Hearing: May 27, 2010
j:mandates/2002/02tc18/psgs/fsa

ITEM __

FINAL STAFF ANALYSIS

PROPOSED PARAMETERS AND GUIDELINES

Penal Code Sections 13730, Subdivision (c)(3), 12028.5;

Statutes 2001, Chapter 483, Statutes 2002, Chapter 833

Crime Victims' Domestic Violence Incident Reports II

02-TC-18

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Background

The test claim statutes address Penal Code sections 13730 and 12028.5, which require additional information on the domestic violence incident report form regarding the presence of firearms or weapons at the scene. The statutes also require officers "at the scene of a domestic violence incident involving a threat to human life or a physical assault" to take temporary custody of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search, and provide a procedure for return or disposal of the weapon.

Analysis

On December 14, 2009, the claimant submitted revised parameters and guidelines that allow eligible claimants to file reimbursement claims by either claiming actual costs incurred to perform the mandated program or by using claimant's proposed reasonable reimbursement methodology (RRM). (Exhibit E.) The proposed RRM is in section V of the claimant's proposed parameters and guidelines (Claim Preparation and Submission), and identifies standard unit times to perform the one-time and the ongoing activities for this program. (See Schedule A to claimant's proposed parameters and guidelines.) Under the proposed RRM, reimbursement for direct and indirect costs is calculated by multiplying the proposed RRM unit time with the "blended hourly rate of the involved employees."

The proposed RRM contains unit times based on factual scenarios developed by the claimant. The factual scenarios were included in a "standard time survey questionnaire" that was sent by the claimant to 48 local agencies. Ten (10) counties and two (2) cities responded to the questionnaire. The claimant then took the average times reported by the twelve (12) respondents to come up with the proposed unit times.

Government Code section 17518.5, subdivision (c), requires that a proposed RRM satisfy the following requirements: (1) the methodology considers the variation of costs among

local agencies and school districts to implement the mandate, and (2) the methodology reimburses local agencies or school districts for implementing the mandate in a "cost-efficient manner." Staff finds that the proposed RRM does not satisfy the requirements of Government Code section 17518.5 for the following reasons:

- The activities identified in claimant's factual scenarios supporting the proposed RRM for the ongoing activities do not correspond to the activities found by the Commission in the Statement of Decision to be reimbursable under article XIII B, section 6 of the California Constitution.
- The unit times proposed may not be representative of the costs incurred by the eligible claimants in the state to implement the mandated program. Survey results were received from only two of the 480 cities in the state.
- There are large disparities in the times reported by the local agencies to perform the proposed activities identified in claimant's survey.

Thus, staff recommends that the Commission adopt the attached proposed parameters and guidelines that contain the mandated activities identified in the Statement of Decision that can be claimed based on actual costs. Language is included in section IV of the parameters and guidelines to allow claimants to use time studies, as requested by claimant, to support salary and benefit costs when the activity is task-repetitive as follows:

> Claimants may use time studies to support salary and benefit costs when the activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

This time study language has been recently adopted by the Commission in other parameters and guidelines.

In addition, the attached proposed parameters and guidelines clarifies in section II that eligible claimants are "any county, city, or city and county."

Conclusion

Staff recommends that the Commission adopt the proposed parameters and guidelines, beginning on page 17.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

09/27/07	Statement of Decision adopted[1]
10/18/07	Claimant submits draft parameters and guidelines and proposed reasonable reimbursement methodology (RRM)[2]
10/25/07	Claimant's draft parameters and guidelines and proposed RRM issued for comment
11/14/07	Department of Finance files comments on claimant's draft parameters and guidelines and proposed RRM[3]
09/23/09	Draft staff analysis and draft proposed parameters and guidelines issued for comment[4]
12/14/09	Claimant submits *revised* proposed parameters and guidelines and proposed RRM[5]
01/20/10	Department of Finance files comments on revised proposed parameters and guidelines and proposed RRM[6]
02/18/10	State Controller's Office files comments on revised proposed parameters and guidelines and proposed RRM[7]
03/25/10	Informal conference conducted pursuant to Title 2, California Code of Regulations, section 1183.131 to discuss claimant's revised proposed parameters and guidelines and proposed RRM
04/16/10	Notice of hearing issued, Final Staff Analysis and Proposed Parameters and Guidelines issued

Background

The test claim statutes address Penal Code statutes that require additional information on the domestic violence incident report form regarding the presence of firearms or weapons at the scene. The statutes also require officers "at the scene of a domestic violence incident involving a threat to human life or a physical assault" to take temporary custody

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[1] Exhibit A.

