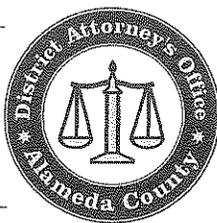


Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney



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COMMENTS ON PROPOSED PARAMETERS AND GUIDELINES

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

Statutes 2001, Chapter 713 (AB 1129)

Domestic Violence Background Checks

01-TC-29

County of Alameda, Claimant

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

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

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

* * *

(4) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute or executive order that are necessary to carry out the mandated program. (2 CCR § 1183.1, subd. (a)(4).)

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

A. Perform or cause to be performed, in specified electronic data bases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75, subd. (a)).

1. Review by district attorney or prosecuting city attorney, or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed

in Penal Code section 273.75 as based on defendant information provided in or with the law enforcement report.

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

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

B. Present the information for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement (Pen. Code, § 273.75, subd. (a)).

1. Review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court.

2. Presentation of evidence in court by district attorney or prosecuting city attorney.

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

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

C. If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75, subd. (c)).

1. Review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for

a letter or report to be sent to order-issuing court of a different jurisdiction.

2. Draft letter or report and sign.

3. Prepare envelope and mail.

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

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

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

CERTIFICATION

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

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



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