments:

In its IRC, the City contends that the SCO incorrectly reduced the number of SCARs investigated for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component based on the denial of all the LEA-generated SCARs. The City believes that the level of investigation required to complete the SCAR Form SS 8572 was not sufficient to make a determination on whether the case was unfounded, substantiated, or inconclusive; or to complete the necessary information on the SS 8583 Report Form. The City requested that we reassess and allow 10 LEA-generated SCARs that we found to be ineligible in our analysis. Also, the City believes that it should be reimbursed for SCARs initiated and investigated by the LEA that identify interviews that involve more than one party. We disagree.

The parameters and guidelines (section IV – B.3.a.1) allow the following ongoing activities related to costs for reporting to the DOJ:

> From July 1, 1999 to December 31, 2011, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall: (Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ for law enforcement agencies only ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.)
>
> 1) Complete an investigation for purposes of preparing the report
>
> Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583 [emphasis added], or subsequent designated form, to the Department of Justice. (Penal Code section 11169(a) (Stats. 1997, ch. 842 § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.) Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.
>
> ***Reimbursement is not required in the following circumstances:***
>
> i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).
>
> ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

The City maintains that the 10 LEA-generated SCARs should have been included in the population of allowable cases because the level of investigation required to complete the initial SCAR Form SS 8572 was not sufficient to make the determination required to complete the SS 8583 Report Form. The City argues that the files for these 10 cases show that there were multiple officers on scene and multiple parties were interviewed to determine whether the cases were unfounded, substantiated, or inconclusive. The City contends that the officers were not able to obtain enough information to complete the initial SCAR Form SS 8572 and complete the SS 8583 Report Form. We disagree.

The Commission's Statement of Decision, pages 40 through 42, discusses in detail what activities are and are not reimbursable when a mandated reporter is employed at one of the investigating agency (Police Department, County Welfare, and Probation Department). Per PC section 11166(a), a mandated reporter is already compelled by the nature of their duty to report instances of suspected child abuse via the SS 8572 Form. No higher level of service is mandated and, therefore, the investigation under PC section 11166(a) is not reimbursable. Furthermore, the level of information for completing the SS 8572 form is frequently sufficient to complete form SS 8583 Report Form.

Page 41 of the Statement of Decision states:

> The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse… This duty is triggered whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Given the scope of employment within a law enforcement agency, county probation department or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). Ultimately, some of the same information to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter's (non-reimbursable) duties under section 11166(a).

Page 42 of the Statement of Decision states:

> The test claim statement of decision approved only Code of Regulations, title 11, section 903 as amended by Register 98, No. 29, which adopted the Form SS 8583, and required that only "certain information items…must be completed." Those information items, as discussed above, impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse.

The Statement of Decision emphasizes that a mandated reporter who is an employee of a child protective agency already has greater responsibility to investigate when he/she has suspicions of child abuse. The Statement of Decision states, "[t]herefore, the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter." The number of information items required to make the SS 8583 Report Form retainable is relatively low. Investigative work performed to identify suspects or gather proof for criminal charges is not necessary to complete the SS 8583 Report Form.

The Statement of Decision also states:

> [t]herefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, *prior to the completion of a Form SS 8572 under section 11166(a),* is not reimbursable under this mandated program. If the Form SS 8572 is *completed by an employee of the same agency, and the information contained in the* Form SS 8572 *is sufficient to make the determination and complete the essential information items required by section 11169 and the regulations,* then no further investigation is reimbursable.

Additionally, the Commission, when crafting the Statement of Decision, was aware of the potential for over-claiming when a mandated reporter is also the investigating agency. Page 40 of the Statement of Decision states, "the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in particular case is also an employee of the child protective agency that will complete the investigation under section 11169."

During the course of the audit, the City did not provide supporting documentation for all of the costs claimed; this is not consistent with the rules in place when the claims were filed. The documentation requirements for the City's mandated cost claims are contained within the parameters and guidelines that were adopted by the Commission on December 6, 2013. The parameters and guidelines require that all costs claimed be traceable to source documents that show evidence of the validity of such costs and their relationship to this mandate. The City argues that about a decade had passed since the cases occurred and when the audit was conducted, and that there was no prior notification of the requirement that the SCAR Form SS 8572 and SS 8583 Report Form must be kept as a condition for reimbursement, and making this requirement retroactive would violate Due Process We disagree.

The City filed its claims with the SCO on July 15, 2015. The SCO initiated an audit of the City of South Lake Tahoe's legislatively mandated Interagency Child Abuse and Neglect Investigation Reports Program Cost claims filed for fiscal year (FY) 1999-2000 through FY 2011-12 on October 14, 2016. The documentation requirements for this mandated cost program were adopted by the Commission on December 6, 2013. For testing purposes, we judgmentally selected a non-statistical sample of SCAR cases from FY 2008-09, FY 2009-10, and FY 2010-11. Based on our review of the SCAR case files, we found that the documentation maintained by the City from one year to the next appeared to be consistent regardless of the fiscal year, showing that the City consistently failed to retain a SCAR Form SS 8572 or a SS 8583 Report Form for the SCAR case files. As such, the City's argument that approximately a decade had passed between when the cases occurred and the audit was conducted is unsupported, as FY 2010-11 was only five years from the date in which the City filed its claims with SCO and six years from the date on which the SCO initiated the audit. Furthermore, the City is responsible for maintaining documentation for the period the claims were subject to audit.

At this time, the City has not provided any additional documentation to support an increase in the allowable costs. Based on our review of the documentation provided during audit fieldwork, one out of the 10 LEA-generated SCAR cases included a completed SCAR Form SS 8572 in the file. Based on our review of the completed SCAR Form SS 8572 for case Number 1010-0549, the form shows that it was completed on October 8, 2018 **(Tab 5 – page 25)**. However, the occurrence date and the date of the initial interviews for this LEA-generated SCAR case occurred on October 7, 2018, and follow-up interviews were conducted on October 8, 2018 and after **(Tab 5 – pages 1-24)**. Therefore, the SCO is able to confirm that an investigation occurred prior to the completion of the Form SS 8572 for case Number 1010-0549. Therefore, costs are

ineligible for reimbursement because an investigation was conducted prior to the completion of the SS 8572 Form.

For the remaining nine cases, no SCAR Forms SS 8572 were on file. Therefore, the SCO is unable to confirm that the SCAR Forms SS 8572 were completed and cross-reported to CPS and the DA's Office. In addition, the SCO is unable to confirm that an investigation occurred prior to the completion of the SCAR SS 8572 Form. Costs are ineligible for reimbursement if information obtained by the mandated reporter through the completion of the SCAR Form SS 8572 was sufficient to make the determination and complete the essential information items required by PC section 11169. Costs are also ineligible for reimbursement if any investigation was conducted prior to the completion of the SCAR Form SS 8572 under section 11166(a). Without being able to review the SCAR Forms SS 8572 that may or may not have been completed by the City, the SCO is unable to determine whether the City was able to obtain sufficient information to make a determination and complete the essential information items required by PC section 11169 or if an investigation was conducted prior to the completion of the SCAR Form SS 8572. Therefore, the City's argument that the files for these cases show that there were multiple officers on scene and multiple parties were interviewed to determine whether the cases were unfounded, substantiated, or inconclusive is not relevant. Regardless of the number of interviews conducted, if they occurred prior to the completion of the SCAR Form SS 8572 they are ineligible for reimbursement. Also, the City's assertion that the level of investigation required to complete the SCAR Form SS 8572 was not sufficient to complete the necessary information in the SS 8583 Report Form is unsubstantiated. Based on our review of case Number 1010-0549, the level of investigation required to complete the SCAR Form SS 8572 Report was sufficient to complete the necessary information in the SS 8583 Report Form because the investigation occurred prior to the completion of the SCAR Form SS 8572. Furthermore, one of the cases had a completed SS 8583 Report Form on file. For this component, the reimbursable activity is to complete an investigation for purposes of preparing a SS 8583 Report form. The documentation in the case files does not support that the City prepared the required SS 8583 Report Forms.

The parameters and guidelines (section IV – Reimbursable Activities) require claimed costs to be supported by source documents. The parameters and guidelines state, in part:

> 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.

Consequently, the City's argument that the 10 LEA-generated SCAR cases should be included as eligible in the sampling analysis, and that SCAR cases initiated and investigated by the LEA identified interviews involving more than one party, remains unsupported. As such, we believe that the investigative costs determined to be ineligible for reimbursement for the LEA-generated SCARs for the audit period should remain unchanged.

Issue 2: Audit Finding 2 – SCO determination that the Police Department did not investigate a vast majority of case claimed for those "reported to them by other agencies (SCARs")

In an IRC filed on May 13, 2021, the City disagreed with the SCO's reduction to the number of other agency-generated SCARs investigated and the time associated with performing the investigative activities for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component **(Section 7 – page 5)**.

SCO's Analysis:

The City believes that the SCO's determination that the LEA investigated few other agency-generated SCARs that had been cross-reported to the City is erroneous. The City also believes that the SCO's reduction of the time associated with performing the investigative activities is incorrect.

Section IV – B.3.a (1) of the program's parameters and guidelines **(Exhibit F – page 243)** allows reimbursement of the actual costs incurred to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting the state SS 8583 Report Form to the DOJ. This activity includes reviewing the initial SCAR (Form SS 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews that may be reviewed by a supervisor. The Commission clarified multiple times in its statement of decision **(Exhibit F)** that reimbursement is limited to the activities noted in the parameters and guidelines.

The City believes that the preliminary investigative activities 2 through 5 identified below, which were performed by the LEA when a SCAR case was cross-reported were reasonably necessary for the LEA to make a determination regarding closure of the other agency-generated SCAR case (determine the allegations are unfounded) or to continue the investigation with in person/on-site interviews. The City stated in its IRC that it believes the following preliminary investigative activities and the time associated with performing each step should be eligible for reimbursement for the other agency-generated SCAR cases that were determined by the SCO to not be fully investigated based on the information included in the City's 2015 time study:

2. Verify if a report was already written (6 minutes Detective NOT ALLOWED)

3. Verify if a report was already written (6 minutes Records NOT ALLOWED)

4. Check prior history and determine if the case is actually in the agencies jurisdiction and determine that the case is not a duplicate and has not already been investigated by the department. This often requires phone calls to other involved agencies and also may work with internal staff such as records and dispatch to determine the history of the case to determine what action is required (36 minutes Detective NOT ALLOWED)

5. Then the Detective and/or Sergeant must contact the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary. Detective and/or Lieutenant must decide on how to proceed on each case (city requested 26-36 minutes NOT ALLOWED).

The City also believes that the preliminary investigative activities 2 through 5 should be found eligible for reimbursement based on the information the City cites from the Statement of Decision. The City cites information from the Statement of Decision regarding CDSS testimony

indicating that prior to actual interviews, social workers must consider multiple issues in their deciding whether in-person investigation is necessary. The City also asserts that a social worker have direct contact with the alleged child victim and at least one adult who has information regarding the allegations. If the social worker does not find the referral to be unfounded, he or she must conduct an in-person investigation with the child alleged to be at risk of abuse, all parents who have access to the child, and noncustodial parent if he or she has regular or frequent in-person contact with the child. The social worker must also make necessary collateral contacts with persons having knowledge of the condition of the child.

The City goes on to state that because conducting in-person interviews and writing a report of the findings are the last steps by law enforcement before determining whether to proceed with criminal investigation or close the investigation, and last step that county welfare departments take before determining whether to forward the report to the DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. The City believes that the preliminary investigative activities 2 through 5 are essentially the same as the activity described by the Department of Social Services in the Statement of Decision: "to contact….at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation." Therefore, the City believes that the SCO's disallowance of these activities is invalid and unsupported by the Statement of Decision.

The City believes that the claiming instructions are general guidelines meant to provide direction, not an exhaustive list of eligible tasks that take place during the preliminary investigative process to determine if a child abuse or neglect case is unfounded or founded. The City also believes that the written reports required by the SCO in a narrative format showing all interviews and investigative activities performed to obtain reimbursement are not supported by the parameters and guidelines. The City indicates that the LEA procedures do not require detailed narrative write-ups for cases that were deemed unfounded or inconclusive. The City believes that the 11166 PC Referral Form prepared and maintained by the LEA, the SCAR Form SS 8572, the City's 2015 time studies, and command staff assertions were standard LEA practice for these types of cases should have been sufficient to prove that investigative activities took place. The City believes that it is a violation of Due Process provisions for the SCO to require detailed written reports showing notes of every action and interview in the investigation when it is not the City's procedure to do so for unfounded and unsubstantiated cases.

For the audit period, the City claimed a total of 3,952 SCARs investigated. The City claimed investigation costs for LEA-generated SCARs investigated by the City of South Lake Tahoe Police Department, and SCARs that were generated by another mandated reporter (other-agency-generated) and cross-reported to the City of South Lake Tahoe Police Department for completion of the investigations. During our audit fieldwork, the City provided a revised SCAR summary statistics report for each year of the audit period excluding FY 1999-2000 **(Tab 4)**. To verify the accuracy of the SCAR statistics reports, we reconciled the counts to the detailed listing of SCARs from the Crime Analysis Results reports for FY 2008-09, FY 2009-10, and FY 2010-11. We found that the City's counts for these fiscal years were accurate. Therefore, we determined that it is reasonable to rely on the revised SCAR summary statistics report to determine allowable costs incurred by the city.

For testing purposes, we judgmentally selected a non-statistical sample of 148 SCAR cases (32 out of 163 in FY 2008-09, 66 out of 654 in FY 2009-10, and 50 out of 457 in FY 2010-11) to review **(Exhibit C – page 61-70)**. Based on our review of the SCAR case file sampling, we found that the documentation maintained was consistent from year to year and from case to case.

For the three years sampled, we calculated a weighted average using the number of other agency-generated SCAR cases, totaling 121 (26 for FY 2008-09, 54 for FY 2009-10, and 41 for FY 2010-11). We divided the amount by the sampled number of SCAR cases totaling 148. The calculated weighted average for the other-agency-generated SCAR cases was 81.76%. Of these other-agency-generated SCAR cases, the weighted average for which the Police Department completed and documented an initial investigation was 10%, totaling 311 fully investigated SCAR cases. We also calculated the number of SCAR cases allowable for the partial initial investigation by subtracting the fully investigated SCAR cases from the total number of other-agency-generated SCAR cases in each fiscal year.

The following table summarizes the number of other-agency-generated SCARs, the calculated number of other agency-generated SCARs fully investigated, and the calculated number of other agency-generated SCARs partially investigated for the audit period:

Fiscal Year	Claimed Number of SCARs Investigated (a)	Number of SCARs Investigated per Revised Statistics Provided by City (b)	Number of Other Agency-Generated SCARs (c) = (b) x 81.76%	Allowable Number of SCARs Fully Investigated (d) = (c) x 10%	Allowable Number of SCARs Partially Investigated (e) = (d) - (c)
1999-00	229	229	187	19	168
2000-01	241	250	204	20	184
2001-02	229	242	198	20	178
2002-03	277	261	213	21	192
2003-04	286	210	172	17	155
2004-05	286	273	223	22	201
2005-06	279	267	218	22	196
2006-07	315	289	236	24	212
2007-08	298	294	240	24	216
2008-09	377	163	133	13	120
2009-10	461	654	535	54	481
2010-11	460	456	373	37	336
2011-12	214	214	175	18	157
Total	3,952	3,802	3,107	311	2,796

Based on our analysis, we determined that the allowable number of other-agency-generated SCAR cases fully investigated totals 311 and the number of other- agency-generated SCAR cases partially investigated totals 2,796 for reimbursement for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component for the audit period.

City's Response:

ISSUE 2: Audit Finding 2 – SCO determination that the Police Department did not investigate a vast majority of case claimed for those "reported to them by other agencies (SCARs)"

The primary eligible activity of this mandated program is to "Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in PC section 11165.12 for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583."

However, the SCO determined, "Upon reviewing the case files sampled, we discovered that, contrary to what the city had claimed, the Police Department investigated very few of the other agency-generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary." **(Exhibits C and E)**

To suggest that the Police Department did not complete or partially investigated 90% of its cases is erroneous and would imply that the department failed to comply with State law by not investigating child abuse cases. The Police Department explained that while each investigation is unique and not every case requires the same level of investigation; every case forwarded to the Police Department requires time and action, regardless of whether another agency did some level of investigation.

The Department outlined the steps taken when a case is forwarded to them via a SCAR report for investigation and times were determined from the 2015 Time Study:

1. the on-duty Detective must read and review each and every SCAR and all attached documentation including other agency notes, reports and narrative provided (ALLOWED at 18 minutes per case)
2. verify if a report was already written (6 minutes Detective NOT ALLOWED)
3. verify if a report was already written (6 minutes Records NOT ALLOWED)
4. Check prior history and determine if the case is actually in the agencies jurisdiction and determine that the case is not a duplicate and has not already been investigated by the department. This often requires phone calls to other involved agencies and also may work with internal staff such as records and dispatch to determine the history of the case to determine what action is required (36 minutes Detective) (NOT ALLOWED)
5. then the Detective and/or Sergeant must contact the Department of Social Services, report agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary. Detective and/or Lieutenant must decide on how to proceed on each case. (city requested 26-36 minutes) (NOT ALLOWED)
6. Sergeant time to approve and close case (ALLOWED at 10 minutes per case)
7. Records document and close the case (ALLOWED at 6 minutes per case)

The SCO modified their language in their response to the City's comment to the Audit Report from "the City did not complete and document the investigation of 90% of their cases" to 90% of the cases…were not "*fully"* investigated." They also stated that "although full initial investigations were not conducted, **some preliminary investigative activities may have taken place to corroborate the information reported by CPS** [emphasis added]." (See Exhibit 2, pages 32-34)

When the City complained at having 90% of their cases denied for reimbursement, the SCO reconsidered their initial stance and permitted time for the activities above: 1) read and review the SCARs, 6) Approve closing the case, and 7) Documenting and file the closed case. However, while they admitted that "some preliminary investigative activities may have taken place to corroborate the information reported by CPS," no time was allowed for that or any actual preliminary investigative activities identified and requested (activities 2, 3, 4, and 5 above).

The SCO explained that they denied that request because they believed these "four additional activities are not within the scope of the parameters and guidelines." They also stated that "Although the department may view these activities as necessary, they do not quality as preliminary investigative activities and are not mandated. As explained, Section IV.B.3.1 of the parameters and guidelines allow reimbursement of the actual costs incurred to 1) review the initial SCARs, 2) conduct initial interviews with involved parties, and 3) make a report of the finding of those interviews." (See Exhibit 2, page 33).
The City argued, unsuccessfully, that activities above, including, "contact the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case" falls under the eligible activity of "interview with involved parties" and "conduct a preliminary investigation." Further, without the investigative steps 2-5 above, it would have been impossible to determine the disposition of the case: whether or not the

allegations were founded and a SS 8583 report was required to be sent to the DOJ as required by State law and this mandate program.

The City contends that these preliminary investigative activities listed above were reasonably necessary for investigators to make the determination whether to close the case (determine the allegations are unfounded) or to continue the investigation by proceeding with in person/on-site interviews.

The Police Department explained that preparing detailed narratives, showing every action taken, was not required for these reports; particularly when it was determined that the case is not substantiated (See Exhibit E). The City explained that the times spent on the investigation could not be gleaned from the final PC 11166 reports, however, the interviews and preliminary investigative activities did occur and the time and process was documented in the 2015 time-study submitted to the SCO at the beginning of the audit process. A case could not be signed off as "not substantiated" without some review and action on our part.

The City believes that activities 2 through 5 above should have been found to be eligible based on the Commission's Statement of Decision (See Exhibit F). On page 34 of December 2013 Decision, the California Department of Social Services (CDSS) argues (and Commission agrees) that only an investigation similar to one that is conducted by CDSS should be allowed.

CDSS testimony states that, "**prior to the actual interviews,** the social worker must make a multitude of considerations **to first decide whether an in-person investigation is necessary** [emphasis added]." On page 35, CDSS continues to describe the process their staff goes through to make the determination as to whether the investigation requires referral to the Department of Justice (DOJ) under CANRA (Child Abuse and Neglect Reporting). "In Summary, these rules require the social worker to first decide whether an in-person investigation is necessary: which includes consideration of a multitude of considerations. If an in-person investigation of reported child abuse is determined to be necessary, the CDSS regulations at MPP 31-115 describe what steps are necessary for the conduct of the investigation."

"These rules require direct contact with all alleged child victims, and at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation with all the children present at the time of the initial in person investigation, all parents who have access to the child alleged to be at risk of abuse, noncustodial parents if he/she has regular or frequent in person contact with the child, and make necessary collateral contacts with persons having knowledge of the condition of the child. Based on these investigative activities, the social worker is required under CDSS regulations at MPP 31-501 to determine whether the results of the investigation require referral to the Department of Justice under CANRA."

The Commission concludes on page 37 of the Decision: "Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that the county welfare departments take before determining whether to forward the report to the DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate."

The City's request for activities 2-5 (see pages 3-4 of this narrative) including "26-36 minutes to call the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary (Detective)" is almost exactly the as the activity described by the Department of Social Services when they note, "to contact… at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation."

Therefore, based on the Statement of Decision discussion, we believe that the requested activities listed above and which were performed by the Police Department before this "last step" of "in-person interviews and writing a report of the findings" in the investigative process are therefore eligible for reimbursement. These preliminary investigative activities are necessary for the Police Department to determine if the suspected child abuse case (SCAR) was founded, unfounded or inconclusive and therefore should have been found to be reimbursable.

The claiming instructions are general guidelines meant to provide direction, not an exclusive and exhaustive list of every eligible tasks that take place during the preliminary investigative process to determine if the child abuse or neglect case is founded or unfounded. To assume so is unreasonable and violates the intent of State Mandate Statutes which ensure the reimbursement of actual costs incurred to comply with the State mandated program.

The SCO arrived at their conclusion by that activities 2-5 above were not eligible based on 1) strictly interpreted claiming instructions to mean that eligible activities equated to and were **solely limited to: conducting initial interviews with parents, victims, witnesses, or suspects** and 2) if no narrative detail existed in the report to prove an "interview" took place, then the SCO assumed that the Police Department did not investigate the case. (See Exhibit 2, page 17).

The City believes both these SCO assumptions were erroneous, unsupported by the Statement of Decision, and led to the disallowance of valid and eligible City costs.

SCO requiring a written report in a narrative format showing all interviews and investigative activities to obtain State Reimbursement for investigative activities is not supported by Parameters and Guidelines.

South Lake Tahoe Police Department procedures do not require detailed narrative write ups for cases that were deemed unfounded or inconclusive. The narrative in the "Comments" section of these reports might simply state, "Inconclusive. Unable to contract/locate family," or "Case closed by CPS" or "Situation stabilized." These brief descriptions and the identification of the assigned officer shown in the "Reviewed By" section of the report indicates investigative activities took place in order for the officer to make those assessments and close the case. (see South Lake Tahoe Police Department 11166 PC Referral Form in Exhibit E).

State Mandate law requires reimbursement of actual costs incurred to comply with the State mandated program. The City did have a report for each case investigated (11166 PC) – albeit a short form, however, this along with the copy of the SCAR (which the City had maintained and produced to the SCO satisfaction), the City's Time Studies (provided to the SCO) and command staff assertions that this was indeed standard Police Department practice for these types of cases, should have been sufficient to prove investigative activities took place.

Requiring detailed written reports showing notes of every action and interview in the investigation when it was not the City's procedure to do so for unfounded and unsubstantiated cases, would violate Due Process provisions. If this was a requirement for obtaining reimbursement, the SCO should have provided advance notification of their expectations in the claiming instructions. Further, since claiming instructions were released in 2014 and the program was eligible for reimbursement in 1999, it would have been impossible for activities to be tracked in the manner desired by the SCO prior to FY 2014-15.

Due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.[1] Thus, the SCO request for documentation that was not enumerated in the Parameters and Guidelines adopted in March or April of 2014 (the requirement for reports to include a record of all parties contacted in the investigations) affect substantive rights or liabilities of the parties that change the legal consequences of past events, and thus the application of those provisions

may be considered unlawfully retroactive under due process principles.[2] Provisions that impose new, additional, or difference liabilities based on past conduct are unlawfully retroactive.[3]

In the Clovis Unified School Dist. v. Chiang case, the court addressed the Controller's use of the Contemporaneous Source Documentation Rule (CSDR) in audits before the rule was included in the parameters and guidelines, finding that the rule constituted an underground regulation. The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness.."[4] The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and did not apply the CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

> We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR during the 1998 to 2003 fiscal years, when the CSDR was an underground regulation. This issue is not resolved by the Commission's subsequent incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)[5]

For the foregoing reasons, the City believes the SCO finding that activities 2-5 listed on pages 3-5 of this narrative were ineligible for reimbursement for the 90% of cases they deemed had not been "investigated" and should be reversed by the Commission.

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[1] In re Cindy B. (1987) 192 Cal.App.3d 771, 783-784; Clovis Unified School Dist. v. Chiang (2010) 188 Cal.App.4th 794, 804-805.

[2] Department of Health Services v. Fontes (1985) 169 Cal.App.3d 301, 304-305; Tapia v. Superior Court (1991) 53 Cal.3d 282; 287-292; Murphy v. City of Alameda (1993) 11 Cal.App.4th 906, 911-912.

[3] City of Modesto v. National Med, Inc. (2005) 128 Cal.App.4th 906, 911-912.

[4] Clovis Unified School Dist. v. Chiang (2010) 188 Cal.App.4th 794, 804-805.

[5] Clovis Unified School Dist. v. Chiang (2010) 188 Cal.App.4th 794, 809, fn. 5.

SCO's Comment:

In its IRC, the City contends that the SCO incorrectly reduced the number of other agency-generated SCARs that the LEA investigated and the time associated with performing the investigative activities for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component.

The City argues that preliminary investigative activities 2 through 5 should be eligible for reimbursement for the other-agency-generated SCAR cases that were determined to not be *"*fully*"* investigated based on the information included in the City's 2015 time study. We disagree. Preliminary investigative activities 2 through 5 are as follows:

2. Verify if a report was already written (6 minutes Detective NOT ALLOWED)

3. Verify if a report was already written (6 minutes Records NOT ALLOWED)

4. Check prior history and determine if the case is actually in the agencies jurisdiction and determine that the case is not a duplicate and has not already been investigated by the department. This often requires phone calls to other involved agencies and also may work with internal staff such as records and dispatch to determine the history of the case to determine what action is required (36 minutes Detective NOT ALLOWED)

5. Then the Detective and/or Sergeant must contact the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary. Detective and/or Lieutenant must decide on how to proceed on each case (city requested 26-36 minutes NOT ALLOWED).

The City is requesting an increase in the allowable time increment for those cases in which a full investigation was not completed. During audit fieldwork, we judgmentally selected a non-statistical sample of 148 SCAR case files (32 out of 163 in FY 2008-09; 66 out of 654 in FY 2009-10; and 50 out of 457 in FY 2010-11) to review. We thoroughly reviewed the contents of each file, and recorded our findings in detail in an Excel spreadsheet (**Exhibit C – page 62 – 71**). In reviewing the SCAR case files, the contents of the files typically included the following:

1. South Lake Police Department 11166 PC Referral Form. This form was completed by the Police Department; it provided a summary of the case that was referred, using check boxes, with the following information: type of abuse, investigating agency, type of investigation, assigned social worker, case status, and comments. **(See example – Exhibit E – page 115)**

   Most of the referral forms identified that CPS was the investigating agency. Those that did not identify CPS as the investigating agency, stated that an investigation was not necessary. "Type of investigation" refers to the type of investigation performed by CPS. The comments on the referral forms included: inconclusive, unfounded, or closed.

2. Pre-Disposition Sheet. This sheet was completed by CPS; it provided general information about a newly opened case, including date, assigned social worker, and to which agency who the case was cross-reported. **(See example – Exhibit E – page 116)**

3. Disposition Sheet. This sheet was completed by CPS. It provided a status of the case after CPS performed a review or investigation. Information on this sheet included date, name of social worker, which agency the social worker cross-reported to, and the final disposition of the case (no immediate risk, situation stabilized, closed, opened service case, evaluated out). **(See example – Exhibit E – page 120)**

4. Narrative Report. This was completed by the Police Department; it stated: "See PC 11166 in file," which is the referral form completed by CPS (see item 1 above). **(See example – Exhibit E – pages 112-114)**

5. Person Profile. This form was completed by the Police Department; it lists the contact information of the suspected child abuser. **(See example – Exhibit E – page 134)**

6. CPS Investigative Report. This report was completed by CPS when the SCAR case was investigated by CPS.

7. SCAR Form SS 8572. This form was completed by CPS. **(See example – Exhibit E – page 122)**

Based on our review of the SCAR case files, we found that few of the other agency-generated cases were investigated by the Police Department or if the Police Department did conduct an investigation it was not documented in the case files. As

noted previously, our review of the South Lake Police Department 11166 PC Referral Form disclosed that most of the forms identified that CPS was the investigating agency or that CPS determined that an investigation was not necessary. The case files also showed that CPS regularly cross-reported SCARs to the Police Department. The Police Department received the CPS referrals and, made notes of the referral in the files, but did not perform an investigation on the referrals received from CPS. The few SCAR case files we found that were investigated by the Police Department contained detailed written narratives of the investigations performed and the interviews conducted. The narratives identified the officers involved, type of investigative work performed, type of crime committed, whether a follow-up investigation was needed, who was interviewed, date of interviews, and time of interviews.

Based on our sampling results, we found that 90% (a total of 2,796) of the SCAR cases cross-reported to the Police Department were not fully investigated. That is, the case documentation that we reviewed during fieldwork did not show that the Police Department had: 1) reviewed the SCAR; 2) conducted initial interviews with witnesses, victims, parents, etc.; and 3) made a written report of the interviews that may have been reviewed by a supervisor. However, during the audit, Police Department staff members explained that for these cross-reported cases, although full initial investigations were not conducted, some preliminary investigative activities may have taken place to corroborate the information reported by CPS. Therefore, as detailed in the audit report, we worked with the Police Department to determine an allowable time increment for the Officer/Detective, Sergeant, Records Technician classifications for performing partial initial investigation activities for these 2,796 cases.

