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DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 273.75(a) and (c)
Statutes 2001, Chapter 713 (AB 1129)

Domestic Violence Background Checks
01-TC-29

County of Alameda, Claimant

EXECUTIVE SUMMARY

This test claim statute requires district attorneys and prosecuting city attorneys to perform data base searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders, and present the information for consideration by the courts under certain circumstances. The claimant propose activities in addition to the activities adopted in the statement of decision. The State Controller’s Office proposes nonsubstantive revisions to the parameters and guidelines. Staff finds that pursuant to section 1183.1 of the Commission on State Mandates’ (Commission) regulations, there is evidence in the record to show that the additional activities proposed by claimant are the most reasonable methods of complying with the mandate, and included the proposed activities. Staff also included the revisions proposed by the State Controller. Staff recommends the Commission adopt the proposed parameters and guidelines and authorize staff to make any necessary technical corrections following the hearing.

STAFF ANALYSIS

Claimant

County of Alameda

Chronology

- 07/26/2007 Commission adopts statement of decision
- 03/20/2008 Commission issues a letter to claimant indicating claimant has missed the 30-day deadline for filing parameters and guidelines, and that pursuant to the Commission’s regulations, claimant’s first 12 months of incurred costs will be reduced by 20 percent for missing the 30-day deadline
- 06/25/2008 Commission issues second notice of failure to submit parameters and guidelines, and asks if claimant has abandoned this claim
- 06/26/2008 Claimant files letter stating intent to work with Department of Finance to formulate a joint reasonable reimbursement methodology (RRM)
- 07/29/2009 The California State Association of Counties and League of California Cities file a letter stating they continue to work with Finance to develop a joint RRM

- 02/11/2011 Commission issues letter indicating that parties have not met deadlines for submitting a joint RRM and therefore, Commission is setting the parameters and guidelines for hearing
- 02/11/2011 Commission issues proposed parameters and guidelines for comment
- 03/11/2011 State Controller's Office files comments on draft parameters and guidelines
- 03/14/2011 County of Alameda files comments on draft parameters and guidelines

I. Background and Summary of the Mandate

Claimant County of Alameda submitted the test claim in July 2002 alleging a reimbursable state-mandated program for courts, district attorneys and prosecuting city attorneys to perform data base searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders.

On July 26, 2007, the Commission adopted a statement of decision finding that Penal Code section 273.75 imposes a reimbursable state-mandated program on district attorneys or prosecuting city attorneys within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to do the following upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- Perform or cause to be performed, in specified electronic data bases,¹ a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
- Present the information for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
- If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the 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(c)).

¹ As specified in Penal Code section 273.75(b), the electronic data bases to be searched, "when readily available and reasonably accessible," are:

- (1) The Violent Crime Information Network (VCIN).
- (2) the Supervised Release File.
- (3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.
- (4) The Federal Bureau of Investigation's nationwide data base.
- (5) Locally maintained criminal history records or data bases.

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

II. Commission's Responsibility for Adopting Parameters and Guidelines

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.²

As of January 1, 2011, the hearing on the adoption of proposed parameters and guidelines is conducted under Article 7 of the Commission's regulations.³ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.⁴ Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any 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. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.⁵

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

III. Discussion

The claimant was required to submit proposed parameters and guidelines on or before August 30, 2007. No proposed parameters and guidelines were submitted. Therefore, on March 30 and June 24, 2008, Commission staff sent notices to the claimant indicating they missed the 30-day deadline for submitting parameters and guidelines, and that pursuant to Government Code section 17557(a), the first 12 months of incurred costs will be reduced by 20 percent for missing the 30-day deadline.

² Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

³ California Code of Regulations, Title 2, section 1187.

⁴ Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

⁵ California Code of Regulations, Title 2, section 1187.5.

On June 25, 2008, the claimant submitted a letter noticing its intent to jointly develop an RRM in lieu of parameters and guidelines. Under Government Code section 17557.1, a notice of intent to develop a joint RRM must include the date the claimant and Finance will submit a plan for the RRM, including the date the RRM will be submitted to the Commission. The date the RRM is submitted must be no later than 180 days after the notice of intent is filed. Upon request of the claimant and Finance, the Commission may provide up to four extensions of this 180-day period.

This process was not followed by the parties. The claimant indicated a plan would be submitted on August 15, 2008, but no plan was submitted. The proposed RRM was not submitted to the Commission within 180 days, and no requests for extensions were requested. In fact, no RRM was ever submitted. In addition, the Commission did not provide notice to the claimants requesting the joint RRM or requesting submittal of the parameters and guidelines.

Therefore, on February 11, 2011, Commission staff issued a letter indicating that the parties have not met deadlines for submitting a joint RRM and therefore, the Commission is setting the parameters and guidelines for hearing.

Section 1183.12 of the Commission's regulations authorizes Commission staff, within 10 days after adoption of a statement of decision, to expedite parameters and guidelines by drafting proposed parameters and guidelines to assist the claimant. Government Code section 17554 authorizes the Commission to waive procedural requirements, upon the agreement of parties. With the parties' agreement, staff drafted and issued the proposed parameters and guidelines for comment.⁶

A. Position of the Claimant

On March 14, 2011, the claimant filed comments on the proposed parameters and guidelines.⁷ The claimant requested the following additional activities:

- 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;
- review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court;
- presentation of evidence in court by district attorney or prosecuting city attorney;
- 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;
- draft letter or report and sign; and
- prepare envelope and mail.

4-6

⁶ Exhibit A.

⁷ Exhibit B.

B. Position of the State Controller's Office

On March 11, 2011, the State Controller's Office filed comments on the proposed parameters and guidelines, recommending several non-substantive technical changes.⁸

C. Staff Analysis

Commission staff reviewed the statement of decision, draft parameters and guidelines and the comments filed by the claimant and the State Controller's Office. Staff made non-substantive changes to conform these parameters and guidelines to other parameters and guidelines previously adopted by the Commission and to address the Controller's request for technical revisions.

Staff made substantive changes to the following section:

Section IV. Reimbursable Activities

The claimant proposed additional language for each of the activities approved by the Commission in order to provide further clarification. (The activities approved in the statement of decision are listed below. Claimant's proposed clarifying language is also listed below in italics.)

- 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(a)).

This activity includes review by the 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 regarding the defendant information provided in or with the law enforcement report.

- 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(a)).

This activity includes:

(1) review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court; and

(2) presentation of evidence in court by district attorney or prosecuting city attorney.

- 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

⁸ Exhibit C.

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(c)).

This activity includes:

- (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 an order-issuing court of a different jurisdiction;*
- (2) draft letter or report and sign; and*
- (3) prepare envelope and mail.*

Section 1183.1(a)(4) of the Commission’s regulations authorizes the Commission to include the “most reasonable methods of complying with the mandate” in the parameters and guidelines. 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.”

There is evidence in the record that the activities proposed by the claimant are necessary to implement the program. The test claim, signed under penalty of perjury by the claimant, states that the information found through the database search must be presented to the judge, and must be provided to other courts. Staff finds that it is reasonably necessary for the district attorney or city prosecuting attorney to review the information culled in the database search before they go to court to present the information to the judge, or draft a letter to send it to other courts. Therefore, staff included the language proposed by the claimant in the proposed parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 7.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.