[2] Exhibit B.

[3] Exhibit C.

[4] Exhibit D.

[5] Exhibit E.

[6] Exhibit F.

[7] Exhibit G.

of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search, and provide a procedure for return or disposal of the weapon. The Commission approved the test claim as follows:

Effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, *when firearms or other deadly weapons are discovered during any other lawful search* at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is

retained because of a court petition filed pursuant to subdivision (f) of section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

- To sell or destroy, as provided in subdivision (c) of Section 12028, any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, *when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.*

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

The claimant submitted draft parameters and guidelines in 2007, with the activities listed above as reimbursable activities under section IV of the proposed parameters and guidelines, and a proposed reasonable reimbursement methodology (RRM) under section V, Claim Preparation and Submission, of the proposed parameters and guidelines. For the proposed RRM, the claimant proposed unit times and costs to perform "mandated tasks," based on the County's average time spent performing activities listed in five factual scenarios. The "mandated tasks" included the activities found by the Commission to be state-mandated and activities the claimant contends are the most reasonable methods of complying with the mandated activities pursuant to section 1183.1 of the Commission's regulations.

On September 23, 2009, a draft staff analysis and draft proposed parameters and guidelines were issued. The draft staff analysis recommended that the Commission not adopt the proposed RRM because the proposed RRM did not satisfy the requirements of Government Code section 17518.5, was based on activities that go beyond the scope of the mandate, and was not supported by evidence in the record that the proposed activities are necessary to carry out the mandated program as required by section 1183.1 of the Commission's regulations. Staff recommended that the Commission adopt parameters and guidelines based on actual costs incurred and that allowed eligible claimants to use time studies to support salary and benefit costs when the activity is task-repetitive.

On December 14, 2009, the claimant submitted revised parameters and guidelines and a new proposed RRM to be included in section V of the parameters and guidelines, Claim Preparation and Submission, for the one-time and ongoing activities. For reimbursement of the ongoing activities, the revised proposed RRM contains unit times based on the

same five scenarios proposed in the claimant's 2007 filing. To support the proposed RRM, the claimant submits the results of a "standard time survey questionnaire" sent to 48 eligible claimants. Ten (10) counties and two (2) cities responded to the questionnaire. The claimant then took the average times reported by the twelve (12) respondents to come up with the proposed unit times. Under the proposed section V of the parameters and guidelines, reimbursement for all direct and indirect costs could be claimed by either multiplying the proposed RRM time with the "blended hourly rate of the involved employees," or by claiming actual costs.

The Department of Finance and the State Controller's Office oppose the proposed RRM.

Claimant's Position

The claimant's revised proposed parameters and guidelines (section V, Claim Preparation and Submission) allows eligible claimants to file reimbursement claims by either claiming actual costs incurred or by using the proposed RRM of unit times. (Exhibit E.) Reimbursement using the proposed RRM would be claimed by multiplying the standard times for each scenario with the "blended hourly rate of the involved employees." The proposed RRM for the ongoing and one-time activities is described below.

Ongoing Activities

1. Scenario – Deputy asks the victim, the suspect, or the witness if firearms are present and no firearms are present.

Proposed Activities	Proposed Unit Time Based Survey Average
Inquire if firearms are at scene	
Document inquiry on incident report	
Incident report reviewed and approved by supervisor	
Total average minutes:	**15 minutes**

2. Scenario – Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally and the firearm is released to the suspect.

Proposed Activities	Proposed Unit Time Based on Survey Average
Inquiry if firearms at scene	
Retrieves firearm	
Renders firearm safe	
Processing firearm	

Document inquiry on incident report	
Incident report reviewed and approved by supervisor	
Enter firearm info to DOJ/AFS	
Verify info/temporary storage of firearm	
Court or Release update records	
Prepare paperwork and firearm for transfer to P&E	
Verify info upon receipt of firearm and P&E	
Storing firearms at P&E	
Enter info to database/file docs at P&E	
Verify court/release to owner update records	
Update evidence database & DOJ/AFS	
Release firearm	
Supervisor's review and signature for release of firearm	
Total average minutes:	**133 minutes**

3. Scenario - Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally and the detective petitions the court to retain the firearm.