Section IV – B.3.a (1) of the parameters and guidelines states, in part:

> Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583,

or subsequent designated form, to the Department of Justice. Except as provided in paragraph below, this activity includes:

1. Review of the initial Suspected Child Abuse Report (Form SS 8572);

2. Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and

3. Making a report of the findings of those interviews (which may be reviewed by a supervisor.

As outlined in the audit report (**Section 10 – Exhibit 2 – page 485**), we determined during the audit that preliminary investigative activities 1, 6, and 7 may have taken place to corroborate the information reported by CPS (which completed the investigations) to make a determination of whether the cases were unfounded. Therefore, we determined that the preliminary investigative activities 1, 6, and 7, and the time associated with performing these activities, were allowable for reimbursement for those SCARs, referred from CPS, in which the Police Department closed the cases without completing and documenting a full initial investigation (totaling 2,796 SCARs for the audit period). Activities 1, 6, and 7 are as follows:

1. Read and review the SCAR (18 minutes Officer/Detective);

6. Approve closing the case (5 minutes Sergeant); and

7. Document and file the closed case (5 minutes Records Technician).

The SCO did not "deny all preliminary investigative time" for the 2,796 cases that were found to have been not fully investigated. Rather, we worked with the Police Department, and based on our discussions with the City's Detective, we found the three previously referenced activities to be reimbursable. The City is correct that we allowed reimbursement of 28 minutes per case, as this is what the Detective proposed, and what we concluded was reasonable based on his explanation. During the audit, the City also proposed that preliminary investigative activities 2 through 5 should be included as reimbursable activities for the 2,796 cases that were found to have been not fully investigated.

In addition, the City argues that the 2015 time study supports that the City performed preliminary investigative activities 2 through 5. The purpose of a time study is to approximate the average time it takes to perform a specific activity. We are not questioning the time that it may have taken Police Department staff members to perform these activities. Rather we discussed the matter with City officials and informed them that these activities are not mandate-related and thus not reimbursable per the parameters and guidelines. Consequently, the time study is irrelevant.

We agree that Detectives and other Police Department staff members perform many activities necessary to complete child abuse investigations. However, not all activities within the investigation process (whether for partial or full initial investigations) are reimbursable, even when they appear reasonably necessary. For example, preliminary investigative activities 2 and 3, identified previously, can be described as overlapping internal procedures. Although the Police Department may view these activities as necessary, they do not qualify as preliminary investigative activities and are not mandate-related.

In the City's response, it suggests that preliminary investigative activities 2 through 5 are "almost exactly the same as" the activity described by the Department of Social Services in the Statement of Decision: "to contact….at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation." We would like to emphasize that "almost exactly the same" is not equivalent.

Page 34 of the Statement of Decision states:

> The CDSS Manual of Policies and Procedures, and excerpt of which is submitted by the claimant as Exhibit 9, states that social worker "shall have in-person contact with all children alleged to be abused," and if the report is not unfounded, "shall interview all children present at the time of the investigation, and all parents who have access," and "shall make a determination as to whether services are appropriate," and "shall request assistance from law enforcement if necessary." The manual goes on to state that the county "shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates….that is determined not to be unfounded.
>
> CDSS argues that the maximum level of investigation that county welfare departments are required to undertake is to conduct interviews with parents, suspects, victims, and witnesses, and that "[b]ased on these investigative activities; the social worker is required under CDSS regulations at MPP 31-501 to determine whether the results of the investigation require referral to the Department of Justice under CANRA."

Page 35 of the Statement of Decision states:

> CDSS concludes that the interviews with suspect(s), victim(s), and witness(es) conducted by county welfare departments are sufficient to comply with the mandate, and that law enforcement activities are reimbursable only to the same extent.
>
> Commission finds that a patrol officer's (or county probation or county welfare employee's) interviews with the child, parents, siblings, witnesses, and/or suspect(s), and preliminary report of the findings, including supervisory review, constitute the maximum extent of investigation necessary to make the determination whether to forward the report to DOJ, and to make the report retainable.

The City contends that Police Department procedures do not require detailed narrative write-ups for cases deemed to be unfounded or inconclusive. The City maintains that the 11166 PC Referral Form prepared and maintained by the LEA, SCAR Form SS 8572, the City's 2015 time studies, and assertions by command staff should have been sufficient to prove that investigative activities took place. The City believes that it is a violation of Due Process provisions requiring detailed written reports showing notes of every action and interview in the investigation when it is not the City's procedure to do so for unfounded and unsubstantiated cases. We disagree.

Page 33 of the Statement of Decision states:

> As discussed throughout this analysis, the scope of reimbursable activities is limited by the plain language of the statute, which requires an investigation *to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated.* In addition, the scope of investigation is limited to the degree of investigation that DOJ has allowed to constitute a "retainable report;" in other words, the *minimum* degree of investigation that is sufficient to

complete the reporting requirement is the *maximum* degree of investigation reimbursable under the test claim statute.

The parameters and guidelines (section IV – B.3.a.1) allow ongoing activities related to costs for reporting to the DOJ for the following reimbursable activities:

> From July 1, 1999 to December 31, 2011, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall: (Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ for law enforcement agencies only ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.)

2) Complete an investigation for purposes of preparing the report

> Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583 [emphasis added], or subsequent designated form, to the Department of Justice. (Penal Code section 11169(a) (Stats. 1997, ch. 842 § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.) Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

For this cost component, the reimbursable activity is to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a SS 8583 Report Form to the DOJ. Reimbursable activities are limited to reviewing the SCAR, conducting initial interviews, and writing a report about the interviews that may be reviewed by a supervisor. The documentation maintained in the SCAR case files, as well as the documentation the City references, including the 11166 PC Report Form prepared and maintained by the LEA, the SCAR Form SS 8572, the City's 2015 time studies, and assertions by command staff are standard LEA practice for these types of cases do not support that the City prepared a written report nor do they support that the LEA conducted initial interviews with parents, victims, suspects, or witnesses, where applicable. Therefore, although it may not be the City's procedure to write a report to document an interview, doing so is a condition for reimbursement under the mandate.

The City also stated in its response that because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and last step that county welfare departments take before determining whether to forward the report to the DOJ and possible refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. We agree that conducting in-person interviews and writing a report of the findings are necessary to comply with the mandate. However, preliminary investigative activities 2 through 5 do not support that the Police Department conducted in-person interviews or wrote a report of its findings to comply with the mandate. Preliminary investigative activities 2 through 5 are not within the scope of the parameters and guidelines. Therefore, the additional time the City is requesting for preliminary investigative activities 2 through 5, beyond the 28 minutes already allowed for

the 2,796 cases in which partial initial investigations were performed, are ineligible for reimbursement.

For the cases in which a full investigation was conducted, we accepted the City's claimed time increments without adjustment. In addition, we worked with the City during the audit to allow the time increments for the three partial investigation activities 1, 6, and 7 identified previously, even though there was no documentation in the case files to support that the activities had been performed.

The City has not provided any additional documentation to support an increase in allowable costs. The City's argument that the number of other agency-generated SCARs the LEA investigated and the time associated with performing the investigative activities were incorrectly reduced for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component remains unsupported. As such, we believe that the reduction to the number of other agency-generated SCARs that the LEA investigated and the time associated with performing the investigative activities for the audit period should remain unchanged.

III. DISALLOWANCE OF OVERHEAD/INDIRECT COST

(Finding 3: Unallowable indirect costs)

Issue 3

The SCO determined that the City overstated indirect costs totaling $521,214 for the audit period **(Section 10 – Exhibit 2 – page 499)**. The SCO concluded that the costs are unallowable because the City overstated the indirect cost rates for the audit period and applied the indirect cost rates to overstated salaries.

In the IRC filed May 13, 2021, the City disagrees with the SCO's reduction of the indirect cost rates. The City believes that the SCO determination to completely disallow the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost rate proposal calculation is erroneous and improperly reduces the City's claims.

SCO's Analysis:

The City believes that the SCO's determination to completely disallow the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost rate proposal (ICRP) calculation is erroneous.

Section IV of the parameters and guidelines states, "Actual Costs must be traceable and supported by source documents that show the validity of such costs."

Section V – B of the parameters and guidelines states:

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

Compensation for indirect costs is eligible for reimbursement using 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 direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

The City believes that the Police Department's Communication Center and the Public Safety Dispatcher positions serve as the department's receptionists. The City provided a listing of common clerical duties obtained from Indeed.com's website to show that the duties performed by the Public Safety Dispatcher positions are clerical functions. The City also believes that the disallowance of the Public Safety Dispatcher positions from the Police Department's overhead rate contradicts what is identified in the *State Controller's Office Mandated Cost Manual for Local Agencies* because the mandated cost manual includes communications as an allowable expense in the example of computing an ICRP rate.

The City agrees that administrative and clerical duties are valid examples of allowable indirect costs and that the Public Safety Dispatchers perform clerical duties. However, the City points out that there is no language in the *State Controller's Office Mandated Cost Manual for Local Agencies* or OMB guidelines that restricts indirect costs to only administrative or clerical duties. The City believes that positions such as Janitors or Custodian, which are equivalent to the City's Police Maintenance Workers and staff in the City's Technology Division, do not perform administrative or clerical functions. However, the inclusion of these positions and division was allowable in the ICRP even though the employees do not perform administrative or clerical functions.

The City believes that it is clear that the Public Safety Dispatcher and the Evidence Technician classifications did not perform any of the mandated program or cost objective activities directly, nor can their time be directly attributable to any specific activity or award. The City believes that the Public Safety Dispatcher and the Evidence Technician classifications should be allowable as 100% indirect labor costs in its ICRP calculations.

City's Response:

Issue 3: Audit Finding 3 – SCO Incorrectly reduced Indirect Costs by

The SCO determined that two classifications of employees – the Dispatchers and Evidence Technicians were completely unallowable in the Indirect Cost pool." …two classifications that we determined do not provide any indirect duties and are therefore 0% indirect: Public Safety Dispatcher and Evidence Technician." (See Exhibit 2, page 42)

The following statements show how the SCO auditor came to their erroneous conclusion that these positions were not indirect:

First flaw in SCO's ICRP finding. The auditor states:

> *"The duties we identified as indirect were either administrative or clerical in nature." The "Public Safety Dispatcher and Evidence Technician's duty statements… do not identify any duties that are administrative or clerical in nature." (See Exhibit 2, page 42)*

It is unclear how the SCO defines clerical duties or functions, because most would consider an organization's communication center or receptionists to be clerical/support staff. They are not the one's solving the citizens problems – they are transmitting the calls to the officers (direct staff) to respond to those issues.

According to the on-line hiring website, ***Indeed.com's*** "List of Common Clerical Duties" downloaded from their website and attached in Exhibit H, eight of the twelve "clerical" tasks listed are performed by Police Department Dispatchers:

- Communication with customers and colleagues
- Answering phone calls
- Records and document filings
- Operating office machines
- Keeping records and reports
- Replying to emails
- Delivering messages
- Arranging appointments

The Police departments communication center and those dispatch position's primary mission is to serve as the department's receptionists, a clearly is a clerical function by standard definition. (See Job Description items 1-11 for the Dispatcher position attached in Exhibit G)

Evidence Technician's job to store, maintain and process evidence material for all sworn staff is similar to other clerical job duties listed by the Indeed list of clerical duties." to compile, track transactions," to "file important company records."

The SCO disallowance of the Communications/Dispatch positions from the Police Department's overhead rate clearly shows an error in judgement as it is contrary to their own statements and guidelines. The SCO's "Claiming Instructions, Local Agencies Mandated Cost Manual" specifically includes **Communications** costs as an ALLOWABLE expense in their own example of how to compute an ICRP rate. (See Exhibit I, Claiming Local Agencies Mandated Cost Manual, Section 2, Filing a Claim, page 13)

Second flaw in SCO's ICRP finding. The auditor states:

> *"The duties we identified as indirect were either administrative or clerical in nature." (See Exhibit 2, page 42):*

While we agree that administrative and clerical duties are valid examples of allowable indirect duties and that dispatchers perform clerical duties; it should be pointed out that there is no

language in either Claiming Instructions or the Federal CFR/OMB Guidelines which limits indirect costs to only administrative and clerical duties.

Claiming Instructions and the Federal CFR/OMG Guidelines which state:

> Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective; and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved."

For example, a janitor or custodian (in the city's case, the Police Maintenance Worker) is neither clerical nor administrative, however, that position does provide necessary support and benefit a common or joint purpose: the overall police department as well as the cost objective/mandate program. The same is true for the department's Information Technology division. Those positions (the Information Services Manager and the Information Services Technicians) were claimed and were correctly allowed for inclusion in the ICRP/Overhead rate by the SCO even though they did not provide "administrative or clerical" functions. (See Exhibit 2, page 35).

Therefore, the SCO criteria to limit eligibility to, *"The duties we identified as indirect were either administrative or clerical nature."* was erroneous.

Third flaw in SCO's ICRP finding. The auditor states:

> *"Generally speaking, direct costs are those which can be identified specifically with particular unit or function (cost objective) and accounted for separately." (See Exhibit 2, page 42). And*
>
> *"Indirect costs…are not attributable to a specific project or unit." (See Exhibit 2, pages 42-43).*

SCO's definitions of direct and indirect costs do not adhere to either State or Federal guidelines and may explain their error.

SCO states, "direct costs are those which can be identified specifically with particular unit or function (cost objective) and accounted for separately" however, Claiming Instructions say, "Direct costs are those costs incurred specifically for the reimbursable activities. (see Exhibit 1, page 14).
While on-scene conducting the child abuse investigations, the officer is in constant contact with the dispatch staff – receiving the information and request for service from dispatch, notifying dispatch of their location, arrival time, departure time form the call and notifying them of the status of the investigation or if any additional assistance is needed. The Dispatchers – or Communications Division – is the liaison between the public and the sworn officer, as well the sworn officer and command/support staff.

It is clear that neither the dispatcher nor the evidence staff positions are the direct costs of this programs or "Cost objective." They did not perform any of the mandated program activities directly; their time was not claimed directly – nor could easily be claimed directly for the mandated program; and their costs could not be identified specifically to the mandated "cost objective" or any other activity or award.

Nowhere in the Claiming Instructions or the Federal Guidelines does it specify that determination of whether a cost is an eligible indirect cost is defined by how it is budgeted or if its functions are "attributed to a specific unit." The determination is based on the function or **benefit** that unit performs or provides to the eligible direct "cost objective."

SCO statement:

"*Indirect costs…are not attributable to a specific project or unit." (See Exhibit 2, pages 42-43).*

is contrary to [the] claiming instructions and Federal OMB/CFR guidelines.

In fact, the opposite is true – Claiming Instructions specifically permit the computation of overhead/ICRP costs by division or section. (See Exhibit 1, Claiming Instructions, page 16 and also on Page 39 of the Audit Report) which reads:

> 2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such **as divisions or sections, and then classifying the division's or section's total costs for the base period**

In addition, the Claiming Manual further states that:

> "Indirect costs can originate in the department performing the mandate **or in departments that supply the department performing the mandate** with goods, services, and facilities."

CFR gives examples showing the clerical pools of staff be classified as indirect costs. (see Exhibit J, Page 207-209) 2 CFR instructs:

> "(b) Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration" as described in section A.3 of this Appendix. The indirect costs pools are described as follows:…
> (3) Operations and maintenance expenses. …They include expenses such as janitorial…utilities…care of grounds…
>
> (4) General administration and general expenses. …Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs…The salaries and wages of administrative and **pooled clerical staff** should normally be treated as indirect costs…"

Not only can divisions or units be either direct or indirect – but so can costs in outside DEPARTMENTS which provide eligible indirect "services". (See Exhibit I, Page 10). By the SCO's own analysis," City-wide" overhead costs" – or costs from outside departments were allowed in the ICRP computations. (see Exhibit 3 – City-wide Overhead Calculations in Claim copies)

For all the reasons stated above, SCO reasoning that: IF a cost "can be identified specifically with a unit or function", THEN that makes it a direct cost -- was flawed and contradicts State and Federal Guidelines.

The City respectfully requests that the Commission review and remedy these issues.

SCO's Comments:

In its IRC, the City contends that the SCO incorrectly and improperly reduced the City's claims by excluding the salaries and related benefits of the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost pool in its IRCP. We disagree.

As outlined in the audit report **(Section 10 – Exhibit 2 – page 500)**, the City claimed a total of 21 classifications as 100% indirect in its ICRPs during the audit period (two exceptions were noted). Of these 21 classifications, we accepted the City's assessment for 13 and questioned eight as not being 100% direct due to the nature of the positions. Throughout the

audit, we worked with the City to determine a reasonable allocation of direct and indirect labor for these eight classifications. We analyzed the representative duties listed in the City's duty statements, and held multiple discussions with City officials and considered their input to determine a reasonable allocation. Of the eight classifications, we determined that six performed a combination of both direct and indirect duties to different extents.

The duties that we identified as indirect were either administrative or clerical in nature. The duties that we identified as direct were readily assignable to a specific function and benefited the direct functions of the Police Department. The City is not contesting our assessment of the six classifications. Rather, the City is contesting the two classifications that we determined do not perform any indirect duties and are therefore 0% indirect the Public Safety Dispatcher and Evidence Technician classifications.

During audit fieldwork, we worked extensively with both Police Department and City staff members to perform an analysis of the Public Safety Dispatcher and Evidence Technician classifications. Based on our analysis, we determined that these classifications did not perform any indirect duties and were thus 0% indirect. We based our assessment of direct and indirect salaries and related benefits both on our discussions with staff as well as on the actual duty statements **(Tab 6)**. The respective duty statements do not identify general business function duties that would benefit the entire Police Department. Rather, they identify duties that are direct in nature and can be specifically identified with a particular unit or function within the Police Department.

However, the City argues that the Police Departments communication center and the Public Safety Dispatcher positions serve as the department receptionists. The City provided a listing of common clerical duties obtained from the Indeed.com's website to show that the duties performed by the Public Safety Dispatcher positions are clerical functions. The City also contends that the disallowance of the Public Safety Dispatcher positions from the Police Department's overhead rate contradicts what is identified in the *State Controller's Office Mandated Cost Manual for Local Agencies* because the manual includes communications as an allowable expense in the example of computing an ICRP rate. We disagree.

Employees in the Public Safety Dispatcher classification may serve as receptionists; however, they do not provide receptionist services to the entire Police Department. Employees in the Public Safety Dispatcher classification serve as receptionists that benefit specific units within the Police Department. Therefore, we believe that this classification should be classified as direct. In addition, costs for communications are allowable, as documented in the OMB guidelines **(Tab 7 – page 5)**. In computing an ICRP rate, communication expenses are costs incurred for telephone services, local and long distant calls, telegrams, postage, messenger, electronic or computer transmittal services and the like. Consequently, there is no correlation between communication expenses and the Public Safety Dispatcher classifications costs, as the City suggests.

The City contends that it is clear that the Public Safety Dispatcher and Evidence Technician classifications did not perform any of the mandated program or cost objective activities directly, nor can their time be directly attributable to any specific activity or award. Therefore, the City argues that these classifications should be allowable as 100% indirect labor costs in the ICRP calculations. We disagree.

The City interchangeably identifies the cost objective as the "child abuse program" and "child abuse investigations." The City argues that the Public Safety Dispatcher and the

Evidence Technician classifications benefit more than one cost objective (child abuse investigation, missing persons, theft, DUI, etc.). For this reason, the City concludes that these positions are indirect. We disagree.

The indirect cost rate is typically computed as a calculation that allocates expenses between direct and indirect. The pool of expenses (numerator) identified as indirect is then divided by an allocation base (denominator), which in most cases is direct labor. Generally speaking, direct costs are those which can be identified specifically a with particular unit or function ("cost objective") and accounted for separately. Indirect costs, on the other hand, are those costs incurred in support of general business functions and which are not attributable to a specific project or unit. Both the City's claimed rates (as shown in its ICRPs) and our audited rates were based on the Police Department expenditures as a whole. Therefore, the cost objective is the entire Police Department and not the ICAN program. Direct labor includes the overall functions of the Police Department assignable to specific units and functions, and the calculated indirect cost rates are considered to be department-wide rates.

The City has not provided additional documentation to support an adjustment to the indirect cost rates. We believe that the Public Safety Dispatcher and Evidence Technician classifications perform duties that are direct in nature and can be specifically identified with a particular unit or function within the Police Department. We also believe that these classifications do not perform general business functions that benefit the entire Police Department. Therefore, we believe that we properly classified these positions as direct in our computations of the ICRPs for the audit period. As such, we believe that the reduction of the indirect cost rates by disallowing the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost rate proposal calculation should remain unchanged.

IV. CONCLUSION

The SCO audited the City of South Lake Tahoe's claims for costs of the legislatively mandated Interagency Child Abuse and Neglect Investigation Reports program (PC sections 11165.9, 11166, 11166.2, 11166.9[1], 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)) for the period of July 1, 1999, through June 30, 2012. The city claimed $1,505,262 for the mandated program. Our audit found that $239,395 is allowable and $1,265,867 is unallowable. The costs are unallowable because the City overstated the number of SCARs cross-reported, overstated the number of SCAR cases investigated, misstated productive hourly rates, and overstated indirect cost rates.

The Commission should find that (1) the SCO correctly reduced the City's FY 1999-2000 claim by $33,684; (2) the SCO correctly reduced the City's FY 2000-01 claim by $41,122; (3) the SCO correctly reduced the City's FY 2001-02 claim by $44,012; (4) the SCO correctly reduced the City's FY 2002-03 claim by $68,780; (5) the SCO correctly reduced the City's FY 2003-04 claim by $77,602; (6) the SCO correctly reduced the City's FY 2004-05 claim by $82,291; (7)

the SCO correctly reduced the City's FY 2005-06 claim by $89,468; (8) the SCO correctly reduced the City's FY 2006-07 claim by $102,975; (9) the SCO correctly reduced the City's FY 2007-08 claim by $100,781; (10) the SCO correctly reduced the City's FY 2008-09 claim by $151,888; (11) the SCO correctly reduced the City's FY 2009-10 claim by $193,363; (12) the SCO correctly reduced the City's FY 2010-11 claim by $198,188; and (13) the SCO correctly reduced the City's FY 2011-12 claim by $81,713.

V. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on February 16, 2022, at Sacramento, California, by:

Lisa Kurokawa, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office

Tab 3

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
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SACRAMENTO, CA 95814
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December 16, 2013

Mr. Ed Jewik
County of Los Angeles,
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012-2766

And Affected State Agencies and Interested Parties (See Mailing List)

RE: Statement of Decision and Parameters and Guidelines
Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22
Penal Code Sections 11165. 9 et al.
County of Los Angeles, Claimant

Dear Mr. Jewik:

On December 6, 2013, the Commission on State Mandates adopted the statement of decision and parameters and guidelines on the above-entitled matter.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES: Penal Code Sections 11165.9, 11166,11166.2, 11166.9,[1] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916 California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)[2] "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91) Period of reimbursement begins July 1, 1999, or later for specified activities added by subsequent statutes. Reimbursement ends for specified activities on January 1, 2012.	Case No.: 00-TC-22 *Interagency Child Abuse and Neglect Investigation Reports* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted December 6, 2013*) (*Served December 16, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on December 6, 2013.

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

[2] The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

Ed Jewik appeared on behalf of the claimant, the County of Los Angeles. Michael Byrne and Kathleen Lynch appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of 7-0.

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the *Interagency Child Abuse and Neglect Investigation Reports* (ICAN) test claim, 00-TC-22, adopted December 6, 2007. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 1999, or later for specified activities added by subsequent statutes. Some of the activities end as of January 1, 2012, due to a subsequent change in law.

The test claim addresses amendments to the Child Abuse and Neglect Reporting Act (CANRA). The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The Commission found that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, and 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903 as added by Register 98, No. 29, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)[3]

[3] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)[4]

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)[5]
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[6]

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[4] As added by Statutes 2000, chapter 916, operative January 1, 2001.

[5] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[6] *Ibid.*

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)[7]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[8]

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)[9]

---

[7] *Ibid.*

[8] *Ibid.*

[9] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)[10]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)[11]

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)[12]

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the

[10] *Ibid.*

[11] *Ibid.*

[12] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)[13]

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[14]

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[15]
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[16]
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[17]

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the

[13] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

[14] As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [18]

- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [19]

Notifications Following Reports to the Child Abuse Central Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)[20]
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)[21]

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[18] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as added by Register 98, No. 29.

[19] *Ibid.*

[20] As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

[21] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996,

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)[22]

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)[23]

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).) [24]

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

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chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

[22] *Ibid.*

[23] As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

[24] *Ibid.*

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[25]

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).) [26]

The Commission found that requirements imposed on individuals, termed "mandated reporters," are not unique to government, but rather are generally applicable to all persons described in the statute. Mandated reporters, including physicians, teachers, social workers, law enforcement personnel, and members of a number of other professions, are required to report to "an agency specified in section 11165.9," whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect.[27] These requirements are imposed upon individuals by virtue of their vocation and professional training, irrespective of whether they are employed by local government. Therefore, as discussed in the test claim statement of decision, those requirements do not constitute a state-mandated new program or higher level of service.[28] Additionally, some duties found in the test claim statutes are not new, or are otherwise excluded from reimbursement, pursuant to the Commission's findings in the test claim statement of

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[25] As amended by Statutes 1997, chapter 842.

[26] *Ibid.*

[27] Penal Code section 11166(a) (Added by Stats. 1980, ch. 1071. Amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, ch. 269; Stats. 1988, ch. 1580; Stats. 1990, ch. 1603 (SB2669); Stats. 1992, ch. 459 (SB1695); Stats. 1993, ch. 510 (SB665); Stats. 1996, ch. 1080 (AB295); Stats. 1996, ch. 1081 (AB3354); Stats. 2000, ch. 916 (AB1241); Stats. 2001, ch. 133 (AB102); Stats. 2002, ch. 936 (AB299); Stats. 2004, ch. 823 (AB20); Stats. 2004, ch. 842 (SB1313); Stats. 2005, ch. 42 (AB299); Stats. 2005, ch. 713 (AB776); Stats. 2006, ch. 701 (AB525); Stats. 2007, ch. 393 (AB673); Stats. 2010, ch. 123 (AB2380); Stats. 2012, ch. 728 (SB71); Stats. 2012, ch. 517 (AB1713); Stats. 2012, ch. 521 (AB1817)).

[28] See *County of Los Angeles v. State* (1987) 43 Cal.3d 46, at p. 56.

decision. Furthermore, maintaining the Child Abuse Central Index (CACI), and other duties imposed upon the Department of Justice, are not reimbursable activities because they affect state government, rather than local government.

But the duties imposed on city and county law enforcement agencies, county welfare departments, and county probation departments, where authorized, to receive reports from mandated reporters of suspected child abuse; to refer those reports to the correct agency when the recipient agency lacks jurisdiction; to cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; to report to licensing agencies; to make additional reports in the case of a child's death from abuse or neglect; to distribute the standardized forms to mandated reporters; to investigate reports of suspected child abuse to determine whether to report to the Department of Justice; to notify suspected abusers of listing in the Child Abuse Central Index; and to retain records, as specified, *are* unique to local government, and were determined to constitute a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. A small number of activities were also approved for county licensing agencies and district attorneys' offices, as provided.

II. PROCEDURAL HISTORY

The test claim was filed on June 29, 2001, by the County of Los Angeles (claimant), and was partially approved by the Commission on December 6, 2007, by a vote of 7 to 0.[29]

The adopted statement of decision was issued December 19, 2007, with instructions for the claimant to file proposed parameters and guidelines within 30 days. The claimant submitted proposed parameters and guidelines on January 14, 2008. On December 2, 2008, the claimant requested a prehearing conference on the draft parameters and guidelines. Pursuant to the prehearing on December 11, 2008, the parties agreed that they would develop a reasonable reimbursement methodology (RRM) and submit the proposal to the Commission by April 1, 2009. On March 10, 2009, the claimant submitted a request for a second prehearing. Pursuant to the second prehearing, Commission staff issued proposed schedules for the parties resulting in a tentative hearing date between September 2009 and January 2010. When the claimant failed to submit the proposed RRMs for addition to the parameters and guidelines within the proposed schedules, Commission staff warned, in a letter dated August 19, 2009, that "if a proposed reimbursement methodology is not submitted by September 1, 2009," the Commission would proceed in adopting an actual cost parameters and guidelines at the December 2009 hearing. The claimant requested a third prehearing, which was set for October 29, 2009. At the third prehearing, it was determined that the initial proposed parameters and guidelines did not describe the reimbursable activities consistently with the surveys that were being circulated to evaluate costs and form the proposed unit rate RRMs. As a result, the claimant submitted revised proposed parameters and guidelines, on January 28, 2010, attempting to describe the reimbursable activities more in line with the information requested in the surveys.

On March 11, 2010, the Department of Social Services (CDSS) requested an extension of time to file comments on the revised proposed parameters and guidelines. On March 12, 2010, the State Controller's Office (SCO) requested an extension of time to file comments on the revised proposed parameters and guidelines. On March 18, 2010, CDSS submitted written comments on

[29] Exhibit A, Test Claim Statement of Decision, at pp. 1-2; 21-38.

the revised proposed parameters and guidelines.[30] On March 30, 2010 the Department of Finance (DOF) submitted written comments on the revised proposed parameters and guidelines.[31] On April 1, 2010, SCO submitted written comments on the revised proposed parameters and guidelines.[32] On May 18, 2010, the claimant submitted rebuttal comments and a second revised proposed parameters and guidelines.[33]

On March 12, 2013, Commission staff issued a draft proposed statement of decision and parameters and guidelines.[34] On March 20, 2013, the claimant requested an extension of time to file comments, from April 2, 2013 to May 2, 2013, and a postponement of the hearing date from April 19, 2013 to May 24, 2013. The request for extension and postponement was granted for good cause. On March 27, 2013 the SCO filed comments on the draft proposed statement of decision and parameters and guidelines.[35] On April 17, 2013, the claimant filed comments on the draft proposed statement of decision and parameters and guidelines.[36] On April 19, 2013, DOF filed a request for extension and postponement, which was granted for good cause on April 22, 2013, extending time to file comments until June 7, 2013, and setting the matter for hearing on July 26, 2013.

On June 7, 2013, DOF submitted comments on the draft proposed statement of decision, suggesting that Proposition 30, adopted by the voters in 2012, might have an impact on the Commission's findings regarding costs mandated by the state.[37] On June 10, 2013, CDSS submitted comments on the draft proposed statement of decision, requesting that the Commission consider the potential impact of Proposition 30 and the 2011 Realignment legislation.[38]

On June 14, 2013, Commission staff issued a request for comments and additional briefing addressing the 2011 Realignment Legislation and Proposition 30, and the possible impacts on existing public safety-related mandates, such as the *ICAN* program.[39] On July 8, 2013, DOF

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[30] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines.

