



March 29, 2021

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



Response to Test Claim 20-TC-01, Sexual Assault Evidence Kit Testing

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 20-TC-01 submitted to the Commission on State Mandates (Commission) by the City of San Diego (Claimant). The Claimant alleges there are state-mandated, reimbursable costs associated with Chapter 588, Statutes of 2019 (SB 22).

SB 22 amended Penal Code section 680 and requires law enforcement agencies to adhere to the following procedures within a specified timeframe for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

- Penal Code section 680(c)(1)(A)—Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.
- Penal Code section 680(c)(1)(B)—Transport evidence from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.
- Penal Code section 680(c)(2)(A)—Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into the FBI's Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence.
- Penal Code section 680(c)(2)(B)—Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

Prior to the passage of SB 22, law enforcement agencies were encouraged but not required to complete these procedures within a specified timeframe. SB 22 changed the statutory language regarding these procedures and timelines from "should" to "shall". As a result of SB 22 compliance, the Claimant is seeking reimbursement for the costs allegedly incurred by the San Diego Police Department (SDPD). The Claimant is

seeking reimbursement for costs of the activities related to Penal Code sections 680(c)(2)(A) and 680(c)(2)(B). For these activities, SDPD alleges it incurred actual costs of \$116,139 in 2019-20 and will incur estimated costs of \$2,335,306 in 2020-21. The costs claimed by SDPD are related to outsourcing the testing of sexual assault evidence kits, department personnel, and lab consumables.

Outsourcing Costs

Prior to SB 22, SDPD had discretion over whether to submit and test the sexual assault evidence kits in its possession. Per SDPD, this caused a significant amount of kits to be untested. After the passage of SB 22, SDPD determined it had a backlog of 472 sexual assault evidence kits that needed to be tested because they were received after the statutory timeframe of January 1, 2016. SDPD outsourced the backlog to a private lab, Bode Technology, because the Claimant states SDPD did not have the staffing and capacity necessary to test these backlogged kits within its own lab. Penal Code sections 680(c)(2)(A) and 680(c)(2)(B) require the law enforcement agency to either process the sexual assault evidence kits in its own lab or transmit it to a different crime lab for processing. The Claimant states the costs to outsource the testing to the private lab were \$52,670 in 2019-20 and \$214,855 in 2020-21. SDPD will utilize its Citizens Option for Public Safety grant to offset the 2020-21 costs.

Department Personnel

The Claimant alleges SDPD incurred personnel costs of \$63,469 in 2019-20 and will incur personnel costs of \$2,264,535 in 2020-21 related to staffing increases and new workload activities to comply with SB 22. The claimed costs are for the following purposes:

DNA Technical Manager, costs of \$986 in 2019-20 and \$56,752 in 2020-21

SDPD's DNA Technical Manager is responsible for the technical specifications of the outsourcing contract and performs duties associated with receiving, analyzing data, filing, review of case work, and review of reports from Bode Technology. The Technical Manager also verifies and prepares any DNA profiles for upload into CODIS. The claimant alleges these are all new duties that are required to adhere to SB 22.

Police Investigative Service Officer, costs of \$62,483 in 2019-20 and \$124,996 in 2020-21

SDPD created an administrative position, a Police Investigative Service Officer, to serve as the program manager and handle administrative tasks associated with sexual assault evidence kit tracking, processing, and case management within the department's crime lab. The Claimant alleges the creation of this position was necessary to address the additional workload and testing timeframes required by Penal Code Section 680(c)(2)(A). The referenced statute neither requires this position to be created nor requires the administrative duties that are fulfilled by this position. This cost should not be considered for reimbursement.

Four New Criminalist positions, costs of \$876,678 in 2020-21

In addition to the backlogged kits that are being outsourced, SDPD estimates it will be required to test approximately 118 new cases a year in its own lab starting January 1, 2020. To meet the anticipated increase in testing volume, SDPD hired four criminalist positions. The Claimant alleges the four criminalist positions were required to

prevent a growing backlog of kits and to limit the risk of not meeting the 120 day turnaround time required by Penal Code Section 680(c)(2)(A).

Sex Crimes Cold Case Team, costs of \$1,206,109 in 2020-21

SDPD's Sex Crimes Cold Case team, composed of one sergeant and two detectives, had their investigative duties modified to focus on conducting the follow-up investigations that are related to new evidence being uncovered from the previously untested sexual assault evidence kits. The Claimant alleges the costs related to performing follow-up investigative work related to new evidence are driven by Penal Code section 680(c)(2)(B). The basis of this test claim are Penal Code sections 680(c)(2)(A) and 680(c)(2)(B); however, these sections are focused on the processing of sexual assault evidence kits and do not contain any requirements for investigative work related to new sexual assault evidence. The officers were already performing investigative work, so they are not providing a new or higher level of service by focusing on sex crime investigations. Therefore, these costs are beyond the scope of this test claim and should not be considered for reimbursement.

Lab Consumables

SDPD estimates the number of kits that are tested per year in its own crime lab will increase by 118 tests per year, which caused the department to increase its crime lab budget to procure more testing materials. The Claimant alleges this increase in cost is a result of the amended language in Penal Code Sections 680(c)(2)(A). The estimated cost for 2020-21 is \$70,800.

In summary, Finance contends that several of the activities the Claimant performed or intends to perform in regard to SB 22 are not required by that statute. The costs in the test claim related to these non-required activities are \$62,483 in 2019-20 and \$1,331,105 in 2020-21.

Sincerely,

Teresa Calvert

TERESA CALVERT
Program Budget Manager

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 March 30, 2021, I served the:

- **Department of Finance's Comments on the Test Claim filed March 29, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as added by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, 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 March 30, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/12/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

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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