Proposed Activities	**Proposed Unit Time Based on Survey Average**
Inquiry if firearms at scene	
Retrieves firearm	
Renders firearm safe	
Processing firearm	

Document inquiry on incident report	
Incident report reviewed and approved by supervisor	
Enter firearm info to DOJ/AFS	
Verify Info/temporary storage of firearm	
Court or Release update records	
Prepare paperwork and firearm for transfer to P&E	
Verify info upon receipt of firearm at P&E	
Storing firearm at P&E	
Enter info to database/file docs at P&E	
Prepare petition for retention of firearm	
Notification to suspect of petition for retention of firearm	
Release of Firearm:	
Verify court/release to owner update records	
Update evidence database & DOJ/AFS	
Release firearm	
Supervisors review and signature for release of firearm	
Total minutes if firearm is released	**141 minutes**
Destruction of firearm:	
Input and file the property paperwork	
Create disposal authorization	
Mail disposal authorization	

Make determination if firearm is ready to dispose	
Retrieve the property paperwork and attach disposal authorization	
Destroy/crush firearm	
Update computer regarding destruction and file property paperwork	
Total minutes if firearm destroyed	**260 minutes**

4. Scenario - Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally but does not request return of the firearm and the firearm is destroyed.

Proposed Activities	**Proposed Unit Time Based on Survey Average**
Inquire if firearms are at scene	
Retrieves firearm	
Renders firearm safe	
Processing the firearm	
Document inquiry on incident report	
Incident report approved by supervisor	
Enter info to DOJ/AFS	
Verify firearm info/temporary storage of firearm	
Court or Release update records	
Prepare paperwork and firearm for transfer to P&E	
Verify info upon receipt of firearm at P&E	
Storing firearms at P&E	
Enter info to database/file docs at	

P&E	
Create disposal authorization	
Mail disposal authorization	
Make determination if firearm is ready to dispose	
Retrieve the property paperwork and attach disposal authorization	
Destroy/crush firearm	
Update computer regarding destruction and file property paperwork	
Total Average Minutes	**220 minutes**

5. Deputy asks suspect if firearms are present and suspect refuses to relinquish firearms.

Proposed Activities	**Proposed Unit Time Based on Survey Average**
Inquire if firearms are at scene	
Document inquiry on incident report	
Incident report approved by supervisor	
Total Average Minutes:	**32 minutes**

One-Time Activity

The claimant also proposes the following RRM for the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

Proposed Activities	**Proposed Unit Time Based on Survey Average**
Amend receipt	
Supervisor's approval of receipt	

Agency's approval of receipt	
Print/download receipt	
Total Minutes	**56 minutes**

In the event a consensus RRM cannot be reached, the claimant proposes alternative time study language permitting claimants to time study the reimbursable activities.

Position of the Department of Finance

The Department of Finance opposes the revised RRM proposed by the claimant on the following grounds:

- Some activities may not be reasonably necessary to carry out the mandate.
- The proposed parameters and guidelines lack information showing how the proposed activities related to Penal Code section 12028.5 when a weapon or firearm is discovered pursuant to other lawful searches.
- The standard time surveys lack sufficient data or information to support the proposed RRM. For example, tasks related to petitions for a second hearing are absent.

Finance does not oppose the proposed time study language.

Position of the State Controller's Office

The State Controller's Office opposes the proposed RRM and the proposal to allow a claimant to choose to file a reimbursement claim based on actual costs or an RRM. The Controller's Office argues as follows:

- The State Controller's Office opposes providing a claimant the option of choosing a method to file. By allowing a claimant to choose the most beneficial claiming method, the cost of the mandate to the state will be increased.
- The proposed RRM may include activities that go beyond the scope of the mandate. The actions proposed for each scenario are vague and not cross-referenced to the reimbursable activities.
- The number of sample units included in the unit time determination may not be representative of eligible claimants. Twelve respondents is not representative of all the cities and counties in the state. In addition, there is a large disparity in times submitted by the cities and counties surveyed. Moreover, one respondent's survey is based on estimates, rather than actual time spent on the activities.

Discussion

Staff reviewed the claimant's revised proposed parameters and guidelines, the proposed RRM, and the comments received. Issues raised by the parties with respect to section II, Eligible Claimants, and section V and the proposed RRM, are discussed below.

Section II, Eligible Claimants

Section II of the proposed parameters and guidelines lists the eligible claimants as "any county or city and county." The proposed language leaves out cities. City police are mandated to comply with the reimbursable activities. The attached proposed parameters and guidelines clarifies that eligible claimants are "any county, city, or city and county."