[31] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines.

[32] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines.

[33] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

[34] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines.

[35] Exhibit J, SCO Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[36] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[37] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[38] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[39] Exhibit N, Commission Request for Comments on New Substantive Issue.

requested an extension of time to file comments and postponement of the hearing to the December 6, 2013 hearing, which was granted for good cause.[40] The parties and interested parties submitted comments in response to Commission staff's request on September 3 and 5, 2013.[41, 42,43]

III. POSITION OF THE PARTIES

A. Claimant's Position and Proposed Parameters and Guidelines

The claimant's revised proposed parameters and guidelines offered a combination of actual cost reimbursement for some activities and standard times-based RRMs for others. In response to agency comments, the claimant submitted rebuttal comments and a *second revised* proposed parameters and guidelines, which introduced a "streamlined three-tiered classification of required investigations,"[44] but otherwise made no changes to the prior revised proposed parameters and guidelines. For that reason, both the revised proposed parameters and guidelines and the second revised proposed parameters and guidelines are analyzed below.

The claimant proposes actual cost reimbursement for most activities expressly approved in the statement of decision, and most activities alleged to be reasonably necessary to complete those activities, including a number of case-specific investigative activities and costs, such as polygraph testing, DNA testing, medical examinations, and other evidence-gathering activities. In addition, the claimant proposes standard time RRMs for the following repetitive activities:

- For law enforcement to complete an investigation of suspected child abuse to determine whether a report is unfounded, substantiated or inconclusive: multiple standard time RRMs are proposed by the claimant based upon the level of investigation required in each case;[45] and
- For county welfare departments to complete certain reports and comply with specified notice requirements.[46]

The activities proposed for reimbursement by the claimant are based on declarations in the record detailing the procedures that Los Angeles County Sheriff's Department employs to investigate reports of suspected child abuse. The standard times were developed on the basis of survey information collected from Los Angeles County Sheriff's Department personnel, and

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[40] Exhibit O, DOF Request for Extension and Postponement.

[41] Exhibit P, CSAC Response to Commission Request for Comments.

[42] Exhibit Q, County of LA Response to Commission Request for Comments.

[43] Exhibit R, DOF Response to Commission Request for Comments.

[44] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 6.

[45] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 14-18.

[46] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

provide reimbursement for repetitive activities conducted by law enforcement agencies when inquiring into reports of suspected child abuse. Standard time RRMs are proposed for three levels of investigations, based on the progress of the investigation, Level 1 being the lowest level.

In cases in which the report is facially inaccurate, or where a preliminary investigation results in a finding that no abuse has occurred, standard times are proposed for the recordkeeping and investigative activities necessary to receive and track the report, and to decide not to forward the report to DOJ; these cases are described as levels 1 and 2, and include receiving and reviewing the initial report, and, where necessary, tasking a patrol officer to conduct interviews and preliminary investigation, concluding with closure of the case, which includes supervisory review.[47] Cases in which some evidence is adduced that necessitates further investigation are categorized as level 3 investigations. Level 3 includes follow-up interviews conducted by a "Child abuse investigator," conducting a background check on the suspect(s), conferring with social services, and writing additional reports, including the CACI report required for DOJ.[48] The claimant proposes applying one of the standard times to each category of case, as reported by each eligible claimant, and multiplying the standard times by the hourly pay rates for each law enforcement agency.

The standard times RRMs proposed for county welfare agencies to prepare and submit certain reports and satisfy certain notice requirements were developed on the basis of information from CDSS detailing the procedures required of individual county welfare agencies, and surveys of eligible agencies in Los Angeles County taken to determine how much time is spent on each activity. The standard times are proposed for the completion of the Child Abuse Summary Report form, the Suspected Child Abuse Report form, the Notice of Child Abuse Central Index Listing form, filing copies of the forms, and responding to Department of Justice requests. The standard times are proposed to be applied to the number of these activities completed, multiplied by the hourly pay rates for eligible county welfare departments. The proposed RRMs are silent regarding reimbursement for probation departments that may perform some of the activities proposed for the RRMs.

In response to the draft proposed statement of decision issued March 12, 2013, the claimant submitted rebuttal comments and declarations in support. The claimant continues to stress that the scope of investigation for which reimbursement is required includes regulations put in place by DOJ *after the test claim decision*, which require a full investigation, including gathering and preserving evidence. The claimant argues that these activities should therefore be reimbursable. In the additional declarations submitted by the claimant, each declarant expressed a belief that *all investigative activities and steps necessary to complete an investigation* must be reimbursed.[49] In addition, the claimant continues to argue for reimbursement for annual training of "ICAN

[47] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 15-16.

[48] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[49] Exhibit K, Claimant's Comments on Draft Proposed Parameters and Guidelines.

staff" and reimbursement for developing and updating software and computer systems to track and process child abuse reports.[50]

In response to Commission staff's request for comments on the realignment issue, the claimant argued that "the ICAN statutes are not funded by the 2011 Realignment Legislation" and therefore article XIII, section 36 had no effect on mandate reimbursement for the ICAN activities.[51]

B. CDSS Position

CDSS urges the Commission to reject claimant's proposed parameters and guidelines, including the proposed law enforcement RRM, "because the activities described in it are not related to or required by CANRA." CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant's revised proposed parameters and guidelines reach deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA. CDSS does not discuss the county welfare standard times and the activities involved in its comments, addressing only the activities and proposed standard times for law enforcement.[52]

On June 10, 2013, CDSS filed comments on the draft staff analysis, in which CDSS concludes that the draft parameters and guidelines "appear appropriate and reasonable, and the California Department of Social Services supports them." With respect to offsetting revenues, CDSS asserts that counties receive "significant state funding for the activities of social workers," and that a 1991-1992 realignment of Child Welfare Services Programs (AB 948) constitutes a potential offset. CDSS also declares that "[w]e also would expect the Commission to consider the implications of the [2011] realignment agreements' statutory and constitutional changes in any reimbursable cost estimates beyond 2011."[53]

C. DOF Position

DOF opposes the adoption of the claimant's revised proposed parameters and guidelines on the ground that "the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution." DOF argues that "the activities in levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable." DOF urges instead that "only those activities directly related to an investigation conducted to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, should be reimbursable."[54]

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[50] *Ibid.*

[51] Exhibit Q, Claimant's Response to Commission Request for Comments.

[52] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 1.

[53] Exhibit M, CDSS Comments on Draft Proposed Parameters and Guidelines.

[54] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

On June 7, 2013, DOF submitted comments on the draft proposed parameters and guidelines, stating, "[g]enerally we have no concerns with the reimbursable activities as they appear to be consistent with the statement of decision." However, DOF did suggest that the 2011 realignment would impact not only the scope of costs mandated by the state, but the extent to which the activities themselves are mandated.[55]

DOF responded to Commission staff's request for comments on the realignment issue, concluding, "[a]fter deliberating the questions, as well as the ICAN activities[,]" that "the approved activities under the ICAN statutes are reimbursable under the law."[56] DOF stated that it "does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government," and therefore article XIII, section 36 is not applicable to the ICAN activities.[57]

D. SCO Position

The SCO states that "the activities specified in Section IV B [Reimbursable Activities] do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007." SCO requests that the activities to which the standard time RRMs will apply be correlated to the reimbursable activities specified in the statement of decision. SCO also suggests that the activities should be segregated between one-time and on-going activities. And, SCO recommends that only an RRM rate or actual cost methodology be applied to each activity, not "a combination of actual cost and or standard cost methodologies," as proposed in the claimant's revised proposed parameters and guidelines.[58] On March 27, 2013, the SCO submitted comments on the draft proposed statement of decision, in which it recommended "no changes."[59]

IV. COMMISSION FINDINGS

Commission staff has reviewed the claimant's proposed parameters and guidelines and comments received. Non-substantive, technical changes, for purposes of clarification, consistency, and conformity to the statement of decision and statutory language have been made, and are not addressed in this analysis. The following analysis addresses only substantive changes to the activities approved in the statement of decision, and to the claimant's proposed parameters and guidelines, and incorporates changes to the parameters and guidelines proposed by the parties, where appropriate. The analysis also addresses whether the evidence in the record supports the adoption of the proposed RRMs.

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[55] Exhibit L, DOF Comments on Draft Proposed Parameters and Guidelines.

[56] Exhibit R, DOF Response to Commission Request for Comments, at pp. 1-2.

[57] *Ibid.*

[58] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

[59] Exhibit J, SCO Comments on Draft Proposed Statement of Decision.

A. Substantive Changes in Law Affecting the Period of Reimbursement for Some Activities (Section III. of Proposed Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later, as specified, for statutes effective after July 1, 1999.

Here, the period of reimbursement must also take account of the subsequent amendments made to the test claim statutes that ended, or limited, some of the reimbursable activities. Statutes 2011, chapter 468 (AB 717) amended Penal Code section 11169 to provide, in pertinent part:

> (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is *determined to be substantiated*, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is *substantiated*, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.
>
> (b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.
>
> (c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI).The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.[60]

Prior to the 2011 amendment, this section required agencies specified in section 11165.9[61] to forward to DOJ, after investigation, reports of suspected child abuse or neglect that were

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[60] Penal Code section 11169 (Stats. 2011, ch. 468 (AB 717)) [emphasis added].

[61] Penal Code section 11165.9 lists the agencies to which the remaining sections of the Child Abuse and Neglect Reporting Act apply: city and county police and sheriff's departments, except school district police or security departments; county welfare departments; and county probation

determined to be "not unfounded."[62] By changing the requirement from those cases that were "not unfounded," to only those that are "substantiated," the amended section now excludes an "inconclusive" case, meaning that forwarding to DOJ "inconclusive" reports of suspected child abuse or neglect is no longer reimbursable as of the effective date of the amendment, January 1, 2012.[63]

The new section also provides that law enforcement agencies "shall no longer" forward reports of suspected child abuse to DOJ, even if those reports are substantiated. Therefore, for law enforcement agencies only, reimbursement for forwarding reports of suspected child abuse to DOJ is no longer mandated as of January 1, 2012. This change was intended, in part, to provide cost savings to the state by limiting the mandate, including ending reimbursement for all law enforcement investigations required to satisfy the reporting requirements.[64] However, AB 717 did not change any other statutory or common law requirements imposed upon police officers, as mandated reporters, to investigate child abuse pursuant to Penal Code section 11166. The Commission, in its statement of decision on the test claim, specifically found that section 11166 did not impose a reimbursable mandate on local government since the duty of a mandated reporter is not unique to government.[65] Therefore, beginning January 1, 2012, for law enforcement only, the activity of investigating child abuse, for purposes of preparing the report to DOJ, is no longer a reimbursable activity.

Note also that subdivision (c) requires that "At the time an agency specified in Section 11165.9 forwards a report [to DOJ]…the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI)." Because this notice requirement is triggered by the report forwarded to DOJ, and law enforcement agencies are no longer required to forward reports to DOJ pursuant to section 11169(b), law enforcement agencies are also no longer are required to notify the suspected child abuser that he or she has been listed in CACI, at the time a report is forwarded. And, because

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departments where designated by the county to receive reports of suspected child abuse from mandated reporters. (Stats. 2000, ch. 916).

[62] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Code of Regulations, Title 11, section 903 (Register 98, No. 29); "Child Abuse Investigation Report" Form SS 8583.

[63] Penal Code section 11169 (As amended by Stats. 2011, ch. 468 (AB 717)).

[64] See Exhibit X, AB 717 Senate Committee Analysis ["By deleting the requirement to report inconclusive reports, as well as limiting CACI reporting agencies to child welfare and probation departments, the provisions of this bill will result in future state-reimbursable cost savings due to reduced mandated reporting workload on local reporting agencies"].

[65] See e.g. *Alejo v. City of Alhambra*, 75 Cal.App.4th 1180, addressing the duty of a law enforcement officer, as a mandated reporter, to investigate alleged child abuse reported to the officer; see also 11165.14, addressing the duty of law enforcement to investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse against a pupil at a schoolsite. However, these investigative requirements have not been found to impose reimbursable state-mandated programs.

only "substantiated" reports, rather than all reports that are "not unfounded" are now required to be forwarded to DOJ, the requirement for other agencies subject to the mandate to inform the suspected child abuser of the listing in the CACI will arise with diminished frequency. However, a number of other notice requirements approved in the test claim statement of decision remain unaffected by the amendments made by Statutes 2011, chapter 468. The remaining activities relating to notice requirements approved by the Commission arise from section 11170, and are unaffected by the substantive amendments to the test claim statutes; the code section from which these activities arise was not substantively altered by Statutes 2011, chapter 468. Furthermore, these activities are triggered by events other than the initial listing in the CACI or initial forwarding of a report to DOJ, which were substantively altered by Statutes 2011, chapter 468. The remaining notice requirements are therefore included in the parameters and guidelines without further analysis.

Based on the foregoing analysis and discussion, the language of Section III, Period of Reimbursement, reflects the ending of certain activities, as of January 1, 2012. Additionally, for purposes of clarity, activities that are ended by subsequent amendments are specified in Section IV, Reimbursable Activities.

B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

The majority of reimbursable activities included in the parameters and guidelines are drawn directly from the test claim statement of decision, and are approved without substantial analysis. However, for purposes of clarity and consistency, the parameters and guidelines provide, consistent with Penal Code section 11165.9, that "city and county law enforcement agencies" and "city or county police or sheriff's departments" are used interchangeably throughout the test claim statutes, and this analysis, and are not distinct entities subject to the mandate, as might be inferred from the test claim statement of decision. Additionally, for purposes of clarity and consistency, activities relating to obtaining the original investigative report and drawing independent conclusions, and retaining records of suspected child abuse reports, will be analyzed briefly. And finally, the scope of the activities approved in the test claim statement of decision pertaining to investigations and forwarding reports to DOJ is analyzed at length.

One-Time Activities: Developing Policies and Procedures to Implement the Mandate, Including Due Process Procedures

Government Code section 17557 provides that "[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."[66] The Commission's regulations provide that parameters and guidelines shall include "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."[67] The claimant has proposed the following reasonably necessary activities:

[66] Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

[67] Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

1) *Annually, update Departmental policies and procedures necessary to comply with ICAN's requirements.*

2) *Periodically, meet and confer with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.*

3) *Annually, train ICAN staff in State Department of Justices' [DOJ] ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in an annual training session and to provide necessary facilities, training materials and audio visual presentations.*

4) *Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ.*

5) *Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding. Reimbursement is provided for the costs of tests and evaluations on suspects as well as victims. Victim costs include those incurred for medical exams for sexual assault and/or physical abuse, mental health exams, and, where the victim dies, for autopsies. Suspect costs include those incurred for DNA and polygraph testing. Also included, when reasonably necessary to make an evidentiary finding are the costs of video-taping interviews of victims and suspects.*

6) *Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].*[68]

SCO recommended, in its comments, that the proposed reasonably necessary activities "be delineated between One-time and Ongoing Activities." The Commission agrees; identification of one-time and ongoing activities is a necessary and usual convention of parameters and guidelines, and the parameters and guidelines for this mandated program therefore include such delineation.

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence. The Commission's regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice "in the manner and of such information as is described in Government Code section 11515." Therefore the reasonably necessary activities proposed must be supported by substantial evidence in order to withstand judicial review, and that evidence must include something other than hearsay evidence.

[68] See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at p. 25.

With respect to activity 1), above, SCO suggested that "Annually updating Departmental policies and procedures," as proposed, should be only reimbursable as a one-time activity. SCO therefore recommended striking the word "annually" above, and instead approving one-time reimbursement to "[d]evelop and establish policies and procedures necessary to comply with ICAN's requirements."[69] DOF, similarly, suggested striking the word "annually" and approving only a one-time reimbursement to "[u]pdate Departmental policies and procedures to comply with ICAN requirements."[70]

The claimant has submitted excerpts from the Los Angeles County Sheriff's Department Child Abuse Protocol, suggesting that the department developed a written policy for child abuse investigations. The claimant has not submitted evidence directly explaining why policy updates are necessary, but it is reasonable to assume, in this limited context, that in implementing the test claim statutes some policies and procedures required updating. Accordingly, the Commission has frequently approved similar policy and procedure updates as a reasonably necessary activity.

However, there is no evidence that compliance with ICAN requirements necessitates *annual* updates to departmental policies and procedures. Since the enactment of the test claim statute in Statutes 2000, chapter 916, very few substantive changes have been made that pertain to the mandated activities approved in the test claim statement of decision, and the claimant has not made any showing that changes to the ICAN requirements are frequent enough or substantial enough to warrant *annual updates* to policies and procedures.[71]

Accordingly, the Commission finds that only a one-time update of policies and procedures for the ongoing activities approved by the Commission is reasonably necessary to carry out the mandate. Reimbursement for a one-time update of policies and procedures is reflected in the parameters and guidelines.

With respect to items 2) through 5), above, the claimant did not submit evidence with its proposed parameters and guidelines to establish that the proposed activities are reasonably necessary to comply with the mandate; only unsupported assertions of necessity are found in the record.[72] Because there was no evidence in the record to support these items, Commission staff recommended in the draft staff analysis that items 2) through 5) be denied.[73] In response to the draft staff analysis, the claimant submitted comments which provide some evidence that some of the activities described in items 3) through 5) might be reasonably necessary to comply with the mandate.

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[69] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

[70] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

[71] See, e.g., Statutes 2011, chapter 468 (AB 717), amending Penal Code section 11169 to provide that only substantiated reports must be forwarded to the DOJ, and not "inconclusive" reports; and to provide that as of January 1, 2012, law enforcement agencies no longer are required to forward reports of suspected child abuse to DOJ.

[72] Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 20-21; 26.

[73] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at p. 27.

With respect to item 3), proposing annual training of "ICAN staff," the claimant submitted the declaration of Sergeant Daniel Scott, which states that "it is my information and belief that specialized training is necessary to ensure that ICAN's comprehensive child abuse referral assessments, investigations and reports are completed in a timely manner and in accordance with DOJ's requirements." Sergeant Scott further expressed a belief that ICAN training should be performed annually, so that "new ICAN staff can be promptly trained and deployed."[74] In addition, the claimant noted SCO's Comments in April 2010, in which it was recommended that one-time activities include training "in State Department of Justice (DOJ) ICAN requirements."[75] The Commission notes that both DOF and SCO expressed their agreement with the Commission's draft proposed parameters and guidelines, absent any provision for training.[76] However, the Commission has often provided for training with respect to past mandates, and the cross-reporting duties of local agencies, as well as the receipt of mandated reports and forwarding completed reports to DOJ, all may necessitate some amount of training. Therefore, the Commission finds that the recommendation of ICAN training one time per employee required to implement ICAN activities is reasonably necessary to comply with the mandate.

With respect to item 4), "Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ," the claimant has submitted the declaration of John E. Langstaff, "a Children Services Administrator II with the Los Angeles County Department of Children and Family Services (DFCS)." Mr. Langstaff declares that "it is his information and belief that ICAN cross-reporting allows written reports transmission by 'fax or electronic transmission' and that electronic transmission includes transmission using computers and specialized software."[77] Mr. Langstaff further declares that fax machines are not reliable, and that the E-SCARS system in Los Angeles County "also has a database to track or produce reports regarding transmission, receipt of the SCAR, agency personnel assigned to investigate, agency findings, comments, report numbers…and many more features." Therefore, Mr. Langstaff declares "that it is my information and belief that ICAN cross-reporting reimbursements should include those for computerized systems which are reasonably necessary in providing child abuse referrals and reports in a timely, reliable, and cost-efficient manner."[78] The Commission notes that in the SCO's comments on the claimant's revised proposed parameters and guidelines, the SCO did not suggest eliminating computer equipment and software entirely, but rather seemed inclined to allow reimbursement to "[d]evelop or procure computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ," with the caveat that such costs be prorated to include "only the costs related to the mandate."[79] The cross-reporting requirements (section 11166), and the requirements to report to DOJ (section 11169) permit, but do not require, electronic transmission. Section 11166

[74] Exhibit K, Claimant Comments on Draft Staff Analysis, at pp. 40-41.

[75] See Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

[76] See Exhibit J, SCO Comments on Draft Proposed Parameters and Guidelines; Exhibit L, DOF Comments on Draft Proposed Parameters and Guidelines.

[77] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 18.

[78] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 51.

[79] See Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

requires cross-reporting by phone, fax, *or* electronic transmission, and section 11169 provides for reporting to DOJ "in a form approved by the Department of Justice and *may be sent by fax or electronic transmission.*" Electronic transmission is an option available, and according to the County of Los Angeles a more reliable option, but it is not required. Moreover, the current form SS (or BCIA) 8583 is available from the DOJ's website in "pdf" format with electronic fields that can be filled and printed, or sent via email.[80] The Commission takes official notice that no specialized software or computer systems are required to access and utilize these forms.[81] Therefore, developing or obtaining software or specialized computer systems is not reasonably necessary to comply with the mandate. Finally, as the declaration of Mr. Langstaff indicates, the software utilized by the County of Los Angeles has many additional features that are not required to comply with the mandate, including, for example, tracking agency personnel assigned to investigate and District Attorney staff assigned, and indexing court case numbers.[82] The County's chosen method to implement the mandate exceeds the mandate, based on the description given by Mr. Langstaff. Therefore, the Commission finds that item 4) is not reasonably necessary to implement the mandate.[83]

With respect to item 5), "Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding," the claimant continues to stress that tests and evaluations, and other types of evidence-gathering, are required to complete an "active investigation." The claimant relies in part on the definition of "active investigation" in Code of Regulations, title 11, section 901, which was amended after the test claim was filed, and which the Commission found, in the test claim decision, did not impose any mandated activities or costs.[84] The claimant asserts, mistakenly, that section 901 was approved for reimbursement.[85] The claimant also points to the SCO's comments on the Revised Proposed Parameters and Guidelines, in which the SCO recommended reimbursement to "gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims…"[86] However,

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[80] Exhibit X, Form BCIA 8583 (Revised 03/08).

[81] Code of Regulations, title 2, section 1187.5 ["Official notice may be taken in the manner and of such information as is described in Government Code Section 11515."]; Government Code section 11515 (Stats. 1945, ch. 867) ["In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State."]; Evidence Code section 451(f) (Stats. 1986, ch. 248) ["Judicial notice shall be taken of the following: ¶…¶ Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute."].

[82] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 50.

[83] The claimant proposes adding language regarding computer software and equipment to each of the ongoing cross-reporting activities approved in the test claim statement of decision. Based on the above analysis, that language is denied here, and will not be further addressed below.

[84] Exhibit A, Test Claim Statement of Decision, at p. 29. See also, Exhibit X, Excerpt from Test Claim 00-TC-22 and Exhibits including section 901.

[85] Exhibit K, Claimant Comments on Draft Staff Analysis, at pp. 3; 9-10.

[86] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 15.

the activity of investigating child abuse, as approved in the test claim decision, requires an investigation sufficient "to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state 'Child Abuse Investigation Report' Form SS 8583…to the Department of Justice." This issue is further explored below, in the discussion of the scope of investigation, but for purposes of "gathering and preserving evidence" or "testing and evaluation costs" it is sufficient to note that the scope of investigation required by the mandate is only *that which is necessary to determine whether to forward the report to DOJ*, which requires a finding only whether the report is "unfounded," "inconclusive," or "substantiated," and does not compel reimbursement of any additional steps that local agencies would reasonably take to gather evidence for a criminal prosecution. As discussed below, the scope of investigation necessary to comply with the mandate is limited to the finding of whether a report of suspected child abuse is unfounded, inconclusive, or substantiated; the gathering of physical evidence or conducting forensic tests is begun to prove allegations, not to establish whether a report is unfounded. Therefore, the Commission finds that item 5) is not necessary to implement the mandated program.

The provision of due process, and related activities and costs, are examined more fully below, but the one-time activity of developing due process procedures is approved here.

Based on the foregoing, the Commission finds that item 1) to develop policies and procedures to implement the mandate; item 3) to provide ICAN training one time to each employee required to comply with the mandate; and item 6) to develop policies and procedures to provide due process, are approved as follows:

1. Policies and Procedures

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

a. *Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B. (One-time costs only.)*

b. *Develop ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI]. (One-time costs only)*

2. Training

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

Develop and implement training for ICAN staff to implement State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities, training materials and audio visual presentations. (One time per employee whose job responsibilities involve ICAN mandated activities)

Ongoing Activities

1. Distributing the Suspected Child Abuse Report Form

The Commission approved reimbursement in the test claim statement of decision for a city or county police or sheriff's department, county probation department, as specified, or county welfare department, to distribute the child abuse reporting forms adopted by DOJ to mandated reporters.[87] This activity is sufficiently clear from the plain language of the test claim finding, and is therefore approved without further analysis.

2. Reporting Between Local Departments

The Commission approved requirements in the test claim statement of decision for local agencies to receive and refer child abuse reports, and to promptly cross-report suspected child abuse among county welfare, county probation departments, local law enforcement, and the district attorney, as specified.[88] These activities were all sufficiently clear based on the language of the test claim findings, and were therefore taken directly from the test claim statement of decision and included in the proposed parameters and guidelines without substantial analysis.[89]

3. Reporting to the State Department of Justice

The most significant disputed issue in these parameters and guidelines is the proper scope of reimbursable activities relating to investigating reports of suspected child abuse and forwarding reports that have merit, as specified, to DOJ. The test claim statement of decision approved reimbursement for law enforcement agencies, county probation departments, or county welfare departments, to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting Form SS 8583 to DOJ; and to forward a report in writing of every case the agency investigates that is not unfounded.[90]

The claimant first requested reimbursement for *the full course of investigative activities* that law enforcement agencies undertake in cases of suspected child abuse or severe neglect.[91] The claimant later submitted rebuttal comments and a second revised proposed parameters and guidelines, in which the claimant reevaluated its reimbursable activities, in an attempt to present a "streamlined three-tiered classification of required investigations."[92] The second revised proposed parameters and guidelines request reimbursement for the following activities:

> *Level 1: No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-for-Service)*

[87] Exhibit A, Test Claim Statement of Decision, at p. 41.

[88] Exhibit A, Test Claim Statement of Decision, at pp. 41-44.

[89] See Proposed Parameters and Guidelines, at pp. 4-8.

[90] Exhibit A, Test Claim Statement of Decision, at p. 45.

[91] Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 23-24.

[92] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and determines based on SCAR or call-for-service that no further investigation is required.*
4. *Officer's findings are entered into agency's system*
5. *Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.*

Level 2: Patrol Officer Investigation, No Child Abuse

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and assigns for appropriate follow-up investigation.*
4. *Patrol officer receives call-for-service and acknowledges call.*
5. *Patrol officer conducts preliminary interview with child/children.*
6. *Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s).*
7. *Patrol officer enters findings into agency's systems (ends call in computer aided system and documents findings).*
8. *Supervising officer reviews investigation findings and approves closure of the report indicating no child abuse.*

Level 3: Reported CACI Investigation

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and assigns for appropriate follow-up investigation.*
4. *Patrol officer receives call-for-service and acknowledges call.*
5. *Patrol officer conducts preliminary interview with child/children.*
6. *Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s).*
7. *Patrol officer enters findings into agency's systems (ends call in computer aided system, writes report, enters evidence).*

8. *Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.*
9. *Secretary distributes, processes report.*
10. *Child abuse investigator reviews child abuse report.*
11. *Child abuse investigator conducts suspect background check.*
12. *Child abuse investigator confers with social services.*
13. *Child abuse investigator interviews child/children.*
14. *Child abuse investigator interviews witnesses.*
15. *Child abuse investigator interviews suspect(s).*
16. *Child abuse investigator writes additional reports.*
17. *Supervisor approves reports.*
18. *Secretary process final files and reports.*
19. *Child abuse investigator completes DOJ/CACI form.*
20. *Child abuse investigator completes advisement form to suspect(s).*[93]

In addition, the claimant requests actual cost reimbursement for the following activities that are deemed non-repetitive, and are alleged to be "reasonably necessary in certain cases:"

i. *Medical Exam – Sexual Assault*
ii. *Medical Exam – Physical Abuse*
iii. *Polygraph*
iv. *Collect, Store, and Review Evidence*
v. *Obtain Search Warrant*
vi. *Mental Health Examination*
vii. *Autopsies*
viii. *DNA Testing*
ix. *Video Taping Interviews (Victim or Suspect)*[94]

The claimant has also proposed reimbursement for repetitive activities of county welfare departments, some of which are expressly approved elsewhere in this analysis, and some of which were not supported by evidence that they are reasonably necessary to perform the activities approved in the test claim statement of decision. The county welfare activities are analyzed at Part 7., below.

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[93] *Ibid.*

[94] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 18.

The following analysis will demonstrate that reimbursement is not required for the *full course of investigative activities* performed by law enforcement agencies, but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ. The analysis will show that the mandate to report to DOJ applies equally to all agencies subject to the mandate, and that therefore law enforcement should not be reimbursed for activities that go beyond what is required for all child protective agencies. The analysis herein concludes, therefore, that law enforcement activities 1-8, above are reimbursable under the mandate, ending with a supervisor's review of the investigative findings and approval of either the closure of the report (a finding of no child abuse) or a report indicating that child abuse is suspected (a substantiated or inconclusive finding). In addition, the analysis below recognizes that activity 19, completing the CACI form (also referred to as the "Child Abuse Summary Report [SS 8583] form), is expressly approved in the test claim decision as a part of forwarding the report to DOJ. Activity 20, providing notice to the suspected abuser, is addressed in Part 4., below. The analysis in this section will conclude also that the non-repetitive activities above are not supported in the record and go beyond the scope of the mandate; these are activities to gather evidence for a criminal investigation, and therefore would be performed only after a determination has been made that the report is "not unfounded." In addition, the Level 3 Investigation, as described by the claimant, is one that results in a report to CACI; therefore the activities in excess of a Level 2 Investigation are necessarily implicated only in the case that the report of suspected child abuse is "not unfounded." The analysis will also show that subsequent legislation *excludes* law enforcement's duty to report to DOJ regarding child abuse, and thereby limits reimbursement for investigative activities for law enforcement agencies to the period prior to the amendment; and, subsequent legislation has limited the mandate for all other agencies subject to the mandate to report to DOJ only reports of child abuse that are *substantiated, and no longer all reports that are "not unfounded*."

a. <u>The test claim statement of decision approved an investigation sufficient to determine whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, in order to prepare and submit the Child Abuse Investigation Report Form SS 8583, or subsequent designated form to the Department of Justice.</u>

The test claim statement of decision approved the following:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - *Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, §*

11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [95]

- *Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)* [96]

The plain language of the approved reimbursable activities in the test claim statement of decision provides for a police or sheriff's department, county probation department, or county welfare department to (1) complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, as defined; and (2) forward to DOJ a report in writing of every case that the local agency investigates which is determined to be substantiated or inconclusive. As explained throughout the analysis below, the determination whether a report must be forwarded to DOJ constitutes the upper bound of the scope of the mandate to investigate child abuse.

b. <u>Penal Code section 11169(a), and Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, require an agency receiving mandated reports to complete an investigation to determine whether a report or known or suspected child abuse must be forwarded to DOJ, and to obtain enough information to complete the report.</u>

The approved activities pertaining to investigation and forwarding reports arise primarily from Penal Code section 11169(a), which states the following:

> A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The report required by this section shall be in a form approved by the

[95] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Register 98, Number 29.

[96] *Ibid.*

> Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send that report to the Department of Justice.[97]

Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, provided that:

> All information items on the standard report form SS 8583 should be completed by the investigating [child protective agency]. Certain information items on the SS 8583 must be completed by the CPA in order for it to be considered a "retainable report" by DOJ and entered into [the index]. Reports without these items will be returned to the contributor. These information items are:
>
> (1) The complete name of the investigating agency and type of agency.
>
> (2) The agency's report number or case name.
>
> (3) The action taken by the investigating agency.
>
> (4) The specific type of abuse.
>
> (5) The victim(s) name, birth date or approximate age, and gender.
>
> (6) Either the suspect(s) name or the notation "unknown."[98]

Other information on the form 8583, which "should be completed," according to section 903, included the name of the investigating party, the date of the incident and the location, the address and relationship of suspect(s), and the present location of the victim, among other items.[99]

The Commission approved, in the test claim statement of decision, the completion of an investigation "to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive… for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583." The Commission based its finding on Penal Code section 11169; Code of Regulations, title 11, section 903 (Register 98, No. 29); and Form SS 8583.[100] The Commission found that the mandate *only requires enough information to determine whether to file a Form 8583*, or subsequent designated form, and enough information to render the Form 8583 a "retainable report," under section 903.[101]

In comments filed on the draft proposed statement of decision, the claimant continues to assert that the Commission approved an "active investigation," which the claimant defines by reference

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[97] Penal Code section 11169 (Stats. 2000, ch. 916).

[98] Code of Regulations, title 11, section 903 (Register 98, No. 29). The regulations pled in the test claim have been subsequently amended, but the Commission does not here take jurisdiction of the amended regulations that were not pled in the test claim.

[99] Exhibit X, Form SS 8583 (Revised 3/91).

[100] The version of Form 8583 included in the test claim exhibits was last revised 3/91.

[101] Penal Code section 11169 (Stats. 2000, ch. 916); Code of Regulations, title 11, section 903 (Register 98, No. 29).

to section 901 of the DOJ regulations. The claimant asserts that Form 8583 and section 901 require:

> " . . . at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency."

The claimant provides a copy of Form 8583 and of section 901 of title 11 in the exhibits attached to the claimant's comments. However, the version of form 8583 that was approved in the test claim statement of decision requires a substantially lesser degree of detail than that cited by the claimant; the form and the instructions have been amended by subsequent regulations, which are not subject to analysis at this time.[102]

Furthermore, the claimant states that section 901 "was included in the County's test claim legislation and found to impose reimbursable 'costs mandated by the State' upon local governmental agencies by the Commission."[103] The claimant is mistaken; the version of section 901 pled and analyzed in the test claim (Register 98, Number 29) contained no such definition.[104] Rather, version of section 901 that claimant cites to is a result of a 2005 amendment to the regulation, which was never pled and was not the subject of this or any other test claim. *Only section 903* was approved in the test claim: "[t]he Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service."[105]

Therefore, the investigation approved in the test claim statement of decision is only that required to comply with section 11169 and to complete the Form 8583, as those authorities existed at the time of the test claim decision. Any additional activities or costs allegedly mandated by later adopted executive orders, not pled in the original test claim would require a new test claim decision. Furthermore, the requirements of section 901 of the regulations may not be analyzed as a reasonably necessary activity; section 901 as it then read was denied in the test claim, and no new test claim has been filed on the amended regulations. Moreover, reasonably necessary activities are defined in the regulations as "those methods *not specified in statute or executive order* that are necessary to carry out the mandated program."[106]

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[102] The version of Form 8583 and the instructions included in the claimant's exhibits was revised in 2005, and was not pled in the test claim. See Exhibit K, Claimant Comments on Draft Proposed Parameters and Guidelines, at p. 81.

[103] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision, at p. 8.

[104] Exhibit X, Excerpt from Test Claim Exhibits: California Code of Regulations, Title 11, sections 901-903.

[105] Exhibit A, Test Claim Statement of Decision, at p. 29.

[106] Code of Regulations, Title 2, section 1183.1.

c. The claimant's proposal provides reimbursement for activities in excess of the scope of the mandate.

As discussed above, claimant originally included a combination of RRMs and actual cost claiming for five levels of investigation in its revised proposed parameters and guidelines. The original proposal sought reimbursement for the full scope of investigative activities, as discussed herein.

DOF argues, in its comments on the claimant's revised proposed parameters and guidelines, that the claimant's proposal "*inappropriately includes the totality of its law enforcement response to reports of child abuse,* and all activities leading up to a full criminal prosecution." DOF argues that the activities alleged "extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ)."[107]

CDSS ignores the test claim statement of decision, and argues that *no investigation* is required under CANRA, except for the very narrow instance required under section 11165.14, not pled in this test claim.[108] However, CDSS also notes that its regulations require county welfare agencies to conduct in person interviews, and that "CDSS' investigatory requirements parallel the law enforcement activities described in the [parameters and guidelines] only up to the point that the patrol officer completes his or her duties in the investigation."[109] CDSS argues that county welfare agencies are required to make a determination whether to report to DOJ, pursuant to section 11169, on the basis of those initial in-person interviews. CDSS concludes: "[i]f these investigations comport with CANRA, and the county does not contend otherwise, it is improper for the county to maintain that the exhaustive and redundant investigatory steps performed by law enforcement in the criminal justice arena are mandated by CANRA."[110]

Based on these and other comments from the parties and interested parties, claimant submitted rebuttal comments and a *second revised* parameters and guidelines proposal.[111] The claimant's second revised proposed parameters and guidelines focuses primarily on the activities undertaken by law enforcement, leaving the remainder of the revised proposed parameters and guidelines substantially unchanged, and provides reimbursement for a list of repetitive activities, including interviews with the child, parents, siblings, witnesses, and suspect(s); follow up interviews by a child abuse investigator, if necessary; and a report detailing the findings, which must be reviewed by a supervisor.[112] The claimant also seeks reimbursement on a case-by-case basis for certain other activities that the claimant called "non-repetitive," including medical

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[107] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

[108] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-3.

[109] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 11.

[110] Exhibit C, CDSS Comments on Claimant's Revised Proposed Parameters and Guidelines, at p. 11.

[111] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 9.

[112] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 15-17.

examinations, obtaining a search warrant, DNA testing, conducting an autopsy, and collecting, storing, and reviewing physical evidence.[113]

In exhibits attached to the revised proposed parameters and guidelines the claimant submitted declarations from Suzie Ferrell and Daniel Scott, both of whom are employees of the Los Angeles County Sheriff's Department, and both of whom assert a belief that all activities described in the proposal are "*reasonably necessary in conducting ICAN investigations*, preparing ICAN reports and performing other required ICAN duties."[114] The Scott declaration introduces an excerpt from the Los Angeles County Sheriff's Department Child Abuse Protocol, which describes the procedures followed by the department in response to a report of suspected child abuse. The Scott declaration also states that "it is my information and belief that the omission of one or more ICAN activities described in Exhibit 4 or ICAN steps described in Exhibit 2 could impair the requirement to conduct an 'active investigation'" as defined in the DOJ forms.[115] Neither declarant provides any indication that he or she has considered whether the steps should be reimbursable; only that they are necessary to complete an investigation. Moreover, what is *reasonably necessary* to implement the mandate is a finding of law, and the declarations submitted by the claimant may inform that decision, but do not control the legal issue.

In exhibits attached to the claimant's second revised proposed parameters and guidelines, a new declaration from Ms. Ferrell states that the revised proposal "contains only those activities that are reasonably necessary in order to complete the state 'Child Abuse Investigation Report' Form SS 8583," and that "those activities necessary to meet additional criminal prosecution duties are not included" in the second revised proposal.[116] In both the rebuttal comments and second revised proposed parameters and guidelines, and in comments filed on the draft proposed statement of decision and parameters and guidelines, the claimant continues to emphasize the credentials of the declarants, and that the declarants believe that "omission of one or more ICAN investigation activity [*sic*] could impair the requirement to conduct an active investigation."[117] The claimant concludes that each declarant's statement should be given considerable weight, for example: "Sergeant Scott provides substantial evidence supporting the County's version of reimbursement provisions for child abuse investigations." More specifically, the claimant objects to the absence of reimbursement in the proposed parameters and guidelines for "assessing the nature and seriousness of the known or suspected abuse," and "gathering and

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[113] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 9; 18.

[114] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative, at pp. 9; 45; 53.

[115] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 3, Declaration of Daniel Scott, at pp. 1-2.

[116] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

[117] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines, at p. 11. See also, Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 50.

preserving evidence." The claimant's proposed reimbursable activity with respect to investigating child abuse would include the following:

> Except as provided in the paragraph below, reimbursement for this activity includes but is not limited to: assessing the nature and seriousness of the known or suspected abuse, review of the initial Suspected Child Abuse Report (Form 8572); conducting interviews of the victim(s) and parent(s) and any known suspect(s) and witness(es) in their spoken language when appropriate and/or available; gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated; and preparing a report that will be retained in the files of the investigating agency.

As discussed throughout this analysis, the scope of reimbursable investigative activities is limited by the plain language of the statute, which requires an investigation *to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated*. In addition, the scope of investigation is limited to the degree of investigation that DOJ has allowed to constitute a "retainable report;" in other words, the *minimum* degree of investigation that is sufficient to complete the reporting requirement is the *maximum* degree of investigation reimbursable under the test claim statute. Based on the following analysis, the Commission finds, as a matter of law, that the activities described in the declarations, and in the proposed language, go beyond the scope of the mandate, as discussed herein.[118]

Penal Code section 11164 states that the "intent and purpose of [CANRA] is to protect children from abuse and neglect." The section recognizes that investigation is essential to the purpose (though it does not necessarily imply that all investigations will lead to criminal prosecution or penalties), saying: "[i]n any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."[119] CDSS argues, accordingly, that the purpose of CANRA is the protection of children, not the investigation and prosecution of crime.[120] CDSS argues that the reporting required by CANRA does not involve identification of suspects,[121] does not require the same standards of proof as a criminal

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[118] The declarations submitted still fail to address specifically whether reimbursement is required for these activities. The declarants, and the claimant more broadly, suggest that if the Commission limits reimbursement as proposed, law enforcement agencies will fail to complete an investigation. There is no evidence that the completion of an investigation relies so closely upon the level of mandate reimbursement; and, moreover, the limitations proposed are consistent with the statement of decision, and with the reimbursement requirement of article XIII B, section 6.

[119] Penal Code section 11164 (Stats. 2000, ch. 916 (AB 1241)).

[120] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

[121] Section 903 of title 11, Code of Regulations, states that all information on the form 8583, "should be completed." However, the same section also states that a "retainable report" entered

investigation or prosecution, and does not differentiate cases on the basis of severity.[122] The point is well-taken: if a significant focus of CANRA were the investigation of criminal instances of child abuse, the requirements of section 11169 would be crafted differently for law enforcement agencies as compared with county welfare departments, respective to their abilities and resources. But the requirements are *not* crafted differently for different agencies; the requirements to complete an investigation and to report to DOJ apply equally to all entities subject to the mandate. To the extent that a mandate to investigate can be tied to or derived from CANRA, it must be limited to the investigative activities that all agencies can and do undertake. Any further investigation should not be attributed to the mandate of CANRA.

The CDSS Manual of Policies and Procedures, an excerpt of which is submitted by the claimant as Exhibit 9, states that a social worker "shall have in-person contact with all children alleged to be abused," and if the report is not unfounded, "shall interview all children present at time of the investigation, and all parents who have access," and "shall make a determination as to whether services are appropriate," and "shall request assistance from law enforcement if necessary." The Manual goes on to state that the county "shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates…that it has determined not to be unfounded."[123] CDSS does not assert that all activities required in the Manual of Policies and Procedures are required by CANRA; in fact most are required by the Welfare and Institutions Code.[124] Nevertheless, as CDSS points out:

> Every year, thousands of reports are referred by county welfare departments to the Department of Justice based on the results of these investigations. *CDSS is aware of no case [or] instance in which the Department of Justice rejected a county welfare department CACI referral based on the sufficiency of the social worker's investigation.*

CDSS argues that the maximum level of investigation that county welfare departments are required to undertake is to conduct interviews with parents, suspects, victims, and witnesses, and that "[b]ased on these investigative activities; the social worker is required under CDSS regulations at MPP 31-501 to determine whether the results of the investigation require referral to the Department of Justice under CANRA."[125]

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into the index may include "[e]ither the suspect(s) name or the notation 'unknown.'" (Code of Regs., tit. 11, § 903 (Reg. 98, No. 29)).

[122] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 8.

[123] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at Exhibit 9.

[124] Exhibit X, CDSS MPP 31-101et seq. referencing Welfare and Institutions Code section 16501(f) as the source of the requirement to investigate. See also Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines p. 15 stating the following: "The investigative activities performed by county social workers under CDSS's regulations are exclusively and totally connected with duties established under the Welfare and Institutions Code, not CANRA. Accordingly, costs for those activities are not related to the claim in the matter."

[125] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11 [emphasis added].

> In summary, these rules require the social worker to first decide whether an in-person investigation is necessary, which includes consideration of a multitude of considerations. If an in-person is investigation of reported child abuse is determined to be necessary, CDSS regulations at MPP 31-115 describe what steps are necessary for the conduct of the investigation. These rules require direct contact with all alleged child victims, and at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation with all children present at the time of the initial in-person investigation, all parents who have access to the child alleged to be at risk of abuse, noncustodial parents if he/she has regular or frequent in-person contact with the child, and make necessary collateral contacts with persons having knowledge of the condition of the child. *Based on these investigative activities*; the social worker is required under CDSS regulations at MPP 31-501 *to determine whether the results of the investigation require referral to the Department of Justice under CANRA*. There is no requirement for redundancy in the investigation as described PG between patrol officer and detective interviews. There is no tracking, booking, or arresting of suspects. There is *no requirement for forensic evidence to be collected or analyzed*. There is no review of school records. Basically, CDSS' investigatory requirements parallel the law enforcement activities described in the PG only up to the point that the patrol officer completes his or her duties in the investigation.[126]

CDSS concludes that the interviews with suspect(s), victim(s) and witness(es) conducted by county welfare departments are *sufficient to comply with the mandate*, and that law enforcement activities are reimbursable only to the same extent.[127] The claimant has requested reimbursement, as discussed above, for a much more extensive investigation normally pursued by law enforcement agencies, whether the investigation results in a finding of no child abuse, or a finding that the suspected child abuse is substantiated. In accordance with CDSS' evidence, and the plain language of the test claim decision and the approved statute and regulations, the Commission finds that a patrol officer's (or county probation or county welfare employee's) interviews with the child, parents, siblings, witnesses, and/or suspect(s), and preliminary report of the findings, including supervisory review, constitute the maximum extent of investigation necessary to make the determination whether to forward the report to DOJ, and to make the report retainable.

In comments submitted in response to the draft proposed statement of decision and parameters and guidelines, the claimant disputes that the mandate applies equally to all agencies, labeling the reasoning above the "lowest common denominator theory." The claimant argues that this theory "assumes facts not in evidence," and that Commission staff and CDSS have not cited "any evidence that county welfare agencies are not complying with the requirements of conducting an

[126] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11.

[127] *Id*, at p. 11.

"active investigation."[128] Indeed, staff has not cited any evidence that CDSS, or other agencies, are not complying with the mandate, and this is precisely the point: CDSS asserts that county welfare agencies *have complied with the mandate,* and that the investigative activities performed under CDSS guidance have been *sufficient* to satisfy DOJ requirements with respect to its Child Abuse Summary Reports, and thus the level of investigation performed by county welfare agencies *satisfies* the mandate.[129]

As discussed above, the test claim statutes require that child protective agencies subject to the mandate forward all reports that are "not unfounded," and the duty to investigate under section 11169 arises from the requirement to forward reports and to make that determination.[130] The point at which the decision is made to close the case (an unfounded report), or continue the investigation (an inconclusive or substantiated report), is the point at which a determination sufficient to control whether a report will be forwarded to DOJ has been made. The claimant's evidence demonstrates that an investigation that results in a finding of no child abuse will conclude with the patrol officer's interviews and the filing of a closure report, which must be approved by a supervisor.[131] Where some evidence is found that necessitates follow-up interviews by a child abuse investigator, the claimant classifies the case as a "Level 3" investigation, which apparently is expected to conclude with a report to DOJ, according to the claimant's proposed activities:

> *[¶…¶]*
>
> *8. Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.*
>
> *9. Secretary distributes, processes report.*
>
> *10. Child abuse investigator reviews child abuse report.*
>
> *11. Child abuse investigator conducts suspect background check.*
>
> *12. Child abuse investigator confers with social services.*
>
> *13. Child abuse investigator interviews child/children.*
>
> *14. Child abuse investigator interviews witnesses.*
>
> *15. Child abuse investigator interviews suspect(s).*
>
> *16. Child abuse investigator writes additional reports.*

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[128] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines, at p. 12.

[129] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11.

[130] As noted previously, the current text of section 11169 requires reporting to DOJ only of "substantiated" reports, rather than those that are "not unfounded," but the effective date of this change is the same as the date after which law enforcement agencies no longer must report to DOJ in any event, and therefore the change is irrelevant to the discussion in this section.

[131] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 16.

17. Supervisor approves reports.

18. Secretary process final files and reports.

19. Child abuse investigator completes DOJ/CACI form.

20. Child abuse investigator completes advisement form to suspect(s).[132]

The claimant's proposed language thus presumes that all Level 3 investigations will result in a report to DOJ, and therefore that all Level 3 investigations are "not unfounded."

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is "not unfounded" has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.[133]

In comments on the draft staff analysis the claimant continues to stress that an "active investigation" is required by the test claim statute and DOJ regulations. However, the claimant relies on regulations not approved in the test claim decision, as discussed above, and on a theory that a complete report filed with DOJ requires a more extensive investigation than that provided for in the test claim decision. The above analysis is not changed: the mandate, as approved in the test claim decision, is to conduct an investigation sufficient to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, and thus whether a report must be forwarded to DOJ. The *maximum* scope of investigation required to make that determination, and to complete the report to DOJ, is the *minimum* level of investigation necessary to make the report retainable by DOJ. The evidence submitted by CDSS demonstrates that reports based only on interviews with suspects, witnesses, parents, and the victim(s) have been and are retainable. The claimant has not submitted evidence to the contrary.

Based on the foregoing, the Commission finds that the activities proposed for reimbursement to law enforcement agencies exceed the activities approved in the test claim statement of decision, as specified, and that the maximum extent of reimbursement under the mandate includes a patrol officer's (or county probation or county welfare employee's) interviews with the child, parents, witnesses, and/or suspects, and the reporting of those findings, which may be reviewed by a supervisor, where applicable.

d. <u>The requirement to investigate arises from both sections 11166 and 11169, but only investigative activities required pursuant to section 11169 are reimbursable.</u>

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[132] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[133] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 2, at pp. 2-6.

The Commission's approval of investigative activities cites Penal Code section 11169 and *Alejo v. City of Alhambra*. *Alejo*, in turn, relied on both sections 11166(a) and 11169 for its finding that police are required to investigate reports of suspected child abuse. Ultimately, the Commission found, in the test claim statement of decision, that the activities of mandated reporters, required under section 11166(a), were not reimbursable because they were not unique to government.[134]

Alejo involved a child being abused by his mother's live-in boyfriend. The child's father reported the abuse to police, but they failed to investigate, or cross-report, or create any internal report. The child was soon after severely beaten and left permanently disabled, and the police department and the officer who took the report were sued on a negligence per se theory. The court explained that a negligence per se action will lie where (1) there has been a violation of statute or regulation; (2) the harm to the plaintiff was caused by the violation of statute or regulation; (3) the harm is of the type intended to be prevented by the statute or regulation; and (4) the plaintiff is within the class of persons that were to be protected by the statute or regulation. The court held that the only elements in issue were the causation question, and whether the failure to investigate upon receipt of a report of child abuse from the father was a violation of the statute.[135]

Relying on *Williams v. State of California* (1983) 34 Cal.3d 18, the court found that, as a general rule, police do not have a duty to act, including a duty to investigate. In *Williams*, the California Supreme Court concluded:

> In spite of the fact that our tax dollars support police functions, it is settled that the rules concerning the duty - or lack thereof - to come to the aid of another are applicable to law enforcement personnel in carrying out routine traffic investigations. Thus, the state highway patrol has the right, but not the duty, to investigate accidents.[136]

The California Supreme Court also observed that "the intended beneficiaries of any investigation that is undertaken are the People as prosecutors in criminal cases, not private plaintiffs in personal injury actions."[137] Accordingly, the *Alejo* court concluded that "[t]herefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection."[138]

However, the court found that section 11166 imposes such a duty on police officers: "[s]ection 11166, subdivision (a) creates such a duty."[139] Section 11166, as it read in 1999, provided, in pertinent part:

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[134] Exhibit A, Test Claim Statement of Decision, at p. 31; *Alejo v. City of Alhambra*, (Cal. Ct. App. 2d Dist. 1999) 75 Cal.App.4th 1180.

[135] *Alejo, supra*, at pp. 1184-1185.

[136] *Williams, supra*, 34 Cal.3d at p. 24.

[137] *Williams, supra*, 34 Cal.3d at p. 24, Fn 4.

[138] *Alejo, supra*, 75 Cal.App.4th at pp. 1186.

[139] *Alejo, supra*, 75 Cal.App.4th at pp. 1186.

> (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer *who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible*… For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.[140]

The *Alejo* court concluded that although nothing in the plain language of section 11166 requires a mandated reporter to investigate child abuse:

> [I]t clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the Department of Justice under section 11169, subdivision (a). The latter statute provides in relevant part: "A child protective agency shall forward to the Department of Justice a report in writing of *every case it investigates* of known or suspected child abuse which is determined not to be unfounded .... A child protective agency *shall not forward* a report to the Department of Justice *unless it has conducted an active investigation* and determined that the report is not unfounded, as defined in Section 11165.12."[141]

Furthermore, the *Alejo* court held that the statute imposed a duty "to take further action when an objectively reasonable person in the same situation would suspect child abuse," including reporting to a child protective agency immediately or as soon as practically possible. And finally, the *Alejo* court concluded that "[c]ontrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion."[142]

In the test claim statement of decision here, the Commission noted that "the court [in *Alejo*] was not examining the law from a mandates perspective, and made the finding based on current law." Therefore the Commission was compelled to examine prior law, and consider the court's decision in the context of mandates law to determine whether new programs or higher levels of service were mandated by the test claim statutes. With respect to prior law, the Commission noted that former Penal Code section 11161.5 required that: "[c]opies of all written reports

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[140] Penal Code section 11166 (Stats. 1996, ch. 1081 (AB 3354) [current version employs the term "mandated reporter," which is in turn defined in section 11165.7]) [emphasis added].

[141] *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, at page 1186. [Emphasis added.]

[142] *Alejo, supra*, 75 Cal.App.4th at pp. 1186-1187.

received by the local police authority shall be forwarded to the Department of Justice."[143] The Commission found that the prior law did not require investigation, but required police only "to forward a copy of the report to the state, as received."[144] The Commission concluded:

> No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation *sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive*, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.[145]

With respect to other mandates law considerations, the Commission held that because section 11166(a), which governs the duties of a mandated reporter, applies to a number of different professions, public and private, the requirements imposed are not unique to government, and therefore cannot be reimbursable.[146] Accordingly, the Commission found that "Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters."[147] Therefore, even though the court in *Alejo* found that section 11166(a) imposed a duty to investigate on the police officer as a mandated reporter, reimbursement is not required for costs arising from that duty; section 11166(a) was therefore denied. Thus the test claim statement of decision approved reimbursement for the investigation of suspected child abuse, and for forwarding reports that are "not unfounded" to the DOJ, as specified, relying only on section 11169, as interpreted by the court in *Alejo*.[148]

e. <u>Only investigative activities conducted by the agency subsequent to the receipt of a mandated report are reimbursable; reimbursement is not required for investigative activities conducted by employees of a county child protective agency pursuant to the duties of a mandated reporter.</u>

Because section 11166(a) was held by the *Alejo* court to impose a duty upon individuals employed by a local child protective agency to investigate, but is not reimbursable, the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in

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[143] Former Penal Code section 11161.5 (Stats. 1973, ch. 1151).

[144] Exhibit A, Test Claim Statement of Decision, at pp. 29-30.

[145] Exhibit A, Test Claim Statement of Decision, at p. 31 [emphasis added]. See also *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, 1186.

[146] See *County of Los Angeles v. State of California* (1987) 43 Cal.3d.46, at p. 56 [Reimbursement required only for "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."].

[147] Exhibit A, Test Claim Statement of Decision, at p. 16.

[148] *Ibid*.

a particular case is also an employee of the child protective agency that will complete the investigation under section 11169.

Under section 11165.9, reports "shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department." And under section 11165.7, mandated reporters include "[a]ny employee of any police department, county sheriff's department, county probation department, or county welfare department."[149] Thus an employee of any of those agencies, represented here by the claimant, Los Angeles County, could be both a mandated reporter, and a recipient of mandated reports. In that event a mandated reporter could be required both to complete the initial report of suspected child abuse, and to investigate that report in order to determine whether to forward the matter to DOJ. In this manner the requirements of section 11166(a) and 11169 might be completed by the same agency, or even the same employee, and because the former requirements under section 11166(a) are not reimbursable, a claimant must not be permitted to claim reimbursement for investigative activities conducted pursuant to section 11166(a). In that event, reimbursement is required for investigative activities necessary to complete the agency's duties under section 11169, but not for any investigation already completed by the mandated reporter under section 11166(a).

As discussed above, a mandated reporter's duty to investigate under section 11166(a) pursuant to the holding in *Alejo* is not reimbursable. The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse to one of the identified child protective agencies. This duty is triggered whenever the mandated reporter, *in his or her professional capacity or within the scope of his or her employment*, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.[150] Given that the scope of employment within a law enforcement agency, county probation department, or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of section 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). Ultimately, some of the same information necessary to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter's (non-reimbursable) duties under section 11166(a) (as discussed above, section 11169 requires a determination whether a report is unfounded, inconclusive, or substantiated, and Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, requires certain information items in order to complete a "retainable report").

The more recent amendments to the regulatory sections pled in the test claim provide that an agency must complete all information required in Form SS 8583.[151] But those amended

[149] Penal Code section 11165.7 (As amended by Stats. 2000, ch. 916).

[150] Penal Code section 11166(a) (Stats. 2000, ch. 916).

[151] Section 902 of title 11, Code of Regulations, provides that "[i]n order to fully meet its obligations under CANRA, an agency required to report instances of known or suspected child

regulations are not the subject of this test claim; the test claim statement of decision approved only Code of Regulations, title 11, section 903 *as amended by Register 98, No. 29*, which adopted the Form SS 8583, and required that only "certain information items...must be completed." Those information items, as discussed above, impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse. Because, as discussed above, a mandated reporter is expected to do what is reasonable within the scope of his or her experience and employment, a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse.[152] Therefore the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter in the employ of a child protective agency, and therefore reimbursement must be limited to only such investigative activity as is necessary to satisfy the mandate of section 11169, but not mandated on the individual employee under section 11166.

Therefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, or county probation department, *prior to the completion of a Form SS 8572 under section 11166(a)*, is not reimbursable under this mandated program. And, if the Form SS 8572 is *completed by an employee of the same agency*, and the information contained in the Form SS 8572 is *sufficient to make the determination and complete the essential information items required by section 11169 and the regulations*, no further investigation is reimbursable.[153]

Thus, the parameters and guidelines authorize reimbursement for investigation only to the extent information has not been previously obtained by a mandated reporter within the same agency, in the course of the investigation already performed by the mandated reporter within the scope of his or her employment, to determine if a report of child abuse is not unfounded.[154] If the mandated reporter in a particular case is not an employee of the investigating agency, the agency maintains an independent and reimbursable duty to investigate in order to determine whether a

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abuse or severe neglect must complete all of the information on the BCIA 8583. Only information from a fully completed BCIA 8583 will be entered into the CACI."

[152] See Alejo, supra, 75 Cal.App.4th, at p. 1187 ["duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse"].

[153] This position is supported by the description submitted by the claimant of the investigative activities conducted by law enforcement: each of the four levels of investigation, as discussed above, begins with receiving a "SCAR [Suspected Child Abuse Report, Form 8572] *from Department of Children and Family Services*." There is no mention of reimbursement for the situation in which the mandated reporter is an officer in the same law enforcement agency. The claimant's requested reimbursable activities appear to assume, correctly, that any investigative activities prior to the completion of a Form 8572 will not be reimbursed; only investigative activities subsequent to the receipt of a Form 8572 are proposed for reimbursement. (Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at pp. 4-7; 23-24).

[154] "Unfounded reports" are defined as reports that are determined false, to be inherently improbable, to involve accidental injury, or not to constitute child abuse or neglect as defined by Penal Code section 11165.12.

report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583. If necessary, the investigating agency may need to verify the information reported on the Form SS 8572. But where the mandated reporter is an employee of the investigating agency, investigative activities necessary to complete Form 8583 to submit to DOJ, and not any investigation which was required to complete Form 8572, are reimbursable; and where the investigation undertaken to complete Form SS 8572 is sufficient also to complete Form SS 8583, and to satisfy the mandate of section 11169 to determine whether the report must be made to DOJ, reimbursement is not required for any further investigation.

f. <u>The mandate to report to DOJ regarding suspected child abuse has been limited by subsequent legislation, as provided</u>.