Section V, Proposed RRM

Section V of the claimant's proposed parameters and guidelines allows eligible claimants to file reimbursement claims by either claiming actual costs incurred or by using the claimant's proposed RRM of unit times for the one-time and the ongoing activities. The RRM for ongoing costs is based on five factual scenarios. (See Schedule A to claimant's revised proposed parameters and guidelines.) Under each scenario, the claimant proposes unit times to perform the ongoing "mandated tasks." The unit times are calculated based on average times reported by the twelve (12) counties and cities to perform the "mandated tasks" identified in the factual scenarios proposed in claimant's survey.

Government Code section 17557, subdivision (b), states that the Commission may adopt an RRM when adopting parameters and guidelines. Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines an RRM to "mean a formula for reimbursing local agencies and school districts for costs mandated by the state ..." It requires that two elements be met: (1) that the methodology considers the variation of costs among local agencies and school districts to implement the mandate, and (2) that the methodology reimburses local agencies or school districts for implementing the mandate in a "cost-efficient manner." (Gov. Code, § 17518.5, subd. (c).) The Commission's regulations, section 1183.13, subdivision (d), states that proposed reasonable reimbursement methodologies "shall include any documentation or assumption relied upon to develop the methodology."

For the reasons below, staff finds that the proposed RRM does not satisfy the elements required by Government Code section 17518.5, subdivision (c).

First, the activities identified in claimant's scenarios that support the proposed RRM do not correspond to the activities found by the Commission in the Statement of Decision to be reimbursable under article XIII B, section 6 of the California Constitution. The activities are overly broad and go beyond the scope of the mandate. For example, under claimant's Scenarios 2, 3, and 4, firearms or other deadly weapons are present, seized, and either the firearm or weapon is released to the owner, held pending a court petition, or destroyed. The Commission, on pages 27-33 of the Statement of Decision, found that performing these activities mandated a new program or higher level of service *only when* the firearm or weapon is discovered during "any other lawful search," and not when the firearm or deadly weapon is found in plain sight or during a consensual search. Page 27 of the Statement of Decision describes "any other lawful search" as follows:

> The 2002 amendment to section 12028.5 (Stats. 2002, ch. 833, § 1.5) adds the following underlined text to subdivision (b):
>
> > [Law enforcement officers] shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered

> pursuant to a consensual <u>or other lawful</u> search as necessary for the protection of the peace officer or other persons present.
>
> Sponsored by the City of Santa Rosa, the legislative history of this amendment indicates that its purpose was "to add any "lawful" search to the existing "plain sight or consensual" search required in domestic violence circumstances for the mandated seizure of firearms and weapons." Adding "any lawful search" to the consensual or plain sight searches already in the statute means that firearm or weapon confiscation is now also required for searches incident to arrest, or of people the officer has legal cause to arrest, or searches pursuant to a warrant, or searches based on statements of persons who do not have authority to consent but have indicated to law enforcement that a weapon is present at the scene. (Footnotes omitted.)

Seizure of firearms or other deadly weapons found in plain sight or during consensual searches, and the activities that follow the seizure under these circumstances, were required by prior law and are not reimbursable here. [8]

Second, the claimant's proposed RRM does not include reimbursement for the following activities found by the Commission to be reimbursable when a firearm or other deadly weapon is taken during a lawful search:

- Giving the owner or person in lawful possession of the firearm or other deadly weapon a receipt pursuant to Penal Code section 12028.5, subdivision (b).
- Selling the firearm or other deadly weapon taken into custody and held longer than 12 months and not recovered by the owner pursuant to Penal Code section 12028.5, subdivision (e).
- Notifying the owner of the firearm or other deadly weapon that the local agency plans to initiate a petition in court to determine if the firearm or other deadly weapon should be returned, and advising the owner of the process in court pursuant to Penal Code section 12028.5, subdivisions (f) and (g).
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a court hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or person reporting the assault or threat pursuant to Penal Code section 12028.5, subdivision (h).
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default pursuant to Penal Code section 12028.5, subdivision (i).

In addition, the claimant's RRM does not contain a proposal for the reimbursement of the activities and costs required pursuant to Penal Code section 12028.5, subdivision (j). The

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[8] See Penal Code section 12028.5, subdivision (f), as last amended by Statutes 2001, chapter 254.

Commission found that when the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search, the following activities and costs are reimbursable, beginning January 1, 2003:

> If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j)

Third, the unit times proposed may not be representative of the costs incurred by the eligible claimants in the state to implement the mandated program. Survey results were received by only two of the 480 cities in the state.