As stated above in analyzing the period of reimbursement, section 11169 was amended by the Legislature in 2011, ending the mandate for law enforcement agencies to investigate and forward to DOJ, and limiting the requirement for all other local agencies to forwarding only those reports that are substantiated. Penal Code section 11169 was amended in 2011 to provide that "[o]n and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 *shall no longer forward to the Department of Justice* a report in writing of any case it investigates of known or suspected child abuse or severe neglect."[155] Therefore, both the requirement to "[f]orward to the Department of Justice a report in writing of every case it investigates," as well as the requirement to "[c]omplete an investigation…for purposes of preparing and submitting the state 'Child Abuse Investigation Report' Form SS 8583,"[156] are ended, *for purposes of reimbursement to law enforcement agencies*, as of January 1, 2012. Penal Code section 11169 also was amended at the same time to provide that only "substantiated" reports of suspected child abuse shall be forwarded to the DOJ by agencies other than law enforcement, rather than reports that are "not unfounded," as was the requirement under prior law.[157] This results in fewer reports being forwarded to DOJ by the agencies remaining subject to the mandate.

Therefore, because the statute at issue has been amended to end the requirement as applied to law enforcement, the activities approved by the Commission in the test claim statute must also end, as applied to law enforcement, and the requirement to forward reports to DOJ must be limited, as applied to all other entities subject to the mandate, as of January 1, 2012. Section IV of the parameters and guidelines reflects these dates.

g. <u>Reimbursement for activities required to report to DOJ regarding reports of suspected child abuse is approved for all agencies subject to the mandate, but for law enforcement only until December 31, 2011, and for forwarding inconclusive reports only until December 31, 2011</u>.

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[155] Penal Code section 11169(b) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)).

[156] Exhibit A, Test Claim Statement of Decision, at p. 45.

[157] Penal Code section 11169(a) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)). Compare Penal Code section 11169 (As amended by Stats. 2000, ch. 916 (AB 1241)).

The test claim statement of decision approved reimbursement for investigation of reports of suspected child abuse, but only to the extent of an investigation sufficient to determine whether a report of suspected child abuse or neglect must be forwarded to DOJ. The test claim statement of decision also approved reimbursement for reporting to DOJ all reported instances of known or suspected child abuse that are determined, after investigation, to be "not unfounded." Based on the foregoing analysis, an investigation sufficient to make that determination is complete after a law enforcement officer, or county welfare employee, or county probation department employee where applicable, has completed in-person interviews with the parents, suspects, victims, and witnesses, if any, and reported his or her findings. And, because the mandate to investigate applies equally to all agencies subject to the reporting requirements, reimbursement must be limited to the activities that are or can be performed by all agencies subject to the mandate, and must exclude the collection of physical or forensic evidence, and the building of a criminal case. Moreover, because the activities of mandated reporters under section 11166(a) are not reimbursable, any investigative activity to be reimbursed under section 11169 must exclude investigative activities conducted by a mandated reporter prior to submission of a Form SS 8572, even if the mandated reporter is an employee of an otherwise-reimbursable county agency. And finally, the investigative activities of law enforcement agencies are no longer mandated under the test claim statutes as of January 1, 2012, pursuant to amendments made to the underlying code sections, as discussed above.

Pursuant to the above analysis, the following activities are approved for reimbursement in the parameters and guidelines:

Reporting to the State Department of Justice

a. ***From July 1, 1999 to December 31, 2011****, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:*[158]

1) *Complete an investigation for purposes of preparing the report*

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[159] *Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and*

[158] Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

[159] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

making a report of the findings of those interviews, which may be reviewed by a supervisor.

Reimbursement is not required in the following circumstances:

i. *Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).*

ii. *In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

iii. *Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.*

2) *Forward reports to the Department of Justice*

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice (currently form 8583) and may be sent by fax or electronic transmission.[160]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

[160] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

b. ***Beginning January 1, 2012****, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:*

1) *Complete an investigation*

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[161] *Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.*

Reimbursement is not required in the following circumstances:

i. *Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).*

ii. *In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

iii. *Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583.*

2) *Forward reports to the Department of Justice*

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated, as defined in Penal Code section 11165.12. Unfounded or inconclusive reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice.

[161] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.[162]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

In response to the draft proposed parameters and guidelines, the claimant submitted comments objecting to the limitation specifying that activities undertaken *subsequent to the determination* whether a report of child abuse is substantiated, inconclusive, or unfounded, "including the collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest,"[163] were not reimbursable. The claimant stated that this limitation could be read to imply that these activities would be reimbursable if undertaken prior to making the determination whether a report should be forwarded to DOJ, but not reimbursable if performed after making a determination and forwarding the report. In addition, the claimant stated that not all agencies have "detectives," and that only those that do would be denied reimbursement. The intent of the limiting language above is merely to clarify that the focus of reimbursement for investigations should remain the *determination of whether to file a report with DOJ* (i.e., whether a report is unfounded, inconclusive, or substantiated). The collection of physical evidence, the referral to a senior investigating officer, whether or not that person is called "detective," and conducting follow-up interviews are all activities listed in the claimant's time studies[164] that should logically only be conducted in the case that the suspected child abuse is "not unfounded," and logically only performed after such determination has been made, and the mandate satisfied. Accordingly, the limitation of reimbursement stated above is amended to omit the word "detective," but otherwise unaffected.

[162] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

[163] See Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at pp. 45; 88.

[164] See Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 7-9.

4. Notifications Following Reports to the Child Abuse Central Index

The test claim statement of decision approved reimbursement to notify a known or suspected child abuser that he or she has been listed in the CACI. That and other notice requirements are included in the proposed parameters and guidelines, in accordance with the following analysis.[165]

a. Notifying the suspected abuser may include the SOC 832 form but this activity is ended, for law enforcement agencies, as of January 1, 2012.

In addition to the notice requirements approved in the test claim decision, the claimant has proposed reimbursement for the following activities when several of the approved notice requirements are triggered:

- *[For law enforcement agencies:] Child abuse investigator completes advisement form to suspect(s); and*[166]
- *[For county welfare departments:] Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form.*[167]

In addition, the claimant has proposed that the above activities should include "sending the person listed in CACI with [sic] a 'Request for Grievance Hearing' form (SOC 834)."[168] There is no requirement in the statute or the approved regulations to provide this form along with the notice to the person listed. Providing the "Request for Grievance Hearing" form is denied.

Form SOC 832 was developed by CDSS, and is intended for use by county welfare departments to inform a known or suspected abuser that he or she has been reported to the CACI. It is not clear, based on the evidence in the record, whether any other agencies or departments also employ this form, but the Commission finds that completion of the Notice of Child Abuse Central Index Listing form (SOC 832), at item 3, above, is a reasonable means of implementing the expressly approved activity to "[n]*otify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice."*[169]

Additionally, the activity described here, to notify a suspected abuser that he or she has been listed in the index at the time the agency files the "Child Abuse Investigation Report" with DOJ, is ended, for law enforcement, as of January 1, 2012. This requirement arises from Penal Code section 11169, which, as discussed above, was amended in Statutes 2011, chapter 468, ending the requirement for law enforcement to forward reports of suspected child abuse to DOJ as of January 1, 2012. Because the requirement above is to notify the suspected abuser *at the time the*

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[165] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at pp. 48-53; 88-90.

[166] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[167] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

[168] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 34.

[169] Exhibit A, Test Claim Statement of Decision, at p. 45.

report is filed with DOJ, and because law enforcement agencies "shall no longer" file those reports, the notice requirement is also ended.

The parameters and guidelines reflect the completion of the form SOC 832, as a reasonable means of complying with the approved activity, and reflect the end date of this activity for law enforcement agencies, as follows:

> *a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:*
>
> *1) Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.*[170]
>
> *This activity includes, where applicable, the completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.*
>
> ***For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to amendments to Penal Code section 11169(b), enacted in Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.***
>
> ¶…¶
>
> **b. <u>When information is received from CACI in the normal course of investigating or licensing duties, agencies are required to obtain and objectively review the original investigative report when making decisions regarding a new investigation, prosecution, licensing, or placement of a child, but not required to initiate a new investigation.</u>**

The test claim statement of decision also approved the following, related to the notice requirements, and triggered by the receipt of information from the CACI during the course of a routine investigation, or an investigation of a current report of suspected child abuse or neglect:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*
>
> - *Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution,*

[170] Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241)). This activity is ended for law enforcement as of January 1, 2012, pursuant to Statutes 2011, chapter 468 (AB 717).

licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).) [171]

Information implicating the requirement to obtain and review the original report may be *received from DOJ* by the means described in section 11170. Section 11170, as amended by Statutes 2000, chapter 916, provides, in pertinent part:

> The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency…
>
> ¶…¶
>
> The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24–hour care for a child or children in a residential home or facility…
>
> ¶…¶
>
> The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children…information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child.
>
> ¶…¶
>
> Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed,

[171] *Ibid.*

and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.[172]

Thus the duty to obtain and objectively review the original investigative report is implicated when an agency, in the conduct of its ordinary duties, has occasion to inquire to DOJ regarding an individual currently under investigation regarding an instance of known or suspected child abuse, or before the agency seeking a license, or placement of a child, or an employee of a licensee or home in which a child would be placed. In such case, the DOJ is instructed by the above statute that it "shall make available" the information requested, and the agency, in turn, is required, when a listing in the CACI is made known, to obtain the original investigative report, and to review it objectively in order to evaluate licensing, placement, or prosecution decisions. The section then requires that persons or agencies, when conducting their existing duties to investigate cases of known or suspected child abuse, or when making a licensing determination, or when assessing the possible placement of children in a home, shall, *upon receipt of information from DOJ* regarding an individual suspected of child abuse, or regarding an instance of suspected child abuse, obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence and its sufficiency for making decisions within the agency's or person's discretion.

The purpose of this section can be inferred from its context, and from the expansion of its scope subsequent to Statutes 2000, chapter 916: Penal Code section 11170(b)(10) (renumbered) now imposes the same requirements on a Court Appointed Special Advocate investigating prospective employees or volunteers, a local government agency conducting a background check on a prospective peace officer employee, and a county welfare or adoption agency conducting a background check on a prospective employee or volunteer.[173] These are not persons who would normally be subject to an active, targeted investigation seeking information regarding suspected child abuse; rather, they are persons who would be subject to a routine background investigation before they can be granted employment, or some other benefit. The Commission does not here seek to exercise jurisdiction over subsequent amendments to section 11170; the expanded scope of the section is discussed only as it helps to illuminate the purpose of the requirement, which is to obtain and objectively review a report of suspected child abuse, when information is received from DOJ regarding an individual before the agency in the normal course of the agency's duties. The purpose of the test claim statute (section 11170, as last amended in 2000), then, must be to protect the individual seeking a license, or placement of a child in his or her home, from being summarily denied on the basis of a report contained in the CACI. And, with respect to a person being investigated for a more recent instance of known or suspected child abuse, the test claim statute is meant to ensure that a district attorney or other law enforcement or child protective agency does not pre-judge the individual based solely upon the existence of a prior report in the

[172] Penal Code section 11170(b) (Stats. 2000, ch. 916 (AB 1241)).

[173] Penal Code section 11170(b)(10) Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2005, ch. 279 (SB 1107); Stats. 2006, ch. 701 (AB 525); Stats. 2007, ch. 160 (AB 369); Stats. 2007, ch. 583 (SB 703); Stats. 2008, ch. 701 (AB 2651); Stats. 2008, ch. 553 (AB 2618); Stats. 2008, ch. 701 (AB 2651); Stats. 2009, ch. 91 (AB 247); Stats. 2010, ch. 328 (SB 1330); Stats. 2011, ch. 459 (AB 212); Stats. 2011, ch. 468 (AB 717); Stats. 2012, ch. 846 (AB 1712); Stats. 2012, ch. 848 (AB 1707)).

CACI; the investigating agency, or district attorney, must obtain and objectively review the prior report, and evaluate "its sufficiency for making decisions."[174]

However, the Commission finds that reimbursement is only required for the costs of *obtaining the original report and reviewing the report objectively*. This section *does not* mandate reimbursement of any investigative activities that implicate the requirement to obtain the original report, nor any investigative activities that might be necessary after reviewing the report with respect to "making decisions regarding investigation, prosecution, licensing, or placement of a child."[175]

Based on the foregoing, the parameters and guidelines provide for reimbursement as follows:

> *City or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*
>
> *Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and shall objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.*
>
> ***Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.***

5. Record Retention

The test claim statement of decision approved reimbursement for record retention by local government agencies as follows:

> *Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:*
>
> - Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.
>
> *A county welfare department shall:*
>
> - Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code,

[174] Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)).

[175] *Ibid.*

§ 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[176]

Penal Code section 11169 provides that "Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170."[177] Penal Code section 11170 provides that information from an inconclusive or unsubstantiated report is removed from CACI after 10 years, unless a new report of suspected child abuse is received relating to the same person or persons within that time. However, because agencies subject to the test claim statute were already subject to record retention time frames for these reports, claimants are only eligible for reimbursement for the higher level of service; the length of time exceeding the prior requirement.

Government Code sections 26202 and 34090 allow cities and counties, respectively, to authorize destruction of records after two years. The Commission found that while the test claim statute requires a minimum 10 years of record retention, the initial two years are not reimbursable because of this existing requirement. The additional minimum of eight years is reimbursable under the test claim statute, and the parameters and guidelines reflect this analysis.[178]

Similarly, Welfare and Institutions Code section 10851 permits destruction of records after three years for county welfare departments. The Commission found that because county welfare departments already had a duty to retain records for three years under Welfare and Institutions Code section 10851, records retention for a minimum of seven years should be reimbursed under the test claim: the length of time added to the retention requirement by the test claim statute.[179] The parameters and guidelines reflect this analysis.

The parameters and guidelines provide for reimbursement of eight and seven years, respectively, for record retention for county probation departments and county welfare departments. As explained here and in the test claim statement of decision, the years for which claimants are eligible for reimbursement for record retention are those eight and seven years, respectively, that *follow* the two or three year retention period required under prior law. Therefore the Commission adopts the following language:

> *City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:*
>
> *Retain child abuse or neglect investigative reports, that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the prior two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within*

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[176] Exhibit A, Test Claim Statement of Decision, at pp. 46-47 [citations omitted].

[177] Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

[178] Exhibit A, Test Claim Statement of Decision, at pp. 37-38.

[179] *Ibid.*

the first 10-year period, the report shall be maintained for an additional 10 years.[180]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.

County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the prior three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[181]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.

6. Due Process Procedures Extended to Individual Listed in CACI

The claimant has proposed reimbursement for due process requirements implicated by the test claim statutes, as follows:

> *Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].*

DOF suggests striking this requirement entirely, but without comment.[182] SCO suggests limiting this activity to one-time development of ICAN due process procedures.[183] These comments are set aside, pursuant to the following analysis.

It is not clear whether the claimant's proposed language encompasses the actual implementation of due process procedures and the provision of a constitutionally-appropriate hearing for

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[180] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[181] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[182] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

[183] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

individuals whose rights are affected by the test claim statutes, or is limited to the development of due process procedures. The following analysis will demonstrate that agencies have always been responsible, under the Constitution and laws of the United States, and of California, to provide due process protections to those listed in the Child Abuse Central Index, and that Statutes 2011, chapter 468 codified these protections in Penal Code section 11169. Claimants are therefore eligible for reimbursement for the ongoing costs of providing due process in each individual case, as well as the one-time costs of developing due process procedures.

a. <u>An individual's inclusion within the Child Abuse Central Index triggers that person's due process rights</u>.

The test claim statement of decision was adopted in 2007, without discussion of the precise contours of due process protections implicated by the test claim statute. In 2009 the Ninth Circuit Court of Appeals decided *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, in which it was held that CANRA triggers an individual's 14th Amendment rights to due process of law, because inclusion in the CACI can affect a person's liberty or property interests: certain licenses, and a number of relevant vocations, are not available to a person listed in the CACI.[184]

The plaintiffs in *Humphries* were listed in the CACI as a result of an allegation of child abuse made by a rebellious teenager.[185] Out-of-state investigators determined that the report of child abuse was "substantiated," and the Humphries were arrested by Los Angeles County Sheriff's Department officers and the report of suspected child abuse forwarded to DOJ for listing in the index.[186] The Humphries were later cleared of any wrongdoing by the courts, but were unable to have their names removed from the CACI, in part because the investigator who had forwarded their names in the first instance was no longer employed with the department.[187]

The Humphries alleged that their listing in the CACI impacted their reputations and potentially their livelihood: Mrs. Humphries worked as a special education teacher, and introduced evidence that renewal of her teaching credentials might be halted by the information in the CACI.[188] Mrs. Humphries also indicated that her desire to pursue a degree in psychology was threatened by her inclusion in the CACI, because portions of her psychology coursework included working in a child care program, which in turn would require a CACI background check. The court found that this evidence implicated the Humphries' rights to procedural due process.

The court determined that listing in the CACI deprived the Humphries of rights secured by the Constitution and laws of the United States. Specifically, the stigma of being listed in the CACI, along with the statutory consequences, including the inability to obtain certain licenses or

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[184] See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 8.

[185] *Humphries*, *supra*, 554 F.3d 1170, at p. 1180.

[186] *Ibid*.

[187] *Id*, at pp. 1181-1182.

[188] *Id*, at p. 1183.

credentials, constituted a violation of protected liberty interests.[189] The court held that a "lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violate[d] the Humphries' due process rights." Because certain licensing agencies are required to consult the CACI before issuing licenses, "the CACI cease[s] to be a mere investigatory tool, [and becomes], in substance, a judgment against those listed."[190] The court did not seek to dictate exactly what due process is required, but stated:

> At the very least, however, California must promptly notify a suspected child abuser that his name is on the CACI and provide "some kind of hearing" by which he can challenge his inclusion. *See Goss v. Lopez*, 419 U.S. 565, 578, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Henry J. Friendly, "*Some Kind of Hearing*," 123 U. Pa. L.Rev. 1267 (1975) (discussing the various forms that a hearing can take). The opportunity to be heard on the allegations ought to be before someone other than the official who initially investigated the allegation and reported the name for inclusion on the CACI, and the standards for retaining a name on the CACI after it has been challenged ought to be carefully spelled out.[191]

Based on the court's reasoning in *Humphries*, it is clear that some due process is owed to those listed in the CACI, to ensure that the listings are not erroneous, and that an innocent person is not unduly damaged. At a minimum, due process requires notice, and an opportunity to be heard before an impartial fact finder.

b. <u>Due process protections recognized in *Humphries* were incorporated in the subsequent amendments to the test claim statutes</u>.

After and in accordance with *Humphries*, the Legislature sought to include basic due process protections in the statutes that make up CANRA. These requirements are declaratory of existing federal and state due process protections and do not require a new test claim decision. Due process protections identified in Humphries and codified by the Legislature are reasonably necessary to comply with the mandate; moreover, the amendments made to section 11169 are implementing existing constitutional requirements triggered by the test claim statutes, not imposing additional mandated activities.

Subdivisions (d) through (g) were added to section 11169 by Statutes 2011, chapter 468, as follows:

> (d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

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[189] *Id*, at pp. 1185-1189.

[190] *Humphries*, *supra*, 554 F.3d 1170, at p. 1201.

[191] *Ibid*.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

These changes, recognizing that "CACI has been the subject of substantial litigation over the years, principally involving issues related to due process of law," are intended "to address the issues raised in previous lawsuits" regarding the constitutionality of the CACI.[192] The Legislative Counsel's digest preceding the bill provides as follows:

> Existing law charges the Department of Justice with maintaining CACI and requires that the index be continually updated by the department and not contain any reports that are determined to be unfounded.
>
> This bill would instead provide that only information from reports that are reported as substantiated would be filed, and all other determinations would be removed from the centralized list. The bill would also provide that any person who is listed on the CACI has the right to an agency hearing, as specified, to challenge his or her listing on the CACI. The bill would require the hearing to meet due process requirements. The bill would also specify the circumstances under which the hearing may be denied. The bill would further provide that a person who is listed on the CACI has a right to that hearing if the court's jurisdiction terminates, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and that hearing has not been provided previously to the listed person. After that hearing or a court proceeding, if it is determined that the person's CACI listing was based on a report that was not substantiated, the agency would be required to notify the department of that result and the department shall remove that person's name from the CACI.

The Committee analysis also states that "[t]he provisions of this bill seeking to ensure that CACI is operated in a constitutional manner are likely to result in significant future litigation-related cost savings potentially in the millions of dollars to the DOJ and local agencies." While this statement captures the intent of cost-savings, it also recognizes the intent to alter the operation of the CACI to achieve consistency with constitutional requirements. Therefore the Commission

[192] Exhibit X, Senate Committee Analysis, AB 717.

finds that the amendments to section 11170, effected by Statutes 2011, chapter 468, are not newly mandated requirements, but are codifying and clarifying existing federal and state constitutional requirements.

c. Due process protections required under the Constitution of the United States, or under the Constitution and laws of the State of California, when triggered by state-mandated activities, are reimbursable pursuant to Article XIII B, section 6.

In *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, the California Supreme Court held that all due process procedures and costs resulting from expulsions made mandatory by the test claim statute were reimbursable, whether arising from federal law or state law.[193] Education Code section 48915, in pertinent part, "(1) *compelled* a school principal to *immediately suspend* any student found to be in possession of a firearm at school or at a school activity off school grounds, and (2) *mandated* a recommendation to the school district governing board that the student be expelled."[194] The court noted that "whenever expulsion is recommended [under state law] a student has a right to an expulsion hearing." The court held, "[a]ccordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing.*"[195]

The Commission, in its test claim statement of decision prior to *San Diego Unified*, had excepted the federal due process requirements from reimbursement pursuant to Government Code section 17556, finding that only the due process requirements imposed by the test claim statute that were in excess of the federal requirements should be reimbursable.[196] The court disagreed, finding that section 17556 was not applicable to the facts; that Education Code section 48915, providing for mandatory expulsions in certain situations, does not "implement federal law," and therefore due process costs arising from both federal and state law and Constitutions are reimbursable when an expulsion recommendation is made mandatory under state statute.[197]

d. The one-time development of due process procedures, as well as the ongoing provision of due process protections to listed individuals, are approved.

Due process procedures were not expressly approved in the test claim statement of decision, nor are due process requirements found in the language of the test claim statutes, as pled. Rather the *Humphries* decision recognized a due process right inherent in the existence and application of the CACI, and the Legislature subsequently amended the code to include due process protections. *San Diego Unified* is in accord, in that it makes clear that due process procedures triggered by state-mandated activities are reimbursable whether arising under state or federal law

[193] Discretionary expulsions were held not to give rise to reimbursable costs, including due process procedures triggered.

[194] *San Diego Unified*, *supra*, at p. 869.

[195] *Id*, at p. 870.

[196] *Id*, at pp. 872-873.

[197] *Id*, at p. 881.

or Constitution.[198] The Commission now must accept the courts' findings and hold that due process protections triggered by test claim statutes surrounding the CACI are reimbursable.

The court in *Humphries* directed the state to institute "some kind of hearing" process to provide a remedy for those who would challenge their listing in the CACI, and provided that the hearing must be before someone other than the person who performed the investigation.[199] The very fact that the Humphries' were forced to sue (as well as the amendments to the code following thereafter) demonstrates that it is unlikely that adequate due process procedures existed prior to that 2009 case, at least in Los Angeles County. The Department of Social Services has adopted procedures that appear at first glance to satisfy due process, as interpreted by the court in *Humphries*, but those measures, adopted in settlement of another due process case, only extended to county welfare departments at that time, and were not required of law enforcement agencies. This is yet another reason for the amendments made in Statutes 2011, chapter 468 (AB 717).[200]

Based on the court's express finding that due process protections are owed, reimbursement for the development and implementation of those procedures is reasonably necessary to carry out the mandate. However, the claimant has submitted no evidence that due process procedures must be continually "develop[ed] *and* maintain[ed]." Therefore, approval of this activity is limited to a one-time activity of developing procedures for this program, consistent with the Legislature's expression of the constitutional requirements, rather than an on-going activity including "maintain[ing]" due process procedures.

The actual provision of due process protections to individuals who seek to challenge being listed in the CACI is reimbursable, based on the holdings of *San Diego Unified* and *Humphries*, *supra*. Because listing in the CACI triggers 14th Amendment due process protections, the agency initiating the listing must provide sufficient due process to protect the rights of the individual against unconstitutional deprivation of a protected liberty interest. The cost of that process is thus reasonably necessary to carry out the mandate. Given that due process hearings will be required any time an individual seeks to challenge his or her inclusion in the CACI, this must be considered a reasonably necessary ongoing activity.

Accordingly, and consistently with the implications of the *Humphries* decision, and *San Diego Unified*, and the subsequent amendments to section 11169, the Commission finds that one-time development and implementation of due process procedures is approved for reimbursement in these parameters and guidelines. The Commission also approves ongoing provision of due process protections to individuals seeking to challenge their listing in the CACI, including notice and a hearing. Both of these activities are eligible for reimbursement by a showing of actual costs, and will require contemporaneous source documentation, as provided in the parameters and guidelines. It is unclear how many, if any, of the eligible claimants provided the mandated due process protections prior to the *Humphrey's* decision in 2009 or the amendment of 11169 in 2011 and what the scope of those protections might have been. However, any jurisdiction that did actually perform the mandated due process activities is eligible to claim for their actual costs incurred beginning July 1, 1999.

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[198] *San Diego Unified*, *supra*, at p. 881.

[199] *Humphries*, *supra*, 554 F.3d 1170, at p. 1201.

[200] Exhibit X, Senate Committee Analysis, AB 717.

7. Requirements of County Welfare Departments Proposed by Claimant

The claimant has proposed reimbursement for reporting activities of county welfare departments, some of which are not supported on the basis of the record, and exceed the scope of the mandate. The claimant proposes reimbursement for the following reporting activities for county welfare departments:

> *1. Completion of the Child Abuse Summary Report (SS 8583) form [Standard time is 22 minutes]*
>
> *2. Completion of the Suspected Child Abuse Report (SS 8572) form [Standard time is 23 minutes]*
>
> *3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form [Standard time is 13 minutes]*
>
> *4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report [Standard time is 22 minutes]*
>
> *5. Response to DOJ inquires [Standard time is 9 minutes]*.[201]

The Commission finds that preparing and submitting the Child Abuse Summary Report form (SS 8583) is expressly approved in the test claim statement of decision, as part and parcel of the completion of an investigation and forwarding of reports to DOJ. The parameters and guidelines reflect this activity, as discussed above, and it is not necessary to further analyze this activity here.

Completion of a "Notice of Child Abuse Central Index Listing (SOC 832) form" is discussed above at Part 4., with respect to providing notice to a suspected abuser that he or she has been listed in the index. The Commission finds, as stated above, that the completion of the form is a reasonable method by which to comply with the mandate, and the parameters and guidelines therefore reflect reimbursement for this activity, where applicable.

Additionally, the claimant proposes reimbursement for "[f]iling copies of the SS 8583 and SS 8572 forms with a copy of the investigative report." The Child Abuse Summary Report, form 8583, is the form forwarded to DOJ. The Suspected Child Abuse Report, form 8572, originates with the mandated reporter, and is received by the investigating agency; this is the report that precipitates all reimbursable activities under CANRA. The activity proposed above might be interpreted to include filing copies of the forms with DOJ, but this is not required by DOJ regulations.[202] Therefore, it more likely is intended to mean filing copies of the incoming (8572) and outgoing (8583) forms with the investigating agency's investigation report, retained by the agency. Retention of these forms is included in the parameters and guidelines language regarding the expressly approved activities regarding retention of records of suspected child abuse at Part 5., above.

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[201] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

[202] California Code of Regulations, title 11, section 903 (Register 98, No. 29) [requirement to report to DOJ using Form 8583, but no requirement to retain a copy of the Form 8583].

The remaining activities cited above are not supported by evidence in the record. In particular, the Suspected Child Abuse Report form (SS 8572) is the same form employed by mandated reporters, individuals whose activities are not subject to reimbursement. It is not clear based on the evidence in the record why county welfare *agencies* should be reimbursed for completing the Child Abuse Summary Report form, while county welfare *employees* would be subject, as individuals, based on their vocation, to the mandatory reporting requirements, which are not reimbursable. In other words, a psychologist, or doctor, would be considered a mandatory reporter by vocation and training, whether employed by the county, or some private entity. Therefore, as was explicitly found in the test claim statement of decision, the mandated reporter activity, to complete the Child Abuse Summary Report form, is not unique to government, and does not impose a reimbursable new program or higher level of service.[203] Submittal of this form to the child protective agency is the triggering event for the mandate—without it there are no mandated activities.

Furthermore, it is unclear from what approved activity in the test claim statement of decision the claimant derives the alleged reasonably necessary activity "Response to DOJ inquiries (9 min)." It could be asserted that responding to DOJ inquiries is a reasonably necessary activity, but the claimant has provided no explanation as to what would give rise to a DOJ inquiry, nor any explanation of what inquiries are proposed to be reimbursable.[204] DOJ does not take any responsibility for the accuracy of the information maintained in the index: "DOJ does not conduct an investigation to verify the accuracy of the information submitted nor does it investigate the quality or accuracy of the abuse or severe neglect investigation conducted by the submitting agency."[205] DOJ serves only as a repository of information, based on the language of the test claim statutes. Therefore it is unknown what sort of inquiry DOJ might undertake to make. The claimant has provided no evidence in the record explaining what a "DOJ inquiry" entails, and therefore this activity must be denied.

Based on the foregoing, the Commission finds that the preparing and submitting the Child Abuse Summary Report, form SS 8583, retaining copies of the Child Abuse Summary Report form SS 8583 and the Suspected Child Abuse Report form SS 8572, and the completion of the Notice of Child Abuse Central Index Listing, form SOC 832, are approved elsewhere in this analysis, and incorporated within the parameters and guidelines, as appropriate. The remaining proposed activities are denied.

C. Claim Preparation and RRM Proposal (Section V. of Proposed Parameters and Guidelines)

The claimant has proposed standard times RRMs for specified activities, including investigative activities performed by law enforcement agencies, and complying with reporting and notice

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[203] Exhibit A, Test Claim Statement of Decision, at pp. 15-16 [Duties alleged under Penal Code section11166 "are not required of local entities, but of mandated reporters as individual citizens," and are therefore not a reimbursable state-mandated new program or higher level of service].

[204] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at pp. 23-24.

[205] Code of Regulations, title 11, section 902 (Reg. 2002, No. 17; Reg. 2006, No. 19; Reg. 2010, No. 2).

requirements by county welfare departments. The claimant's proposed RRMs will be incorporated into the discussion below, where relevant.

For the following reasons, the Commission finds that the evidence and exhibits submitted are not sufficient to support adoption of the proposed RRMs, consistent with the constitutional and statutory requirements of RRMs, and of Commission decisions generally. While an RRM proposal need not be based on actual cost data, nor precisely reimburse every dollar to every claimant, an RRM must reasonably reimburse claimants for the costs mandated by the state, and an RRM proposal must be based on substantial evidence, like any other Commission decision. Here, as discussed below, there is not sufficient evidence in the record to meet the substantial evidence standard, and to adopt the RRMs for reimbursement on the basis of this record.

Thus, the parameters and guidelines include the Commission's standard language for actual cost reimbursement in Section V, requiring documentation to support the claims for reimbursement.

1. The Purpose of an RRM is to Reimburse Local Government Efficiently and Simply, with Minimal Auditing and Documentation Required.

a. <u>The RRM proposal meets the minimal statutory requirements for adoption of an RRM.</u>

The reimbursement obligation of article XIII B, section 6 was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."[206] Section 17561(a) states: "[t]he state *shall* reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514."[207] The courts have interpreted the constitutional and statutory scheme as requiring "full" payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.[208] The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.[209]

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[206] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

[207] Government Code section 17561 (Stats. 2009, ch. 4, § 4 (SB3X 8)) [emphasis added].

[208] *CSBA v. State of California* (*CSBA II*) (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in "increased actual expenditures." The court further noted the statutory mandates process that refers to the reimbursement of "actual costs incurred."

See also, Government Code sections 17522 defining "annual reimbursement claim" to mean a claim for "actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller's audit to verify the "actual amount of the mandated costs."

[209] Government Code section 17500 et seq.

Statutory provision for the adoption of an RRM was originally enacted in 2004, and amended in 2007 to promote greater flexibility.[210] Former section 17518.5 provided that an RRM must "meet the following conditions:"

> (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
>
> (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.[211]

The LAO found in a 2007 report that measurement of marginal costs was "complex," and that documentation requirements made it difficult to file claims and led to disputes with the Controller. LAO's recommendation to address these issues was to "[e]xpand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute."[212] The LAO's recommendations were implemented in Statutes 2007, chapter 329 (AB 1222). Section 17518.5 now defines an RRM as follows:

> (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
>
> (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or projections of other local costs.
>
> (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost efficient manner.
>
> (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other

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[210] Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

[211] Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

[212] Exhibit X, "State-Local Working Group Proposal to Improve the Mandate Process," Legislative Analyst's Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 2856 (2004), concurrence in Senate Amendments of August 17, 2004; Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007. These bill analyses identify the purpose of the RRM process is to "streamline the documentation and reporting process for mandates."; *Kaufman & Broad Communities, Inch. v. Performance Plastering* (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst's Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

approximations of local costs mandated by the state, rather than detailed documentation of actual costs . . . .

(e) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party. [213]

An RRM diverges from the traditional requirement of supporting a reimbursement claim with detailed documentation of actual costs incurred and, instead, applies a standard formula or single standard unit cost, based on approximations of local costs mandated by the state. A unit cost or, in this case, unit times, based on approximations or other projections may result in some entities receiving more than their actual costs incurred to comply with a mandated program, and some receiving less. As the following analysis will demonstrate, the statutory requirements are highly flexible, but whether approval of RRM is legally supportable turns on whether it reasonably reimburses eligible claimants for their actual costs and whether it is supported by substantial evidence in the record.

A unit cost must represent a reasonable approximation of the costs incurred by eligible claimants to implement the state-mandated program, in order to comply with the constitutional requirement that *all costs mandated by the state* be reimbursed to a local government entity. In certain circumstances, a unit cost based on a significant or large variation of costs reported may not reasonably represent the costs incurred by eligible claimants and, thus, may not comply with the requirements of article XIII B, section 6 of the California Constitution. On the other hand, given the purpose of the RRM, to "balance accuracy with simplicity," some degree of variation in costs is permissible.[214]

The statutory requirements to adopt an RRM are minimal, and very broad. Government Code section 17518.5, as amended in 2007, eliminates both the prior rule that 50% of eligible claimants have their costs fully offset, and the rule that the total amount to be reimbursed under an RRM must be equal to the total statewide cost estimate. The new statute provides less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.[215] In other words, rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*, and only requires

[213] Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[214] Government Code section 17557 (Stats. 2010, ch. 719 (SB 856) § 32).

[215] *Kaufman & Broad Communities*, *supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

that the end result "balances accuracy with simplicity."[216] The Commission's regulations which implement the RRM statute (section 17518.5) also focus on the information to be used, rather than any specific degree of precision or accuracy necessary.[217] Implicit, however, is the constitutional requirement that the end result must reasonably reimburse claimants for their actual mandated costs, as required by article XIII B, section 6.

The statute provides that detailed, actual cost information is not required to develop an RRM. Section 17518.5 provides that an RRM "shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs*."[218] The statute does not *require* any one of these options; it merely outlines these as *possible sources* for the development of evidence to support an RRM. "[C]ost information from a representative sample of eligible claimants" is only *one source of evidence* upon which to base an RRM, along with "information provided by associations of local agencies and school districts, or *other projections* of local costs."[219] Thus, whether the sample size, or the constitution of the sample, is representative is not dispositive on the question whether an RRM may be adopted. Moreover, section 1183.13 of the Commission's regulations provides that a "representative sample of claimants does not include eligible claimants *that do not respond to surveys or otherwise participate* in submitting cost data."[220]

In addition, the statute provides that an RRM "[w]henever possible… shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs."[221]

And finally, section 17518.5(c) provides that an RRM "shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." The section does not require that an RRM *address* such variation, or that it *mitigate* or *eliminate* such variation.

Here, the law enforcement surveys upon which the RRMs are based were responded to by twelve law enforcement agencies that together "serve over half the state's population."[222] The county welfare surveys were responded to by eight counties, serving "well over 50 percent of the State's population."[223] The law enforcement surveys were developed by the Los Angeles County Sheriff's Department, in cooperation with the California State Association of Counties and the

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[216] Government Code section 17557.

[217] Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)); Code of Regulations, title 2, section 1183.131.

[218] Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[219] Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222) § 1) [emphasis added].

[220] Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

[221] Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[222] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative at p. 11.

[223] *Id*, at p. 19.

League of California Cities.[224] The county welfare department surveys were developed by "a core team of [Los Angeles] County staff, California Welfare Directors Association staff, and State Department of Social Services staff."

The RRM proposal includes standard times RRMs for specified activities. The survey data upon which the RRMs are based does not require actual dollar amounts for the specified activities, but rather focuses on the time expended for those activities, and bases reimbursement on those standard times applied to an individual claimant's "blended productive hourly rate, in accordance with long established State Controller's Office Instructions."[225] In this respect the RRMs are not based on "detailed documentation of actual costs," but rather on a formula, based on survey data, or on what might be characterized as "other approximations."[226] In rebuttal comments submitted in response to agency and other party comments, the claimant submitted a second revised proposed parameters and guidelines, which narrows the activities for which the claimant seeks reimbursement under the RRMs, but the surveys upon which the standard times RRMs are based are the same, and the analysis herein is therefore unchanged.[227]

Thus, the claimant has submitted survey results from local agencies who responded to the survey request, and who represent over half the state's population. The Commission may find that this constitutes a representative sample, in accordance with the ordinary meanings of "representative" and "sample," and with the definition found in the Commission's regulations, if the survey results are supported by admissible evidence in the record.[228]

In addition, the claimant has submitted a standard times RRM, which could easily be characterized as a "general allocation formula…[or] other approximations of local costs." To the extent that the RRM is based on time data rather than cost data, it is consistent with the minimal requirements of the statute.[229]

Finally, although hourly rates of pay and benefits might vary from one county or city to another, it is not necessary to examine whether and to what extent that variation impacts the total costs of implementing the mandate, because the application of "standard times" to the hourly rates of personnel in different cities and counties will account for the variation, as long as the times themselves are defensible. In this way a standard times proposal does address, and arguably

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[224] Id, at p. 2; See also, Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Declaration of Suzie Ferrell, at p. 6.

[225] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative at pp. 11-12.

[226] Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222)).

[227] See Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 14-18 [The re-evaluation of the law enforcement RRMs "focused on whether a specific activity should remain in the RRM or be removed. Fortunately, a new time survey of specific activities was not necessary as the standard time component for each activity was discernable."].

[228] Exhibit X, Webster's New International Dictionary, ["representative," and "sample," defined]. See also Code of Regulations, Title 2, section 1183.13.

[229] *Ibid*.

mitigates, any variation in costs among local government, to the extent that personnel costs constitute a significant variable.

Based on the foregoing, the Commission finds that the data submitted, and the proposal based on those data, do "consider the variation" in local costs as required, in order to arrive at the unit times proposed, and otherwise meet the minimal requirements of section 17518.5.

b. The RRM proposal is not supported by substantial evidence in the record.

Despite the findings that the RRM broadly meets the requirements of section 17518.5, statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole;[230] when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission's findings be based on substantial evidence in the record. In 2010, the Commission clarified its regulations to specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.[231] Thus, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM.

Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;[232] and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[233] The California Supreme Court has stated that "[o]bviously the word [substantial] cannot be deemed synonymous with 'any' evidence."[234] Therefore the second of the above definitions is

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[230] *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

[231] The courts, in recent lawsuits dealing with questions of fact, have determined that the Commission's conclusions were not supported by any evidence in the record and, thus, the Commission's decisions were determined invalid pursuant to Government Code section 17559 and Code of Civil Procedure section 1094.5. (See, *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 [Peace Officer Procedural Bill of Rights, on the issue of practical compulsion]; *State of California Department of Finance, State Water Resources Control Board, et al. v. Commission on State Mandates and County of San Diego, et al.,* Sacramento County Superior Court, Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]; *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.,* Los Angeles County Superior Court, Case No. BS130730 [Municipal Storm Water and Urban Runoff Discharges, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]).

[232] *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

[233] *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

[234] *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

appropriate to the standard for overturning and Commission decision in accordance with section 17559: relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is not submitted by a party; it is a standard of review, upon which a reviewing court will uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is "obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor."[235]

The Commission is not required to observe strict evidentiary rules, but its decisions must be reasonable, and grounded in fairness. Section 1187.5(a) of the Commission's regulations provides that when exercising the quasi-judicial functions of the Commission, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."[236] This regulation is borrowed from the evidentiary requirements of the Administrative Procedures Act, which contains substantially the same language.[237] In addition, both the Commission's regulations and the Government Code permit the use of hearsay evidence and declarations "for the purpose of supplementing or explaining other evidence but [hearsay] shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action."[238]

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge: the Commission's decisions must be supported by "substantial evidence" under section 17559, but the conduct of hearings need not adhere to strict evidence rules pursuant to section 1187.5 of the Commission's regulations and Government Code section 11513(c); any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely; hearsay evidence may be used to supplement or explain, although it shall not be sufficient to support a finding unless admissible over objection in civil actions.[239] Under section 11514, as referenced in the Commission's regulations, an affidavit or declaration may be "given the same effect as if the affiant had testified orally," if properly noticed and an opportunity to cross-examine the affiant is given.[240] Expert testimony, in the form of an affidavit, would be admissible if the Commission finds a witness qualified by special skill or training, and the testimony (here, declaration) is helpful to the Commission.[241] Furthermore, surveys of eligible claimants as a method of gathering cost

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[235] *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

[236] Code of Regulations, Title 2, section 1187.5.

[237] Government Code section 11513.

[238] Code of Regulations, title 2, section 1187.5; Government Code section 11514 [providing for use of affidavits in lieu of testimony].

[239] California Code of Regulations, Title 2, section 1187.5.

[240] Government Code section 11514(a) (Stats. 1947, ch. 491 § 6).

[241] Evidence Code sections 720; 801 (Stats. 1965, ch. 299 § 2).

data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission's regulations and the evidence rules, as discussed.[242]

The claimant has proposed standard times RRMs for investigative activities performed by law enforcement, and for reporting and notice activities performed by county welfare departments, as follows:

> Level - 1 No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-for-Service).
>
> All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency.
>
> The standard time for Level 1 is 102 minutes.
>
> Level 2 - Patrol Officer Investigation, No Child Abuse
>
> All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed.
>
> The standard time for Level 2 is 268 minutes.
>
> Level 3 - Reported CACI Investigation
>
> All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be completed to determine if the child abuse is "unfounded," "inconclusive," or "substantiated."
>
> If child abuse is "substantiated"' or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.
>
> The standard time for Level 3 is 838 minutes.
>
> Actual cost reimbursement is available for additional services not found in the Level 3 RRM. These services are described in IV.C(D) below.
>
> The standard times for county welfare agencies are:
>
> 1. Completion of the Child Abuse Summary Report (SS 8583) form
>
> The standard time is 22 minutes.
>
> 2. Completion of the Suspected Child Abuse Report (SS 8572) form.
>
> The standard time is 23 minutes.

[242] Government Code section 17518.5; Code of Regulations, Title 2, section 1183.13.

3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form.

The standard time is 13 minutes.

4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report.

The standard time is 22 minutes.

5. Response to DOJ inquires.

The standard time is 9 minutes.[243]

Based on the record here, the Commission does not have substantial evidence upon which to base a decision to adopt the standard times RRMs proposed for law enforcement.

The declarations of Suzie Ferrell and Daniel Scott state that the law enforcement surveys were developed on the basis of the investigative activities necessary to complete the ICAN mandated activities, and that the activities included in the surveys are "reasonably necessary in conducting ICAN investigations, preparing ICAN reports, and performing other ICAN required duties."[244] The Ferrell declaration also states that "it is my information and belief that the average or standard time for each ICAN step…is based on a representative sample of law enforcement agencies." In an additional declaration attached to the claimant's rebuttal comments and second revised proposed parameters and guidelines, Ms. Ferrell states, with slightly more specificity, that "the replacement RRM, found in Exhibit 1 of this filing, contains only those activities that are reasonably necessary in order to complete the state 'Child Abuse Investigation Report' Form SS 8583."[245]

As discussed above with respect to reimbursable activities, these proposed RRMs, if supported with substantial evidence, could be only partially approved, despite the assertions of Mr. Scott and Ms. Ferrell, because the activities underpinning the proposed RRMs exceed the scope of the mandate, and the scope of what is reimbursable under article XIII B, section 6. Notwithstanding their information and belief that the steps described in the law enforcement RRMs are necessary to complete ICAN investigations, the activities beyond investigation by patrol officers for purposes of preparing the report required by section 11169, as discussed, are not reimbursable, because those activities exceed the scope of what was approved in the test claim statement of decision; they exceed the scope of what is reasonably necessary to carry out the mandate (i.e., to determine whether a report is unfounded); and they exceed the scope of what is reimbursable under article XIII B, section 6 and Government Code section 17556.[246]

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[243] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 26-27.

[244] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 1, Declaration of Suzie Ferrell, at p. 6.

[245] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 47.

[246] See discussion above at section (B.)(3.), p. 34 and following.

Along with the declarations described above, the claimant has submitted summary survey results for the law enforcement activities that the claimant seeks to include in the law enforcement RRMs. Those summary survey results describe how much time should be assigned to each step in the investigation for law enforcement agencies. However, as discussed above, the reimbursement of those activities is limited to the activities and level of investigation required for the purpose of completing the Form 8583. Anything more, as analyzed above, would provide reimbursement for the costs of mandated reporter activities, or a criminal investigation; and to reimburse law enforcement agencies for activities beyond those approved for county welfare departments: these are not reimbursable activities. Moreover, nowhere in the claimant's submissions are the actual raw data found, nor any spreadsheets or other summaries that detail how the standard times RRMs were calculated; therefore it cannot be determined whether there is substantial evidence to support the costs claimed. In the claimant's rebuttal comments and second revised proposed parameters and guidelines, the times for each activity are identified individually, as follows:

Duty	Time in Minutes
Officer receives, prints, or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and determines based on the SCAR or call-for-service that no further investigation is required	33
Officer's findings are entered into agency's system	26
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse	21
Totals for Level 1	102

Because the claimant's proposal identifies individual times for each activity, non-reimbursable activities *could* potentially be eliminated in an adopted RRM. However there remains no evidence to support the standard times requested, other than the conclusory declarations submitted into evidence. In addition, there is no evidence provided that these activities are utilized other than in the County of Los Angeles. In comments submitted in response to the draft staff analysis, the claimant submitted the declaration of Mr. John Langstaff, "Project and Program Manager of the E-SCARS project." Mr. Langstaff declares that the "specialized software" for cross-reporting and tracking child abuse reports utilized by the County is "a more reliable method of cross-reporting" than relying on fax machines. However, Mr. Langstaff does not state, nor does any other evidence in the record indicate, whether any other county or jurisdiction utilizes the E-SCARS system, or any other electronic tracking system. The standard times proposed above presume that the investigating patrol officer utilizes the agency's tracking system, but there is no support in the record for that presumption with respect to other jurisdictions. Therefore the RRMs, based upon inadmissible hearsay, and including activities that are not approved and may or may not be utilized in other jurisdictions, are not supported by substantial evidence in the record and cannot be approved by the Commission.

Based on the analysis above, the law enforcement RRMs are denied.

Moreover, just as with the law enforcement standard times proposed, the claimant has submitted only summary survey results for county welfare departments' activities, along with the survey questions distributed to eligible claimants.[247] As discussed above, the surveys were returned by eight eligible claimants, representing, according to the claimant's evidence, more than fifty percent of the state's population. But nowhere in the claimant's submissions is there any evidence of the raw data returned. Only the conclusions are stated, in the form of standard times calculated by the claimant. This evidence is not sufficient in itself to support the Commission's decision to approve the proposed RRMs.

Based on the foregoing, proposed RRMs for county welfare departments are denied.

D. Offsetting Revenues and Reimbursements (Section VII. of Proposed Parameters and Guidelines)

The Commission's regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

i. Dedicated state and federal funds appropriated for this program

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.[248]

These items, required to be identified, do not undermine the Commission's finding that a program is reimbursable unless there is also a finding that the funding is sufficient to cover the costs of the program under section 17556(e), which is not the case here.

In addition, parameters and guidelines for *all* programs recently adopted state substantially as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

Therefore, even if the parameters and guidelines do not specifically highlight required or potential offsetting revenues, the Controller has authority to reduce reimbursement when other non-tax revenues are applied to mandated costs.

Based on the comments of parties and interested parties, and the plain language of the 2011 Realignment statutes, the Commission determines in the analysis below that non-local funds for child welfare services are identified as potentially offsetting revenue, but 2011 Realignment Funds are not offsetting revenue for purposes of ICAN mandated activities.

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[247] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 10, Child Abuse and Neglect Reporting Act Time Study Survey Questions, at pp. 2-3.

[248] Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

Here, as noted above, DOF and CDSS raised in their comments on the draft staff analysis an issue of offsetting revenue, and suggested that funding provided by the state, both prior to and including in the 2011 realignment, and possibly the language of article XIII, section 36 of the California Constitution might limit reimbursement going forward for the ICAN activities.[249] Specifically, CDSS suggested that "until the 2011 realignment of child welfare services, on the child welfare side counties have received significant state funding for the activities of social workers, for whom many of the activities identified in this mandate is [*sic*] a core function of their work." CDSS went on to assert that "[w]e also would expect the Commission to consider the implications of the realignment agreements' statutory and constitutional changes in any reimbursable cost estimates beyond 2011." And CDSS suggested as well that "the Commission should consider the revenues received by counties as a result of the 1991-92 Realignment of Child Welfare Services Programs (AB 948 Chapter 91 (1991)) as a potential offset to county costs for mandated activities."[250]

DOF asserted, in its comments on the draft proposed statement of decision, that "to the extent that 2011 Realignment funds [counties] for conducting ICAN activities, under Article XIII, section 36 of the California Constitution…the departments are required to conduct the mandated activities only insofar as funding is provided by 2011 Realignment [*sic*]."[251]

In response to these comments, Commission staff issued a request for comments on this new substantive issue.[252] Specifically, staff requested additional briefing on the following three questions:

1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 11166, 11166.2, 11166.9,[253] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?
2. Does the shift of complete or partial funding responsibility from the state to local governments of existing approved mandated activities result in a mandate "imposed by the 2011 Realignment Legislation" within the meaning of paragraph (3)?

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[249] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines; Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[250] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[251] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[252] Exhibit N, Commission Request for Comments.

[253] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

3. Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?

CSAC responded to the request first, arguing that the approved ICAN activities "are not among the 'public safety services' that are covered by section 36 of article XIII of the California Constitution." CSAC maintains that "[t]here is nothing in Prop. 30 that broadly exempts from reimbursement any program that could potentially fit within the definition of 'public safety services.'" CSAC concludes that under article XIII, section 36, public safety services "are only exempt from reimbursement if they were assigned to local agencies by 2011 Realignment Legislation," and that the mandated ICAN activities were not transferred to local agencies by the 2011 Realignment Legislation, and therefore reimbursement is not affected.[254]

The claimant also responded to the request for comment, arguing that the ICAN mandated activities "were already assigned to local agencies prior to enactment of the 2011 Realignment Legislation," and that the Realignment Legislation "specifically details, by statutory reference, which Public Safety Services responsibilities are assigned to local agencies as a result of that legislation." The claimant concludes that "[b]ecause the ICAN statutes at issue have not been assigned to local agencies pursuant to the 2011 Realignment Legislation, but instead were preexisting mandates, they are not part of the 'child abuse prevention, intervention, and treatment services' referenced in Government Code section 30025(f)(16)(A)(vi)."[255]

And finally, DOF also responded to the request for comments, concluding that "[a]fter deliberating the questions, as well as the ICAN activities," there is no effect on the ICAN mandate resulting from article XIII, section 36. DOF asserts that "there is no statute that identifies and/or describes specific funding for ICAN activities," and that "Finance does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government." Finance concludes that article XIII, section 36 only applies to limit reimbursement for "Legislation enacted after September 30th, 2012 that has the overall effect of increasing costs already incurred by a local agency for programs or levels of service mandated by 2011 Realignment Legislation."[256]

a. <u>The non-local share of child welfare services funding is identified as potentially offsetting revenue against costs mandated by the state.</u>

CDSS has suggested that counties receive "significant state funding for the activities of social workers," which, as discussed above, include referring cases of child abuse to DOJ, and conducting investigative activities under the ICAN statutes.[257] CDSS points to the 1991 realignment of health, mental health, and social services, in which the responsibilities of certain programs were shifted from the state to the counties, and the ratio of state to local funding was

[254] Exhibit P, CSAC Response to Commission Request for Comment, at pp. 1-2.

[255] Exhibit Q, County of Los Angeles Response to Commission Request for Comments.

[256] Exhibit R, DOF Response to Commission Request for Comments, at pp. 1-2.

[257] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

shifted, with a corresponding dedicated revenue stream to make up the difference. Prior to the 1991 Realignment, child welfare services funding was made up of 74 percent state and 24 percent local revenues. The 1991 Realignment altered the ratio to 70 percent state funding and 30 percent local funding, while at the same time increasing the state sales tax by one-half percent, and directing a larger share of the VLF revenues to local governments to cover the costs of realignment.[258]

There is no evidence in the record as to exactly what portion of the 70 percent state funding, or the increased local funding, is directed to the ICAN activities, if any, and Statutes 1991, chapter 91 (AB 948) does not specifically cite the prevention of child abuse as a purpose or priority of either source of funds. Accordingly, the Manual of Policies and Procedures, an excerpt of which was included in the claimant's exhibits, and which is cited above with respect to the scope of reimbursable activities, shows that ICAN duties are among those expected of Child Welfare Services agencies, but are not the only charge and expectation of those agencies. In addition, the Manual relies on the Welfare and Institutions Code for authority, rather than the Penal Code sections that impose the ICAN mandated activities. Thus, due to a lack of evidence in the record, the Commission cannot find, as a matter of law, that the non-local funds provided for Child Welfare Services in the 1991 Realignment are sufficient to fund any certain amount or proportion of the costs mandated by the state.

To the extent non-local funds are applied to cover the costs of the mandated activities, the Controller may reduce reimbursement accordingly, consistent with article XIII B, section 6. Based on the foregoing, the Commission finds that non-local funding for child welfare services from July 1, 1999 through June 30, 2011, is identified as potentially offsetting revenues against costs mandated by the state

b. <u>The 2011 realignment does not provide off-setting revenue to this program.</u>

As of November 3, 2004, article XIII B, section 6(c) defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[259] Accordingly, after the 2011 Realignment Legislation was enacted, the LAO issued a report on the realignment, identifying several "pressing implementation issues," including a risk that the programs shifted to the local level could trigger new mandate reimbursement requirements.[260] The principal accomplishments of the realignment were to raise new revenues, and to shift from the state to local governments complete financial responsibility for required programs for which the state previously had complete or partial responsibility.[261] Although no eligible claimant has come forward to file a test claim on the 2011 Realignment statutes pursuant to article XIII B, section 6(c), the LAO expressed an opinion that the statutes facially appear to constitute a mandated new program or higher level of service, and are

[258] Exhibit X, LAO Analysis of 1991 Realignment, at pp. 3; 6.

[259] Adopted by the voters as Proposition 1A, November 2, 2004.

[260] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[261] Exhibit X, LAO Report on 2011 Realignment, at pp. 4-6.

substantially likely to expose the state to liability for mandate reimbursement.[262] Therefore, the LAO recommended that:

> The clearest way to ensure that the 2011 realignment package does not result in state reimbursable mandates would be for the state to pass a constitutional amendment similar to the one proposed by the Governor. That measure excluded the 2011 realignment program changes from the reimbursement requirement.[263]

The following year, the voters approved Proposition 30, on November 6, 2012. In addition to providing new revenue for a period of years, Proposition 30 added article XIII, section 36 to the California Constitution. Section 36 provides:

> (3) *Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section.*
>
> (4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.
>
> (B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.[264]

DOF suggested that Proposition 30 might end reimbursement for county welfare departments for ICAN activities:

> [I]n regards to county welfare departments, to the extent that 2011 Realignment funds them for conducting the ICAN activities, under Article XIII, section 36 of the California Constitution, if the Commission outlines reimbursable activities

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[262] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[263] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[264] California Constitution, article XIII, section 36(c) (adopted November 6, 2012) [emphasis added].

> that cause these departments to incur costs that are in excess of what 2011 Realignment funds, the departments are required to conduct the activities only insofar as funding is provided by 2011 Realignment. Activities that result in costs in excess of what 2011 Realignment provides are not reimbursable mandates and the county welfare departments may conduct those additional activities if they have resources to do so.[265]

But the plain language of the above-quoted provisions of Proposition 30 (now article XIII, section 36) does not support that conclusion. Ultimately, DOF concluded "after deliberating" that reimbursement for ICAN activities is not affected by Proposition 30. Rather, DOF asserts that article XIII, section 36 only applies to limit reimbursement for Legislation enacted after September 30, 2012 that "has the overall effect of increasing costs already incurred by a local agency for programs or levels of service mandated by 2011 Realignment Legislation." DOF also states that it "does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government," for the ICAN mandated activities, and that "there is no statute that identifies and/or describes specific funding for ICAN activities." Therefore, DOF concludes that "the approved activities under the ICAN statutes are reimbursable under the law."[266] This conclusion is consistent with the comments submitted by claimant and CSAC, as well as the plain language of article XIII, section 36.

Therefore, the Commission finds that the 2011 Realignment Legislation, coupled with Proposition 30, had no effect on mandate reimbursement for the approved activities identified in the ICAN test claim statement of decision.

V. CONCLUSION

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities, as analyzed above.

[265] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[266] Exhibit R, DOF Response to Commission Request for Comments.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

Penal Code Sections 11165.9, 11166,11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)

"Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

Period of reimbursement begins July 1, 1999, or later for specified activities added by subsequent statutes. Reimbursement ends for specified activities on January 1, 2012.

Case No.: 00-TC-22

Interagency Child Abuse and Neglect Investigation Reports

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

(*Adopted December 6, 2013*)

(*Served December 16, 2013*)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached parameters and guidelines on December 6, 2013.

Heather Halsey, Executive Director

Adopted: December 6, 2013

PARAMETERS AND GUIDELINES

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9[1], 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

"Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

Interagency Child Abuse and Neglect Investigation Reports
00-TC-22

Period of reimbursement begins July 1, 1999,
or later for specified activities added by subsequent statutes.

I. SUMMARY OF THE MANDATE

This program addresses statutory amendments to California's mandatory child abuse reporting laws commonly referred to as ICAN. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000.

The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys' offices. The act requires reporting to the DOJ when a report of suspected child abuse is "not unfounded." The act requires an active investigation before a report can be forwarded to the DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to the DOJ, and now requires reporting only of "substantiated" reports by other agencies. The act imposes additional cross-reporting and recordkeeping duties in the event of a child's death from abuse or neglect. The act requires agencies and the DOJ to keep records of investigations for a minimum of 10 years, and to notify

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

suspected child abusers that they have been listed in the Child Abuse Central Index. The act imposes certain due process protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

On December 19, 2007, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose 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 reimbursable activities described in section IV., as they are performed by city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys' offices, and county licensing agencies.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later periods as specified for statutes effective after July 1, 1999.

However, Penal Code section 11169 was amended in Statutes 2011, chapter 468 (AB 717), effective January 1, 2012, to repeal the mandate for law enforcement agencies to report to DOJ, and to require that all other affected departments in the local agencies report to DOJ only "substantiated" reports of suspected child abuse, and not "inconclusive" reports. Thus, law enforcement agencies are eligible for reimbursement for the costs of completing investigations of suspected child abuse in order to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for the purpose of forwarding those reports to DOJ from July 1, 1999 until December 31, 2011, when the mandate was repealed. In addition, law enforcement agencies are eligible for reimbursement for the costs of notifying suspected abusers that they have been listed in the Child Abuse Central Index at the time that a report is submitted to DOJ from July 1, 1999 until December 31, 2011, when the mandate to forward reports to DOJ was repealed.

For all other affected departments in the local agencies, the reimbursement period for forwarding reports that are "inconclusive" to DOJ is from July 1, 1999 until December 31, 2011, due to a subsequent change in Penal Code section 11169 by Statutes 2011, chapter 468 (AB 717). On and after January 1, 2012, only forwarding reports to DOJ that are "substantiated" is reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
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 fiscal year, only actual costs may be claimed.