Finally, the proposal does not reimburse local agencies for implementing the mandated program in a cost efficient manner. There are large disparities in the times reported by the local agencies to perform the proposed activities. The range of times submitted in the survey to perform the ongoing activities in claimant's proposed scenarios are listed in the following table:

Scenarios	Range of Times Submitted	Claimant's Proposed Average Time
Scenario 1 (deputy asks if weapon present, no weapons present, document inquiry on incident report)	5 – 30 minutes	15 minutes
Scenario 2 (weapon present, officer takes custody of weapon, weapon released)	61 – 240 minutes	133 minutes
Scenario 3 (weapon present, officer takes custody of weapon, court petition filed, and weapon either released or destroyed)		
Release of firearm	78 – 254 minutes	141 minutes
Destruction of firearm	62 – 500 minutes	260 minutes

Scenario 4 (weapon present, officer takes custody of weapon, weapon destroyed)	65 – 623 minutes	220 minutes
Scenario 5 (deputy asks is weapon present, suspect refuses to relinquish weapon, document inquiry on incident report)	7 – 140 minutes	32 minutes

The range of times reported to perform the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" also varied from a low of 8 minutes to a high of 420 minutes.

Accordingly, staff recommends that the Commission not adopt claimant's proposed RRM. Instead, staff recommends that the Commission adopt the attached draft proposed parameters and guidelines that contain the mandated activities identified in the Statement of Decision that can be claimed based on actual costs. Language is included in section IV of the parameters and guidelines to allow claimants to use time studies to support salary and benefit costs when the activity is task-repetitive as follows:

> Claimants may use time studies to support salary and benefit costs when the activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

This time study language has been recently adopted by the Commission in other parameters and guidelines.

Conclusion

Staff recommends that the Commission adopt the draft proposed parameters and guidelines, beginning on page 17.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED PARAMETERS AND GUIDELINES

Penal Code Sections 13730, Subdivision (c)(3), 12028.5;

Statutes 2001, Chapter 483, Statutes 2002, Chapter 833

Crime Victims' Domestic Violence Incident Reports II

02-TC-18

I. SUMMARY OF THE MANDATE

On September 27, 2007, the Commission adopted a Statement of Decision, finding that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission found that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (3) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is

not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.[1] (Pen. Code, § 12028.5, subd. (b).)

- To sell or destroy, as provided in subdivision (c) of Section 12028,[2] any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm

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[1] Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in cases "in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat." This provision also requires notifying the owner.

[2] Section 12028, subdivision (c) requires specified weapons to be surrendered to law enforcement and authorizes disposal of them by sale at public auction or (in subd. (d)) by destruction.

or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)

- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission found that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The County of Los Angeles filed the test claim on April 2, 2003, establishing eligibility for reimbursement beginning July 1, 2001. However, Penal Code section 13730, subdivision (c)(3), as amended by Statutes 2001, chapter 483, became effective and operative on January 1, 2002. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13730, subdivision (c)(3), are reimbursable on or after January 1, 2002. Penal Code section 12028.5, as amended by Statutes 2002, chapter 833, became operative and effective on January 1, 2003. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 12028.5 are reimbursable on or after January 1, 2003.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.

2. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices and receipts.

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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

<u>One-Time Activity</u>

A. *Beginning January 1, 2003*, the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon taken at the scene of a domestic

violence incident to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

Ongoing Activities

A. *Beginning January 1, 2002*, for all domestic violence-related calls for assistance, the following activity is reimbursable:

Include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3).)

B. *Beginning January 1, 2003*, the following activities are reimbursable when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (3) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.[3]

1. To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
2. To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
3. To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
4. To sell or destroy, as provided in subdivision (c) of Section 12028, any firearm or other deadly weapon taken into custody and held for longer than 12 months and

[3] The activities listed in Section IV B are not reimbursable when firearms or other deadly weapons are found in *plain sight* or during *consensual searches*. Seizure of firearms or other deadly weapons found in plain sight or during consensual searches, and the activities that follow the seizure under these circumstances, were required by prior law and do not constitute a new program or higher level of service.

not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)

5. If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)

6. To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)

7. If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)

8. If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

C. *Beginning January 1, 2003*, the following activity is reimbursable when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and <u>the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search</u>:

If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the

local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the

rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CRF Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should e expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[4] is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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

Original List Date: 4/22/2003
Last Updated: 3/22/2010
List Print Date: 04/20/2010
Claim Number: 02-TC-18
Issue: Crime Victims' Domestic Violence Incident Reports

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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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