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. One-Time Activities

1. Policies and Procedures

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

a. Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B. (One-time costs only)

b. Develop ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI]. (One-time costs only)

2. Training

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

> Develop and implement training for ICAN staff to implement State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities, training materials and audio visual presentations. (One time per employee whose job responsibilities involve ICAN mandated activities)

B. On-going Activities

1. Distributing the Suspected Child Abuse Report Form

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

a. Distribute the child abuse reporting form adopted by DOJ (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters.[2]

2. Reporting Between Local Departments

a. Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the

[2] Penal Code section 11168, as added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916.

department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.[3]

b. Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

1) County probation departments shall:

i. Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[4]

2) County welfare departments shall:

i. Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

Reimbursement is not required for making an initial report of child abuse and neglect from a county welfare department to the law enforcement

[3] Penal Code sections 11165.9 (Stats. 2000, ch. 916, § 8 (AB 1241)).

[4] Penal Code section 11166 (h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

agency having jurisdiction over the case, which was required under prior law to be made "without delay."

ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[5]

c. Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

City and county police or sheriff's departments shall:

1) Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2(b), which shall be reported only to the county welfare department.[6]

2) Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.

3) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

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[5] Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

[6] Penal Code section 11166(i) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (j) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (k) by Statutes 2005, chapter 42 (AB 299).

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[7]

d. Receipt of Cross-Reports by District Attorney's Office:

District attorneys' offices shall:

Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2(b).[8]

e. Reporting to Licensing Agencies:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

1) Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.

2) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.2. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

   As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[9]

f. Additional Cross-Reporting in Cases of Child Death:

1) City and county police or sheriff's departments shall:

   Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.[10]

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[7] *Ibid*.

[8] Penal Code section 11166 (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)).

[9] Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

[10] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

2) County welfare departments shall:

i. Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.[11]

ii. Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.[12]

iii. Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.[13]

3. Reporting to the State Department of Justice

a. **From July 1, 1999 to December 31, 2011**, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:[14]

1) Complete an investigation for purposes of preparing the report

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[15] Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

[11] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

[12] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313); Stats. 2010, ch. 618, § 10 (AB 2791)).

[13] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

[14] Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

[15] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

Reimbursement is not required in the following circumstances:

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice (currently form 8583) and may be sent by fax or electronic transmission.[16]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

[16] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

1) Complete an investigation

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[17] Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

Reimbursement is not required in the following circumstances:

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583.

2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated, as defined in Penal Code section 11165.12. Unfounded or inconclusive reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a

[17] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

form approved by the Department of Justice and may be sent by fax or electronic transmission.[18]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

4. Notifications Following Reports to the Child Abuse Central Index

a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

1) Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.[19]

This activity includes, where applicable, completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.

For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to Penal Code section 11169(b), as amended by Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.

2) Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.[20]

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[18] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

[19] Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

[20] Penal Code section 11170 (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

3) Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.[21]

4) Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report.[22]

b. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.[23]

Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.

c. City and county police or sheriff's departments, county probation departments, and county welfare departments shall:

Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be

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[21] Penal Code section 11170(b) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

[22] *Ibid*.

[23] Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)); now subdivision (b)(10), as amended by Statutes 2012, chapter 848 (AB 1707).

submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.[24]

5. Record Retention

a. City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[25]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.

b. County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[26]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.

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[24] Penal Code section 11170(c) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

[25] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[26] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

6. Due Process Procedures Offered to Person Listed in CACI

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual's name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.[27]

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. 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

[27] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

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 are 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 attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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

5. Travel

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

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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 direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

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

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

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total

allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[28] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), 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

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

Upon 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 and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 16, 2013, I served the:

Statement of Decision and Parameters and Guidelines
Interagency Child Abuse and Neglect Investigation Reports, 00-TC-22
Penal Code Sections 11165. 9 et al.
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 16, 2013 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/9/13

Claim Number: 00-TC-22

Matter: Interagency Child Abuse and Neglect (ICAN) Investigation Reports

Claimant(s): County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Tab 4

UPDATED as of 10-2016

Interagency Child Abuse & Neglect Reports (NEW PROGRAM)

STATISTICAL DATA NEEDED:

11-12 12-13

Fiscal Year	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	~~11-12~~	~~12-13~~	13-14
Number of Substantiated or Inconclusive Reports		39	44	31	36	24	31	36	40	27	42	35	43	55		49
Number of Unfounded Reports		211	198	230	174	249	236	268	254	136	612	421	385	400		159
TOTAL REPORTS	229?	250	242	261	210	273	267	289	294	163	654	456	428	455		208

some never entered up in system / sat on someone's desk, underfilled -Kathleen 11/22

One-Time Activities:

1) Staff Training on Mandate Program – Develop and implement training for ICAN program – instructor and attendee time and costs.

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

List staff in attendance and time for one time training. (Provide documentation if available) This should have occurred about FY 99-00.

2) Develop Policies and Procedures to address these new law changes.

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Title of position(s) that performs this activity: _____
Time for this activity per referral: _____

Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Phone (916) 939-7901 *Fax (916) 939-7801* *Email: AChinnCRS@aol.com*

Tab 5

CONFIDENTIAL

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

CR-1

CASE# 1010-0549
PAGE 1

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED	MORE CHARGES	ESTIMATED LOSS VALUE
10/07/10 21:25 Thursday	10/07/10 21:25	YES [ ] NO [X]	$ 0.00

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PERSONS

Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other

MORE NAMES YES [ ] NO [X]

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	HOME
V 1 OF 1			

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	M	6			

DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	CELLULAR
R 1 OF 4			

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	F	40			

DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	CELLULAR
R 2 OF 4			

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
Maid	H	M	34			

DL	STATE	SS#	INJURIES	ADDRESS 3	PHONE 3

CASE SUMMARY / VEHICLE INFORMATION

SUMMARY

arrested for penetration of a foreign object.

VEHICLE USED IN CRIME	OF	LICENSE (NO. AND STATE)	YEAR	MAKE	MODEL	BODY TYPE	COLOR	VIN	MORE VEHICLES
YES [ ] NO [ ] UNK [ ]									YES [ ] NO [X]

TOW REPORT	GARAGE NAME AND PHONE	REGISTERED OWNER	R/O ADDRESS
YES [ ] NO [ ]			

SUSPECT (S)/ ARRESTEE (S)

Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim

MORE NAMES YES [ ] NO [X]

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	HOME
A 1 OF 1			

RACE	SEX	HT	WT	HAIR	EYE	AGE	DOB	ADDRESS 2	PHONE 2
H	M	5'08"	160	BLK	BRO	15			

OCCUPATION	INJURIES	ADDRESS 3	PHONE 3

SCARS / MARKS / TATTOOS	AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION	ARREST DATE / TIME
YES [ ] NO [ ]		5-Juvenile	EDCoJail-SLT	10/08/2010 / 02:28

DL	STATE	ARRESTED	BOOKING #	WARRANT	CITATION #	SS#	CII#
		YES [X] NO [ ]	1010-0549	YES [ ] NO [X]			

CHARGES
289 (A)(1) PC (1)

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	PHONE 1
OF			

RACE	SEX	HT	WT	HAIR	EYE	AGE	DOB	ADDRESS 2	PHONE 2

OCCUPATION	INJURIES	ADDRESS 3	PHONE 3

SCARS / MARKS / TATTOOS	AKA's	ARRESTEE DISPOSITION	RELEASE LOCATION	ARREST DATE / TIME
YES [ ] NO [ ]				/

DL	STATE	ARRESTED	BOOKING #	WARRANT	CITATION #	SS#	CII#
		YES [ ] NO [ ]		YES [ ] NO [ ]			

CHARGES

ADMINISTRATION

VICTIM DESIRES PROSECUTION	FOLLOW-UP	COPIES TO:
YES [ ] NO [X]	YE [ ] NO [X]	[ ] PAT. [ ] DET. [ ] DA [ ] COURT [ ] PROBATION [ ] VWAP [ ] OTHER:

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/10 08:46	Josh Adler 163	10/08/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [x]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Additional Crimes, Persons and Vehicles

CASE # 1010-0549

PAGE 1 OF 1

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

ADDITIONAL OFFENSE(S) | ADDITIONAL OFFENSE(S) cont'd.

PERSONS

Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	
R 3 OF 4			Home

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	M	9			

DL STATE	SSN	INJURIES	ADDRESS 3	PHONE 3

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	
R 4 OF 4			Home

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	M	6			

DL STATE	SSN	INJURIES	ADDRESS 3	PHONE 3

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	
RP 1 OF 1			Cellular

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	F	21			

DL STATE	SSN	INJURIES	ADDRESS 3	PHONE 3

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/10 08:46	Josh Adler 163	10/08/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Property and Evidence

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED	TOTAL PROPERTY VALUE
10/07/10 21:25 Thursday	10/07/10 21:25	$ 0.00

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PROPERTY ITEMS

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
205-001	E	1				Audio recording		

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION	FIELD RECEIPT ISSUED
Audio recording of statements	[ ]

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/10 08:46	Josh Adler 163	10/08/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Person Profile

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PERSONS

Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
A	1 OF 1			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
V	1 OF 1			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
R	1 OF 4			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
R	2 OF 4			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
R	3 OF 4			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
R	4 OF 4			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/10 08:46	Josh Adler 163	10/08/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest [x]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Person Profile

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PERSONS

Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
RP	1 OF 1	--		This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

ADMINISTRATION

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			Closed

Arrest [x]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Narrative Report

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

NARRATIVE

On 10/07/10, I was advised by dispatch a female identified as contacted the Police Department regarding a sexual assault which may have occurred with her six year old brother, . lives in Fountain Valley, NV so I contacted her via land line and she related the following in summary:

On 10/07/10, at approximately 2120 hrs, received a phone call from her mother, . stated her mother told her ad been sexually assaulted by her older brother, . stated told her that had put his finger inside his anus. stated her mother was worried and did not want to call the Police because she was afraid would get arrested. stated she tried to convince her to call but she refused. then decided to contact the Police herself because it was the right thing to do. End Statement.

Officer Rider and I responded to the address provided by . Officer Rider briefly spoke to inside, however not regarding this incident. along with two other brothers were staying at this address with their parents and . At the residence I contacted . regarding the possible sexual assault. did not speak any english, so all statements were provided through language line. related the following in summary;

stated on 10/07/10, she noticed that her six year old son, was having irregular bowel movements. asked what was wrong and he told her that his older brother, co had put his finger inside his anus. asked if he was sure it was his finger and he said yes. asked if it were the first time it had ever happened and he said yes.

seemed very nervous and was being very vague answering questions. I asked why she did not call the Police and she stated she was nervous for getting in trouble. End statement.

Officer Rider and I returned to the station to contact the watch commander Sgt. Brad Williams. I decided to contact the reporting party, , a second time to attempt to obtain more information. I called on a recorded land line in dispatch and she

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/2010 08:46	Josh Adler 163	10/08/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

NARRATIVE

related the following in summary;

I asked to be more specific with what her mother said when she called. stated when her mother called she said that had told her husband that had put his finger in his anus. When confronted about what happened, told her that had put a spoon inside his anus. did not go into further detail, as to what she said to .

stated her mother called her back when the Police had left the residence. stated her mother was upset that she had called the Police. stated that she "left things out" when she was talking to the Police. told her daughter to tell the Police that she had forgotten what happened, rather than tell the truth. told her mother she had to do the right thing. stated her mother was afraid would get arrested, so she was going to send him to Mexico. End statement.

Officer Rider, Sgt. Brad Williams, and I decided more investigation needed to be done. I asked to respond to her mothers house, and possibly take over custody of if needed. agreed and stated she would meet me at her mother's house.

Officer Rider and I returned to for more investigations. I contacted the victim, for a brief statement, he related the following in summary:

stated he spoke a small amount of english. I asked what had happened between him and his brother. initially stated he did not remember anything that happened. I asked if his mother told him to tell me that he had forgotten everything and he said yes. I asked again what had happened and he stated he could not explain it in English and would need to tell me in Spanish. I asked if his mother had told him to tell me he was only able to speak spanish and he said yes. I decided to talk to later on when I had language line on the phone. End Statement.

I then contacted another brother in the house, who is 9 years old. was able to speak english. I asked if he knew why the Police were at his house. did not know why I was there, and was unaware of any problems between his brother and

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
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OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

NARRATIVE

his brother stated he has never had any negative physical contact with his brother .

I then contacted father , who does not speak english, all statements were received through language line. related the following in summary:

stated has been peeing his pants for about the last two months. Today, inally asked why he was peeing his pants, since he is now older. then told that had put his finger inside his anus, while wearing a glove. hen confronted about what happened. told hat he helped wipe his bottom one day. stated he may have wiped a little hard and his finger may have gone inside his anus but was unsure.

hen stated that had recently taken a video game from , which made very upset. stated may be making this whole thing up since was so upset. stated neither him or his wife told any of the kids to lie to the police or to tell them anything but the truth. End Statement.

I then had ell it was Ok to talk to us and it was very important to tell us the truth. Officer Rider then received a statement from . In summary, stated that there was one incident that occurred approximately one month ago, where he and were wrestling on the bed and he was poking him with a spoon. The spoon may have poked in the bottom, but stated it did not penetrate his anus. stated there was another incident which occurred more than 2 weeks ago but sooner than a month, when he was helping wipe after he went to the bathroom. stated he was helping him wipe and was wearing a latex glove. He stated he may have pressed too hard and his middle finger went inside anus on accident. See Officer Rider's report for further information.

I then contacted , age six, again this time using language line. father old to make sure he tells the truth and it is ok to talk to the Police. related the following in summary:

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
S. Crivelli 205	10/08/2010 08:46	Josh Adler 163	10/08/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

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NARRATIVE

I asked what had happened between him and his brother stated his brother put a spoon in his anus, when the family went to the store and he was left alone with stated it hurt really bad and there was a lot of bleeding. was not able to put a specific time on when this incident occurred. referenced it may have been around his fifth birthday, which would be 03/10/09. did not refer to an incident regarding finger. continued to refer to a spoon being used to penetrate his anus. stated it was a long time ago. stated he never took a video game or toy from which would make him upset. I asked again if his mother told him to tell me that he had forgotten what happened, and he said yes. . was unable to provide any other information regarding the incidents which occurred.

I then contacted and mother, , a second time. All statements were received through language line. related the following in summary:

I asked why she would tell her kids to lie to the Police about what happened. stated she never would tell them to lie and she always told them to tell the Police the truth.

. stated on 10/08/10, she was lying on her bed when came into the room and asked her if she knew what as saying happened with . explained to that had told him that had put his finger in his anus. then asked o tell her what happened and be truthful. stated she assumed used his penis and thought it was his finger. then told that had used a spoon to penetrate his anus.

. then asked , if this had ever happened before and old her no. I asked , why she did not contact the Police. stated she was nervous and did not know what to do. She stated she was scared for and did not want him to get into any trouble. . stated she contacted her daughter and told her what happened, and she ended up contacting the Police. End Statement.

I decided it would be best if . was not in the home where the crime occurred over night. sister, had since arrived on scene. . agreed to take custody of and cooperate with any tasks the SLT PD detectives would need from her. I

ADMINISTRATION

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OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
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NARRATIVE

explained the situation to and how I thought it would be best for to go to her daughters house temporarily. . agreed and consented to her daughter taking

I advised , Detectives would be getting a hold of her on the following day and a medical exam for would probably follow. and then left the residence.

After our investigation, Officer Rider, Sgt. Williams, and I decided had penetrated his brother, in his anus with a foreign object. Due to mother express her interest in sending him to Mexico, it was important to have in custody.

Officer Rider placed under arrest and placed handcuffs on Officer Rider and I transported to the Juvenile treatment center, where he was booked.

See Officer Rider's report for further information

I e-mailed a copy of the recorded statements to Evidence Tech Larry Tomer, for him to put them onto a CD.

Recommendation:

Send to DA officer for filing.
Send to Detectives for follow up.
Request a SART interview and SART exam.

ADMINISTRATION

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S. Crivelli 205	10/08/2010 08:46	Josh Adler 163	10/08/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

CA0090200

Supplemental Report

CASE # 1010-0549

PAGE 1 OF 4

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

CASE SUMMARY

Statements from

SUSPECT(S)/ ARRESTEE(S)

Codes: S = Suspect A = Arrestee D = Detainee SV - Suspect/Victim AV - Arrestee/Victim DV - Detainee/Victim

CODE	NAME - LAST, FIRST, MIDDLE, SUFFIX	ADDRESS 1	HOME
A 1 OF 1			

RACE	SEX	HT	WT	HAIR	EYE	AGE	DOB	ADDRESS 2	PHONE 2
H	M	5'08"	160	BLK	BRO	15			

OCCUPATION	INJURIES	ADDRESS 3	PHONE 3

SCARS / MARKS / TATTOOS	AKA'S	ARRESTEE DISPOSITION	RELEASE LOCATION	ARREST DATE / TIME
YES [ ] NO [ ]		5-Juvenile	EDCoJail-SLT	10/08/2010 / 02:28

DL / STATE	ARRESTED	BOOKING #	WARRANT	CITATION #	SS#	CII#
	YES [X] NO [ ]		YES [ ] NO [X]			

CHARGES

289 (A)(1) PC (1)

NARRATIVE

On October 7, 2010 at approximately 2310 hours I responded with Officer Crivelli to to assist in investigating a possible child sexual abuse.

While Officer Crivelli spoke with (the mother) outside I contacted 15 year old inside. I identified but did not ask him any questions pertaining to the case. did not ask why police were at his home.

Officers Crivelli and I left to get additional information from the reporting party.

At approximately 0050 we returned and I interviewed The interview took place in his room. Below is the interview in summary. See digital recording for further information.

I asked o if he knew why I was there and he said that he knew we were there because his sister had called us. He said he did not know what it was about. I asked if he had touched his brother in a way that was inappropriate. said that they wrestle sometimes. I asked why his sister and mom would tell police that he had put his finger or a spoon in utt. initially said he did not know but upon further questioning relayed an incident where this might have happened. said that he and were wrestling in his bedroom alone and poking each other with a

ADMINISTRATION

FOLLOW-UP	COPIES TO:
YES [ ] NO [X]	[ ] PAT. [ ] DET. [ ] DA [ ] COURT [ ] PROBATION [ ] VWAP [ ] OTHER

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
B. Rider 200	10/08/2010 08:46	Josh Adler 163	10/08/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

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CASE # 1010-0549
PAGE 2 OF 4

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

CASE SUMMARY
Statements from

NARRATIVE

spoon when slipped and poked n the butt with the spoon. explained that it was the round end of the spoon not the handle and that was wearing pajama pants. He said that the spoon did not actually go into his butt although said it hurt so they stopped wrestling. said this was the first and only time this has happened and it was accidental. said he told him mom about it. said the spoon was similar in size to a spoon sitting in a bowl on his dresser. This spoon was metal and approximately 8" long and 1/2 inch wide.
said he did not receive any sexual gratification from poking with the spoon.

said that his two other brothers ( ) were wrestling too but left prior to the spoon incident. This happened approximately 1 month ago according to .

Throughout the interview appeared nervous or scared but never became upset over the allegations of molesting his brother.

said that he has his own bedroom while his 3 brothers sleep in his parent's room or in the living room.

A short while later father told ne needed to tell me the truth and everything that happened. I obtained another statement from . This interview was conducted sitting in the living room. gave the following statement in summary, see audio recording for further information.

I explained to that I wanted him to tell me everything that had happened between him and said that he all ready told me but then explained another incident where had pooped and needed help cleaning up his butt afterwards. said that he put a latex glove on his hand and used some toilet paper to wipe butt. said that as he was doing this the paper ripped and his finger went into butt. said his finger did not go all the way into butt.

ADMINISTRATION

FOLLOW-UP	COPIES TO.						
YES [ ] NO [X]	[ ] PAT.	[ ] DET.	[ ] DA	[ ] COURT	[ ] PROBATION	[ ] VWAP	[ ] OTHER

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			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

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Supplemental Report

CASE # 1010-0549

PAGE 3 OF 4

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
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LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

CASE SUMMARY

Statements from

NARRATIVE

I asked show me which finger it was. showed me that it was his middle finger on his right hand. I had point on his finger how far in it had gone. pointed to his knuckle approximately 2" from the tip of his finger. said that this happened about two weeks ago. He said that after it happened, cried. said that he thought this really hurt . said that he told his mom about it and she was mad because was crying. I asked if had asked him for help cleaning up or if he offered to help. said that asked him to help as he has helped him clean up after the going to the bathroom before. said that this was the only time he has ever slipped with his finger. said that his mom was home when this occurred.

I explained to that it was unbelievable that he slipped accidentally and his finger went that far into his brother's butt. explained that he wrapped the paper up into a ball and was pushing really hard because had some dried poop. explained that had pooped earlier on and not cleaned up after. I asked again when this happened and he said it happened a long time ago. said that it was maybe a month ago but two days after the wrestling we talked about before.

said that he has not helped clean up after he poops anymore sense this happened and cleans himself up now.

then waited in his bedroom while I spoke with Officer Crivelli. I waited with him in his room while Officers interviewed parents and

Based on my investigation I determined that had penetrated anal opening against his will with a foreign object (his finger) in violation of 289 (a)(1) PC. I advised that he was under arrest for the above violation and placed him in double locked hand cuffs. I checked the cuffs for fit and secured in the back seat of my patrol vehicle. I read his Miranda rights verbatim from my Miranda card and he said that he understood them and would be willing to answer questions I had.

ADMINISTRATION

FOLLOW-UP	COPIES TO:						
YES [ ] NO [X]	[ ] PAT.	[ ] DET.	[ ] DA	[ ] COURT	[ ] PROBATION	[ ] VWAP	[ ] OTHER

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Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

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CASE # 1010-0549

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OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
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CASE SUMMARY

Statements from .

NARRATIVE

I transported to JTC and he was booked without incident.

It should be noted that did not appear upset over the allegations and arrest.

Attach to original report.

ADMINISTRATION

FOLLOW-UP	COPIES TO:						
YES [ ] NO [X]	[ ] PAT.	[ ] DET.	[ ] DA	[ ] COURT	[ ] PROBATION	[ ] VWAP	[ ] OTHER

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Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
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Property and Evidence

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED	TOTAL PROPERTY VALUE
10/07/10 21:25 Thursday	10/07/10 21:25	$ 0.00

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PROPERTY ITEMS

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
200-001	E	1				Cd-R		

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION	FIELD RECEIPT ISSUED
Audio recording	[ ]

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
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OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Person Profile

CASE # 1010-0549

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OFFENSE(S)	OFFENSE(S) cont'd.
289 (A)(1) PC; Sexual Penetration W/Foreign Object W/Force; Fel.	

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				105

PERSONS

Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB
A	1 OF 1		

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Please refer to the primary report(s) for additional information.

CLOTHING

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
B. Rider 200	10/08/10 08:46	Josh Adler 163	10/08/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

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Supplemental Report

CASE # 1010-0549

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OFFENSE(S)	OFFENSE(S) cont'd.
288 (A) PC; Lewd Or Lascivious Acts W/Child Under 14 Years; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

CASE SUMMARY
Follow-up

NARRATIVE

On 10/08/10, I called (victim's sister) to arrange a SART interview with . She said the best day for her to bring for a SART is Thursday. I made arrangements to have the interview on 10/14/10 at 1600 hours.

I notified ADA Kelliher via voice mail about this SART interview. I also contacted ADA O'Hara about this case and the scheduled interview.

I contacted Dr. Wagoner about a possible medical exam. I was unable to reach her but I left a message with the details of this case. She later left a message saying the window for collection of evidence had long since passed and that any injuries would be healed by now.

On 10/14/10 at approximately 1600 hours, the SART interview was conducted. Present in the SART observation room was ADA Kelliher, Women's Center Advocate Lisa Schaffer, CPS Workers Leah Brown and Joycelyn Mata. As spoke Spanish, Women's Center Advocate Laura Barber conducted the interview in Spanish. Mata remained in the observation room to interpret the interview. The following is a summary of what said. It is in no way intended to represent an exact, word for word, literal transcription. Additionally, the interview were conducted in Spanish. For complete statement please refer to DVD.

On 10/28/10 at approximately 1500 hours, the SART interview was conducted. Present in the SART observation room was ADA Kelliher, Women's Center Advocate Lisa Schaffer, CPS Workers Leah Brown and Joycelyn Mata. As spoke Spanish, Women's Center Advocate Laura Barber conducted the interview in Spanish. Mata remained in the observation room to interpret the interview. The following is a summary of what said. Additionally, the entire interview was conducted in Spanish. It is in no way intended to represent an exact, word for word, literal transcription. For complete statement please refer to DVD.

ADMINISTRATION

FOLLOW-UP	COPIES TO:						
YES [ ] NO [X]	[ ] PAT.	[ ] DET.	[ ] DA	[ ] COURT	[ ] PROBATION	[ ] VWAP	[ ] OTHER

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/10/2010 16:23	Cameron Carmichael 143	11/12/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

CA0090200

Supplemental Report

CASE # 1010-0549

PAGE 2 OF 2

OFFENSE(S)	OFFENSE(S) cont'd.
288 (A) PC; Lewd Or Lascivious Acts W/Child Under 14 Years; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

CASE SUMMARY

Follow-up

NARRATIVE

On 11/02/10, I was notified by Det. Herring that had been placed in Foster care on 11/01/10. The foster mother reported there were suspicious buising on his pelvis and blistering around his anus. She also reported had no sensation or control of his bowel movements. Det. Herring spoke to the foster parent and said she was willing to transport to a SART interview, if needed.

Det. Herring informed me had been placed in a foster home in Amador County. Det. Herring contacted the Amador County Sheriff's Department and learned their SART exams were conducted at Mark Twain Hospital in Calaveras County.

On 11/02/10, I contacted Calaveras County Sheriff's Detective Wade Whitney. I explained our situation and he agreed to assist us with a SART exam of We arranged to have a SART exam done on 11/02/10 at 1230 hours.

After the SART exam, Det. Whitney contacted me and told me there were no findings.

Recommendations: Forward to the DA's office for review.

ADMINISTRATION

FOLLOW-UP	COPIES TO:							
YES [ ] NO [X]	[ ] PAT.	[ ] DET.	[ ] DA	[ ] COURT	[ ] PROBATION	[ ] VWAP	[ ] OTHER	

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/10/2010 16:23	Cameron Carmichael 143	11/12/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Additional Crimes, Persons and Vehicles

CASE # 1010-0549

PAGE 1 OF 1

OFFENSE(S)	OFFENSE(S) cont'd.
288 (A) PC; Lewd Or Lascivious Acts W/Child Under 14 Years; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

ADDITIONAL OFFENSE(S)	ADDITIONAL OFFENSE(S) cont'd.

PERSONS

Codes: V = Victim W = Witness C = Complainant P = Parent G = Guardian R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	RESIDENCE	Home
V	1 OF 1			

OCCUPATION	RACE	SEX	AGE	DOB	ADDRESS 2	PHONE 2
	H	M	6			

DL	STATE	SSN	INJURIES	ADDRESS 3	PHONE 3

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/10/10 16:23	Cameron Carmichael 143	11/12/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Property and Evidence

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.
288 (A) PC; Lewd Or Lascivious Acts W/Child Under 14 Years; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED	TOTAL PROPERTY VALUE
10/07/10 21:25 Thursday	10/07/10 21:25	$ 0.00

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PROPERTY ITEMS

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-001	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION	FIELD RECEIPT ISSUED
SART interview of	[ ]

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-002	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION	FIELD RECEIPT ISSUED
SART interview of	[ ]

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-003	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION	FIELD RECEIPT ISSUED
	[ ]

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/10/10 16:23	Cameron Carmichael 143	11/12/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

Arrest [X]
Crime [ ]
Non-Criminal [ ]

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150
CA0090200

Person Profile

CASE # 1010-0549

PAGE 1 OF 1

OFFENSE(S)	OFFENSE(S) cont'd.
288 (A) PC; Lewd Or Lascivious Acts W/Child Under 14 Years; Fel.	

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR
				105

PERSONS

Codes: V = Victim W = Witness S = Suspect A = Arrestee D = Detainee C = Complainant R = Party O = Other

MORE NAMES YES [ ] NO [ ]

CODE		NAME - LAST, FIRST, MIDDLE, SUFFIX	DOB	
V	1 OF 1			This report contains Person Profile information only. Please refer to the primary report(s) for additional information.

CLOTHING

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/10/10 16:23	Cameron Carmichael 143	11/12/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest ☐
Crime ☒
Non-Criminal ☐

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

CA0090200

Supplemental Report

CASE # 1010-0549

PAGE 1 OF 1

OFFENSE(S)	OFFENSE(S) cont'd.

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED
10/07/10 21:25 Thursday	10/07/10 21:25

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR

CASE SUMMARY

Evidence booking

NARRATIVE

Report for evidence booking only

ADMINISTRATION

FOLLOW-UP	COPIES TO						
YES ☐ NO ☒	☐ PAT.	☐ DET.	☐ DA	☐ COURT	☐ PROBATION	☐ VWAP	☐ OTHER

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/02/2010 14:41	Cameron Carmichael 143	11/02/10
OFFICER	**UNIT/SHIFT**	**ASSIGNED TO**	**CASE STATUS**
			Closed

Arrest ☐
Crime ☒
Non-Criminal ☐

SOUTH LAKE TAHOE POLICE DEPARTMENT

1352 Johnson Blvd, South Lake Tahoe, CA 96150

CA0090200

Property and Evidence

CASE # 1010-0549

OFFENSE(S)	OFFENSE(S) cont'd.

DATE, TIME AND DAY OF OCCURENCE	DATE AND TIME REPORTED	TOTAL PROPERTY VALUE
10/07/10 21:25 Thursday	10/07/10 21:25	$ 0.00

LOCATION OF OCCURENCE	LOCATION NAME	TYPE OF LOCATION	BEAT	SECTOR

PROPERTY ITEMS

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-001	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION: SART interview of

☐ FIELD RECEIPT ISSUED

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-002	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION: SART interview of

☐ FIELD RECEIPT ISSUED

ITEM #	STATUS	QUANTITY	COLOR	COLOR 2	TYPE	MAKE	MODEL	YEAR
182-003	E	1						

SERIAL NUMBER	BAR CODE	VALUE	TOTAL	LOCATION / BIN #
		$ 0.00	$ 0.00	Evidence Locker

DESCRIPTION: Drawing

☐ FIELD RECEIPT ISSUED

ADMINISTRATION

BY OFFICER	DATE/TIME	APPROVED BY	DATE APPROVED
D. Sentell 182	11/02/10 14:41	Cameron Carmichael 143	11/02/10

OFFICER	UNIT/SHIFT	ASSIGNED TO	CASE STATUS
			Closed

1010-0549

EL DORADO COUNTY PROBATION DEPARTMENT
JUVENILE HALL BOOKING SHEET

Name of Juvenile	Date of Birth	Place of Birth	Age	Soc.Sec.#
		MEXICO	15	

Address (Physical and Mailing)	Phone Number
96151	

Religion	Race	Sex	Hair Color	Eye Color	Height	Weight	Current Ward:
	H	M	BLK	BRO	508	190	☐ Yes ☒ No

Name of Father	Father's Address (physical/mailing)	Father's Phone Number Hm ( ) Wk ( )

Name of Mother	Mother's Address (physical/mailing)	Mother's Phone Number Hm ( ) Wk ( )

Name of Step-Parent/Guardian	Address (physical/mailing)	Phone Number Hm ( ) Wk ( )

Arresting Agency	Agency Report No.	Arresting Officer (print name)	Booking Completed by (print name)
SLTPD	1010-0549	B. RIDER	B. RIDER

Name of Parent/Guardian Notified	Notified By	Time Notified	How Notified
	P.B. WILLIAMS	0228	IN PERSON

Date of Offense	Date/Time of Arrest	Code Violation(s)	
10/08/10	10/08/10 0228	288 P.C.	☐ misdemeanor ☒ felony

Specific Offense(s)
PENETRATION W/ FOREIGN OBJECT

Violation of Probation ☐ 777(a) ☐ 777(b) Specific Violation	For V.O.P./Original Offense Section	☐ misdemeanor ☐ felony

Accomplice/Victim Information	Gang Association ☐ Yes ☐ No ☐ Unknown Name of Gang

Details of Offense/Relevant Information (specify any history of violence, sexual abuse or prior delinquency)

PENETRATED HIS 6 YEAROLD BROTHER'S ANUS WITH A FOREIGN OBJECT.

CHARGE BOOKING INFORMATION TO BE COMPLETED BY DUTY SUPERVISOR

Admitting Time	Date	Admitted By	Detention Authorized By	Time Intake DPO Notified
0245	10/8/10			0303

Special Detention Information

Release Authorized By	Date/Time of Release	Released To	Staff Member Releasing

INTAKE OFFICER'S ACTION/DATE

☐ Closed At Intake	_____	☐ Calendar Detention Hearing	_____
☐ Released from Detention	_____	☐ Referred to D.A. for Review	_____
☐ Informal Probation	_____	☐ Affidavit Submitted	_____
☐ Referred to Teen Court	_____	☐ Dismissed per D.A.	_____

Referred To: _____ Intake Officer: _____

white – PROBATION pink – ACCOUNTING yellow – JUVENILE HALL gold – DETAINING AGENCY

PO#1a [NEW 5/99]

1010-0549

Print

SUSPECTED CHILD ABUSE REPORT

Reset Form

To Be Completed by **Mandated Child Abuse Reporters**
Pursuant to Penal Code Section 11166

PLEASE PRINT OR TYPE

CASE NAME:

CASE NUMBER: 1010-0549

A. REPORTING PARTY

NAME OF MANDATED REPORTER	TITLE	MANDATED REPORTER CATEGORY
Scott Crivelli	Police Officer	

REPORTER'S BUSINESS/AGENCY NAME AND ADDRESS	Street	City	Zip	DID MANDATED REPORTER WITNESS THE INCIDENT?
South Lake Tahoe Police Department	1352 Johnson Blvd	South Lake Tahoe	96150	☐ YES ☒ NO

REPORTER'S TELEPHONE (DAYTIME)	SIGNATURE	TODAY'S DATE
(530) 542-6100		10/08/10

B. REPORT NOTIFICATION

☒ LAW ENFORCEMENT ☐ COUNTY PROBATION ☐ COUNTY WELFARE / CPS (Child Protective Services)

AGENCY: South Lake Tahoe Police Department

ADDRESS	Street	City	Zip	DATE/TIME OF PHONE CALL
1352 Johnson Blvd		South Lake Tahoe	96150	10/07/10 / 2300

OFFICIAL CONTACTED - TITLE	TELEPHONE
Scott Crivelli - Police Officer	(530) 542-6100

C. VICTIM
One report per victim

NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
Ly		M	18

ADDRESS	Street	City	Zip	TELEPHONE
		South Lake Tahoe	96150	( )

PRESENT LOCATION OF VICTIM	SCHOOL	CLASS	GRADE
	Bijou Elementary		1st

PHYSICALLY DISABLED?	DEVELOPMENTALLY DISABLED?	OTHER DISABILITY (SPECIFY)	PRIMARY LANGUAGE SPOKEN IN HOME
☐ YES ☒ NO	☐ YES ☒ NO		Spanish

IN FOSTER CARE?	IF VICTIM WAS IN OUT-OF-HOME CARE AT TIME OF INCIDENT, CHECK TYPE OF CARE:	TYPE OF ABUSE *(CHECK ONE OR MORE)*
☐ YES	☐ DAY CARE ☐ CHILD CARE CENTER ☐ FOSTER FAMILY HOME ☐ FAMILY FRIEND	☐ PHYSICAL ☐ MENTAL ☒ SEXUAL ☐ NEGLECT
☒ NO	☐ GROUP HOME OR INSTITUTION ☐ RELATIVE'S HOME	☐ OTHER (SPECIFY)

RELATIONSHIP TO SUSPECT	PHOTOS TAKEN?	DID THE INCIDENT RESULT IN THIS VICTIM'S DEATH?
Sibling	☐ YES ☒ NO	☐ YES ☒ NO ☐ UNK

D. INVOLVED PARTIES

VICTIM'S SIBLINGS

NAME	BIRTHDATE	SEX	ETHNICITY
1.		M	18
2.		F	18
3.		M	18
4.		M	18

VICTIM'S PARENTS/GUARDIANS

NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
		F	18

ADDRESS	Street	City	Zip	HOME PHONE	BUSINESS PHONE
		South Lake Tahoe	96150	( )	( )

NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
South Lake Tahoe 96150		M	18

ADDRESS	Street	City	Zip	HOME PHONE	BUSINESS PHONE
		South Lake Tahoe	96150	(	( )

SUSPECT

SUSPECT'S NAME (LAST, FIRST, MIDDLE)	BIRTHDATE OR APPROX. AGE	SEX	ETHNICITY
	02/15/95	M	18

ADDRESS	Street	City	Zip	TELEPHONE
		South Lake Tahoe	96150	(

OTHER RELEVANT INFORMATION

E. INCIDENT INFORMATION

IF NECESSARY, ATTACH EXTRA SHEET(S) OR OTHER FORM(S) AND CHECK THIS BOX ☐ *IF MULTIPLE VICTIMS, INDICATE NUMBER:*

DATE / TIME OF INCIDENT	PLACE OF INCIDENT
10/07/10 2100 Hrs	1077 Moss #4

NARRATIVE DESCRIPTION (What victim(s) said/what the mandated reporter observed/what person accompanying the victim(s) said/similar or past incidents involving the victim(s) or suspect)

Victim stated the suspect placed a spoon inside his anus, against his will. The victim reported the incident to his mother, who contacted her sister, who contacted the police. The suspect stated his finger accidentally went inside the victim's anus, while helping him wipe after he used the bathroom.

SS 8572 (Rev. 12/02)

DEFINITIONS AND INSTRUCTIONS ON REVERSE

DO NOT submit a copy of this form to the Department of Justice (DOJ). The investigating agency is required under Penal Code Section 11169 to submit to DOJ a Child Abuse Investigation Report Form SS 8583 if (1) an active investigation was conducted and (2) the incident was determined not to be unfounded.

WHITE COPY-Police or Sheriff's Department; BLUE COPY-County Welfare or Probation Department; GREEN COPY- District Attorney's Office; YELLOW COPY-Reporting Party

Tab 6

PROPERTY/EVIDENCE TECHNICIAN

Class Code: 3490

Bargaining Unit: Police Employees' Association

CITY OF SOUTH LAKE TAHOE
Revision Date: Nov 15, 2007

SALARY RANGE

$25.43 - $30.91 Hourly
$2,034.46 - $2,472.46 Biweekly
$4,408.00 - $5,357.00 Monthly
$52,896.00 - $64,284.00 Annually

SUMMARY DESCRIPTION:
Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.

SUMMARY DESCRIPTION
Under supervision (Evidence/Property Technician) or general supervision (Senior Evidence/Property Technician) of assigned supervisory or management staff, performs a wide variety of responsible technical and paraprofessional duties involved in preparing, identifying, and maintaining criminal identification records and evidence as part of the investigation and prosecution work of the department.

IDENTIFYING CHARACTERISTICS
Evidence/Property Technician – This is the entry-level class within the Evidence/Property Technician series performing routine and less complex technical and paraprofessional non-sworn duties in support of Police Department evidence/property operations. Positions at this level are not expected to function with the same amount of program knowledge or skill level as positions allocated to the Senior Evidence/Property Technician level and exercise less independent discretion and judgment in matters related to work procedures and methods. Work is usually supervised while in progress and fits an established structure or pattern. Exceptions or changes in procedures are explained in detail as they arise. This classification is flexibly staffed with the Senior Evidence/Property Technician. Advancement to the "Senior" level is based on demonstrated proficiency in performing the assigned functions and/or certification or testing that validates the performance of the full range of duties and is at the discretion of higher level supervisory or management staff.

Senior Evidence/Property Technician – This is the full journey level class within the Evidence/Property Technician series performing the full range of technical and paraprofessional non-sworn duties in support of Police Department evidence/property operations. Employees at this level receive only occasional instruction or assistance as new or unusual situations arise, and are fully aware of the operating procedures and policies of the work unit. Positions in this class series are flexibly staffed and are generally filled by advancement from the Evidence/Property Technician level, or when filled from the outside, require prior experience. Advancement to the "Senior" level is based on demonstrated proficiency in performing the assigned functions and/or certification or testing that validates the performance of the full range of duties and is at the discretion of higher level supervisory or management staff.

REPRESENTATIVE DUTIES:
The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

1. Assumes responsibility for the preparation, identification, and maintenance of fingerprints and other related identification records.
2. Conducts specialized tasks in photography, latent fingerprint development, arson and bomb investigations, bloodstain interpretation, hair fiber and trace evidence collection.
3. Fingerprints suspects, prisoners, and corpses; classifies and identifies fingerprints; assists in identification matters with Federal, State and local authorities; prepares fingerprint displays for court.
4. Conducts identification calls to crime scenes; searches for and collects physical evidence; photographs and video records crime scene; makes diagrams and log items collected from each location.
5. Identifies and preserves evidence; presents it in court; books property into and out of evidence to preserve the chain of evidence; maintains files and daily logs; conducts police auction; destroys and releases property; inventories monies and narcotics; generates reports and assists other members of the department with investigations.
6. Compares latent fingerprints to known and unknown suspects and victims; searches files for identifying suspects.
7. Is responsible for the preparation, identification, and maintenance of fingerprints and other related identification records.
8. Conducts specialized tasks in photography, arson and bomb investigations, bloodstain interpretation, hair fiber and trace evidence collection.
9. Serves as an expert witness; provides courtroom testimony.
10. Performs related duties as required.

QUALIFICATION:

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:
Principles and practices of evidence collection, analysis and management.
Crime scene investigation: photography, diagramming, collection and preservation of evidence.
Evidentiary collection methods and analyses: bloodstain pattern interpretation, arson and bomb related scenes, and gunshot wounds and ballistics.
Use of various electronic video equipment.
Standard fingerprint classification methods, practices, records, and equipment.
Modern methods, practices, and techniques of police work including knowledge of criminal investigation and crime scene analysis.
Photography and the various methods of printing, developing, and enlarging negatives to pictures.

Ability to:
Analyze crime scenes.
Develop evidence to be processed.
Identify, interpret, explain, and enforce evidentiary and other police procedures.
Review and interpret case reports.
Maintain awareness of safety at all times.
Prepare and analyze clear and concise reports.
Lift latent fingerprints and to classify fingerprints accurately.
Maintain detailed criminal records.
Reconstruct crime scenes.
Work under pressure.
Communicate clearly and concisely, both orally and in writing.
Establish and maintain effective working relationships with those contacted in the course of work.

Education and Experience Guidelines - Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Evidence/Property Technician
Education/Training:
Equivalent to the completion of the twelfth grade. Additional specialized training in evidence collection, law enforcement, or a related field is desirable.

Experience:
Some evidence identification and collection experience with the ability to classify fingerprints and conduct fingerprint comparisons is desirable.

License or Certificate:
Possession of a valid California or Nevada driver's license.

Senior Evidence/Property Technician

Education/Training:
Equivalent to the completion of the twelfth grade supplemented by specialized training in evidence collection, law enforcement, or a related field.

Experience:
Two years of responsible technical and paraprofessional non-sworn experience comparable to a Evidence/Property Technician with the City of South Lake Tahoe.

License or Certificate:
Possession of a California or Nevada driver's license.

PHYSICAL DEMANDS-WORKING CONDITIONS:
The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

Environment: Work is performed in an office, storage room, and field environment; travel to different locations; incumbents may be exposed to inclement weather conditions; work and/or walk on various types of surfaces including slippery or uneven surfaces; work at heights on ladders; exposure to hazards including bio-hazards such as body fluids and dust; incumbents may be required to work extended hours including evenings and weekends.

Physical: Primary functions require sufficient physical ability and mobility to work in an office and field setting; to walk or sit for prolonged periods of time; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; to operate assigned equipment and vehicle; and to verbally communicate to exchange information.
Vision: See in the normal visual range with or without correction.
Hearing: Hear in the normal audio range with or without correction.

FLSA Designation: Non-Exempt

PUBLIC SAFETY DISPATCHER

Class Code: 6540

Bargaining Unit: Police Employees' Association

CITY OF SOUTH LAKE TAHOE
Established Date: May 11, 2011
Revision Date: May 11, 2011

SALARY RANGE

$23.86 - $29.00 Hourly

SUMMARY DESCRIPTION:

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

Under general supervision from supervisory or management staff, the Public Safety Dispatcher receives and transmits routine and emergency requests for police, fire, ambulance and/or emergency assistance and dispatches required personnel and equipment; performs responsible clerical work of moderately high difficulty; and operates complex teletype and video terminals for automated information retrieval.

Identifying characteristics

The Public Safety Dispatcher is a journey level non-sworn classification in the Police Department. This position requires the incumbent to work under general supervision and within a framework of established procedures. They are expected to perform a full range of duties with only occasional instruction or assistance. Work normally is reviewed only on completion, and may be expected to provide limited training and assistance to less experienced staff.

REPRESENTATIVE DUTIES:

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

1. On assigned shift, receives and processes incoming 911 calls, non-emergency calls, and voice radio calls; secures and records information as to the exact location and circumstances, and uses radio to dispatch necessary units, including police, fire department, and ambulance personnel and equipment as well as other resources that may be necessary.
2. Maintains status of units on assignments; keeps department officials informed of situations and dispatches equipment that either protocol or the dispatcher deem appropriate.
3. Inputs highly sensitive and technically difficult warrants, restraining orders, weapons, evidence, vehicles, property, missing persons, runaways, into the local, state and national teletype system.
4. Provides emergency medical instruction over the phone and must be EMD certified to perform this task.
5. Logs all police, fire, and medical calls for service; compiles data and prepares reports of reported emergencies, equipment dispatched, and/or status of emergency and non-emergency calls.
6. Relays emergency and non-emergency information to public safety personnel in the field; interprets information from units in field which may be unclear, broken or in code.
7. Processes all paperwork related to arrests and citations as part of completing the package for the District Attorney or other related agencies.
8. Relays information to other agencies as required; relays the nature of the incident.
9. Receives the public at the front counter; responds to requests for information; answers general questions about department's procedures and processes.
10. Performs clerical work related to Police activities including logs, reports, applications and correspondence.
11. Accurately inputs program information into electronic data bases.

12. Performs related duties as required.

QUALIFICATION:

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

English usage and grammar.
Modern office procedures and practices.

Ability to:

Review documents related to dispatching operations.
Observe, identify and problem solve incidents while dispatching.
Remember, understand, interpret and explain operational policies and procedures to the public and staff.
Operate radio and telephone equipment in dispatching public safety equipment and personnel.
Analyze a situation and determine effective course of action.
Perform job tasks effectively under pressure for sustained periods of time.
Memorize and retain information presented clearly and unclearly from a variety of sources.
Perform several tasks at once and assign reasonable priorities to incoming calls; monitor multiple radio frequencies.
Speak clearly and concisely in an understandable voice via radio and telephone and in person.
Use a keyboard and computer efficiently and effectively.
Type a minimum of 40 net words per minute.
Work under stress and exercise good judgment in emergency situations.
Learn the geography of the city, county and location of streets and important buildings.
Adjust quickly to changing situations.
Listen carefully and attentively and remember names, locations and numbers.
Give and take orders.
Read maps quickly and accurately.
Perform arithmetic computations with speed and accuracy.
Work irregular hours and shift work.
Communicate clearly and concisely, both orally and in writing.
Establish and maintain effective working relationships with those contacted in the course of work.

Education and Experience Guidelines - *Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

Education/Training:

Equivalent to the completion of the twelfth grade.

Experience:

Some experience performing duties similar to dispatching emergency services.

PHYSICAL DEMANDS-WORKING CONDITIONS:

The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

Environment: Work is performed primarily in a standard office environment; incumbents may be required to work extended hours including evenings and weekends. Incumbents may also be called in for local emergencies at irregular hours.

Physical: Primary functions require sufficient physical ability and mobility to work in an office setting; to stand or sit for prolonged periods of time; to frequently stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; and to verbally communicate to exchange information.

Vision: See in the normal visual range with or without correction.

Hearing: Hear in the normal audio range with or without correction.

FLSA Designation: Non-Exempt

Tab 7

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 225

Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments,'' to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A–87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106–107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A–87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A–87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB Circular A–87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A–87)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

§ 225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§ 225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President'').

§ 225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106–107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied ''Selected Items of Cost'' in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§ 225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§ 225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§ 225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§ 225.40 Effective date of changes.

This part is effective August 31, 2005.

§ 225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular

A–87. Appendix A to this part contains the guidance that was in Attachment A (general principles) to the OMB circular; Appendix B contains the guidance that was in Attachment B (selected items of cost); Appendix C contains the information that was in Attachment C (state/local-wide central service cost allocation plans); Appendix D contains the guidance that was in Attachment D (public assistance cost allocation plans); and Appendix E contains the guidance that was in Attachment E (state and local indirect cost rate proposals).

(b) This part supersedes OMB Circular A–87, as amended May 10, 2004, which superseded Circular A–87, as amended and issued May 4, 1995.

§ 225.50 Policy review date.

This part will have a policy review three years from the date of issuance.

§ 225.55 Information contact.

Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202–395–3993.

Appendix A to Part 225—General Principles for Determining Allowable Costs

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General Principles for Determining Allowable Costs

A. *Purpose and Scope*

1. Objectives. This Appendix establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this appendix and other appendices to 2 CFR part 225 as ''Federal awards''). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of 2 CFR part 225.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to, 2 CFR part 220, Cost Principles for Educational Institutions (OMB Circular A–21), and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, 2 CFR part 225 does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), 2 CFR part 225 shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, 2 CFR part 220 (Circular A–21) shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Appendix; if a subaward is to some other non-profit organization, 2 CFR part 230, Cost Principles for Non-Profit Organizations (Circular A–122), shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that 2 CFR part 225 (OMB Circular A–87) requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The

exemptions would be from all but the allocability of costs provisions of Appendix A subsection C.3 of 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87); Appendix A, Section C.4 of 2 CFR 220, Cost Principles for Educational Institutions (Circular A–21); Appendix A, subsection A.4 of 2 CFR 230 Cost Principles for Non-Profit Organizations (Circular A–122); and from all of the administrative requirements provisions of 2 CFR part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (Circular A–110), and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of 2 CFR part 225 (OMB Circular A–87), and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. *Definitions*

1. ''Approval or authorization of the awarding or cognizant Federal agency'' means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. ''Award'' means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. ''Awarding agency'' means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.

4. ''Central service cost allocation plan'' means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. ''Claim'' means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. ''Cognizant agency'' means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. ''Common Rule'' means the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule'' originally issued at 53 FR 8034–8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. ''Contract'' means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): Awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 *et seq.*

9. ''Cost'' means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. ''Cost allocation plan'' means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms is further defined in this section.

11. ''Cost objective'' means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. ''Federally-recognized Indian tribal government'' means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. ''Governmental unit'' means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. ''Grantee department or agency'' means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. ''Indirect cost rate proposal'' means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Appendix E of 2 CFR part 225.

16. ''Local government'' means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. ''Public assistance cost allocation plan'' means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Appendix D of 2 CFR part 225.

18. ''State'' means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. *Basic Guidelines*

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of 2 CFR part 225.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in 2 CFR part 225, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in 2 CFR part 225 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Appendices C, D, and E to this part.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Appendix B to this part, item 11, ''Depreciation and use allowances,'' for areas of potential application in the matter of Federal financing of activities.)

D. *Composition of Cost*

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. *Direct Costs*

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. *Indirect Costs*

1. General. Indirect costs are those: Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term ''indirect costs,'' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Appendices C, D, and E to this part.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in 2 CFR part 225, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix C to this part.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Appendices C and E to this part must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices C and E to this part. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Appendix B to Part 225—Selected Items of Cost

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Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. (''Direct Costs'') and F. (''Indirect Costs'') are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, d, and e of this appendix;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by , and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' are allowable. Also see 31 U.S.C. 7505(b) and section 230 (''Audit Costs'') of Circular A–133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their

employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix;

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term ''contingency reserve'' excludes self-insurance reserves (see section 22.c. of this appendix), pension plan reserves (see section 8.e.), and post-retirement health and other benefit reserves (section 8.f.) computed using acceptable actuarial cost methods.

10. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), ''Allowable costs under defense contracts.''

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

11. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, etc.) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the depreciation method is followed, the following general criteria apply:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

(2) Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (*e.g.*, plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. Where the use allowance method is followed, the following general criteria apply:

(1) The use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs.

(2) The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost.

(3) When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

a. For purposes of this subsection 15, the following definitions apply:

(1) ''Capital Expenditures'' means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5000.

(3) ''Special purpose equipment'' means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) ''General purpose equipment'' means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to section 15.b(1), (2), and (3)of this appendix, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11 of this appendix, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37 of this appendix, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

16. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

17. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this and other appendices of 2 CFR part 225 are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Appendix A to this part.

18. *Gains and losses on disposition of depreciable property and other capital assets*

and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 11 and 15 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 22.d of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection 18.a. of this appendix, *e.g.*, land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

19. *General government expenses.*

a. The general costs of government are unallowable (except as provided in section 43 of this appendix, Travel costs). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

As used in this section the following terms have the meanings set forth below:

(1) ''Facilities'' means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) ''Idle facilities'' means completely unused facilities that are excess to the governmental unit's current needs.

(3) ''Idle capacity'' means the unused capacity of partially used facilities. It is the difference between: that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) ''Cost of idle facilities or idle capacity'' means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental

unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 8.f. for post retirement health benefits), are allowable in the year of payment provided the governmental unit follows a consistent costing policy and they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection 22.d of this appendix.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

23. *Interest.*

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in section 23.b.(1) through (4) of this appendix. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in section 23.b. (1) through (4) of this appendix.

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over $1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

24. *Lobbying.*

a. General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, ''New Restrictions on Lobbying'' (see Section J.24 of Appendix A to 2 CFR part 220), including definitions, and the Office of Management and Budget ''Government-wide Guidance for New Restrictions on Lobbying'' and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, do not add to the permanent value of property or appreciably prolong its intended life, and are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15 of this appendix).

26. *Materials and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. *Meetings and conferences.* Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section 14, Entertainment costs, of this appendix.

28. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. *Patent costs.*

a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures; cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections 32, Professional service costs, and 38, Royalties and other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable: Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award; costs in connection with filing and prosecuting any foreign patent application; or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see section 38, Royalties and other costs for use of patents and copyrights, of this appendix).

30. *Plant and homeland security costs.* Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15, Equipment and other capital expenditures, of this appendix.

31. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

32. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the governmental unit's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

33. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

34. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

36. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount (as explained in section 37.b of this appendix) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a governmental unit; governmental units under common control through common officers, directors, or members; and a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection 37.b of this appendix) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. *Royalties and other costs for the use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the governmental unit.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a governmental unit.

c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. *Selling and marketing.* Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under section 1. of this appendix as allowable public relations costs or under section 33. of this appendix as allowable proposal costs.

40. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-

assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision is applicable to taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

41. *Termination costs applicable to sponsored agreements.* Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this and other appendices of 2 CFR part 225, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see Subpart __.44 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A–102); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Subparts __.31 and __.32 of the Grants Management Common Rule (see § 215.5) implementing OMB Circular A–102.

f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable. An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A to this part. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

42. *Training costs.* The cost of training provided for employee development is allowable.

43. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally-sponsored activities. Notwithstanding the provisions of section 19 of this appendix, General government expenses, travel costs of officials covered by that section are allowable with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code (''Travel and Subsistence Expenses; Mileage Allowances''), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following:

(aa) That such airfare was not available in the specific case; or

(b) That it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection 43.c. of this appendix, is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip

must receive such approval. For purposes of this provision, ''foreign travel'' includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term ''foreign travel'' for a governmental unit located in a foreign country means travel outside that country.

Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans

Table of Contents

A. *General.*

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.'' A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

B. *Definitions.*

1. ''Billed central services'' means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. ''Allocated central services'' means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. ''Agency or operating agency'' means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. *Scope of the Central Service Cost Allocation Plans.* The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. *Submission Requirements.*

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a ''major local government'' by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this appendix and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. *Documentation Requirements for Submitted Plans.* The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: An organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this and other appendices to this part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: A brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan shall include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.*, regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this and other appendices of this part, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (*e.g.*, salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: The fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (*e.g.*, automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: A listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, *e.g.*, legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87), and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. *Negotiation and Approval of Central Service Plans.*

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: Are unallowable as specified by law or regulation, as identified in Appendix B of this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. *Other Policies.*

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a ''fixed with carry-forward'' basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This ''carry-forward'' procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: A cash refund to the Federal Government for the Federal share of the adjustment, credits to the amounts charged to the individual programs, adjustments to future billing rates, or adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Appendix D to Part 225—Public Assistance Cost Allocation Plans

Table of Contents

A. *General.* Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This appendix extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. *Definitions.*

1. ''State public assistance agency'' means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR part 95. For the purpose of this appendix, these programs include all programs administered by the State public assistance agency.

2. ''State public assistance agency costs'' means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. *Policy.* State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR part 95.

D. *Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.*

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. *Review of Implementation of Approved Plans.*

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. *Unallowable Costs.* Claims developed under approved cost allocation plans will be based on allowable costs as identified in 2 CFR part 225. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: a cash refund, offset to a subsequent claim, or credits to the amounts charged to individual awards.

Appendix E to Part 225—State and Local Indirect Cost Rate Proposals

Table of Contents

A. *General.*

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix C to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.'' A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation

or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This appendix does not apply to State public assistance agencies. These agencies should refer instead to Appendix D to this part.

B. *Definitions.*

1. ''Indirect cost rate proposal'' means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. ''Indirect cost rate'' is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. ''Indirect cost pool'' is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. ''Base'' means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. ''Predetermined rate'' means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. ''Fixed rate'' means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. ''Provisional rate'' means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a ''final'' rate for that period.

8. ''Final rate'' means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. ''Base period'' for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. *Allocation of Indirect Costs and Determination of Indirect Cost Rates.*

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2 of this appendix.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4 of this appendix.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by classifying the grantee agency's total costs for the base period as either direct or indirect, and 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 individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), direct salaries and wages, or another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources

employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: the rate differs significantly from the rate which would have been developed under subsections 2. and 3. of this appendix, and the award to which the rate would apply is material in amount.

b. Although 2 CFR part 225 adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a ''restricted rate'' is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. *Submission and Documentation of Proposals.*

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of 2 CFR 225 and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b of this appendix. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87). Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. *Negotiation and Approval of Rates.*

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that are unallowable as specified by law or regulation, as identified in Appendix B to this part, or by the terms and conditions of Federal awards, or are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. *Other Policies.*

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (*i.e.*, the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (*e.g.*, computer centers). Where this

occurs, the governmental unit should be guided by the requirements in Appendix C to this part relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[FR Doc. 05–16649 Filed 8–30–05; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 230

Cost Principles for Non-Profit Organizations (OMB Circular A–122)

AGENCY: Office of Management and Budget.

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–122, ''Cost Principles for Non-Profit Organizations,'' to Title 2 in the Code of Federal Regulations (CFR), subtitle A, chapter II, part 230. This relocation is part of our broader initiative to create 2 CFR as a single location where the public can find both OMB guidance for grants and agreements and the associated Federal agency implementing regulations. The broader initiative provides a good foundation for streamlining and simplifying the policy framework for grants and agreements, one objective of OMB and Federal agency efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: Part 230 is effective August 31, 2005. This document republishes the existing OMB Circular A–122, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106–107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A–122 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A–122 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this document relocates in 2 CFR the version of OMB Circular A–122 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 230

Accounting, Grant programs, Grants administration, Non-profit organizations, Reporting and recordkeeping requirements.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, chapter II, by adding a part 230 as set forth below.

PART 230—COST PRINCIPLES FOR NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A–122)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939

§ 230.5 Purpose.

This part establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

§ 230.10 Scope.

(a) This part does not apply to colleges and universities which are covered by 2 CFR part 220 Cost Principles for Educational Institutions (OMB Circular A–21); State, local, and federally-recognized Indian tribal governments which are covered by 2 CFR part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87); or hospitals.

(b) The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and non-profit organization participation in the financing of a particular project. Provision for profit or other increment above cost is outside the scope of this part.

§ 230.15 Policy.

The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies.

§ 230.20 Applicability.

(a) These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 16, 2022, I served the:

- **Current Mailing List dated January 24, 2022**
- **Controller's Late Comments on the IRC filed February 16, 2022**

  Interagency Child Abuse and Neglect Investigation Reports (ICAN), 20-0022-I-02
  Penal Code Sections 11165.9, 11166, 11166.2, 11166.9[1], 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
  Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012
  City of South Lake Tahoe, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 16, 2022 at Sacramento, California.

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

[1] Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/24/22

Claim Number: 20-0022-I-02

Matter: Interagency Child Abuse and Neglect Reports (ICAN)

Claimant: City of South Lake Tahoe

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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