

COMMISSION ON STATE MANDATES

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March 26, 2004

Mr. Leonard Kaye
SB 90 Coordinator
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Staff Analysis and Proposed Parameters and Guidelines
Crime Victim's Domestic Violence Incident Reports, 99-TC-08
Los Angeles County, Claimant
Family Code Section 6228
Statutes 1999, Chapter 1022

Dear Mr. Kaye:

The draft staff analysis and proposed parameters and guidelines are enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by **April 15, 2004**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties and to be accompanied by a proof of service. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Hearing

This matter is tentatively set for hearing on **May 27, 2004** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Cathy Cruz at (916) 323-8218.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Patton".

NANCY PATTON
Assistant Executive Director

Enclosures

ITEM ____

**DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF**

Family Code Section 6228

Statutes 1999, Chapter 1022

Crime Victim's Domestic Violence Incident Reports (99-TC-08)

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

The Executive Summary will be included in the Final Staff Analysis.

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

05/29/03 Commission on State Mandates (Commission) adopted Statement of Decision
06/13/03 Claimant submitted its proposed parameters and guidelines
09/25/03 Commission adopted a corrected Statement of Decision
10/27/03 The State Controller's Office (SCO) submitted comments
11/14/03 The Department of Finance (DOF) submitted comments
12/17/03 Claimant submitted its revised proposed parameters and guidelines
03/26/04 Draft staff analysis issued

Summary of the Mandate

On September 25, 2003, the Commission adopted a corrected Statement of Decision¹ finding that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandated a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposed costs mandated by the state pursuant to Government Code section 17514 for the following activity only:

- Storing domestic violence incident reports and face sheets for three years.
(Fam. Code, § 6228, subd. (e).)

The Commission further found that under prior law, cities and counties were already required to keep the domestic violence incident reports for two years.

Discussion

Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

III. Period of Reimbursement

Since the Commission found that prior law already required cities and counties to keep the domestic violence incident reports for two years, the SCO and DOF recommended the addition of language to clarify that only those costs incurred for storing domestic violence incident reports and face sheets for the third, fourth, and fifth years of storage are reimbursable on or after January 1, 2000. Staff made the modification accordingly.

¹ Exhibit A.

already required cities and counties to keep the domestic violence incident reports for two years. Therefore, these activities are not reimbursable under this mandate.

Staff Finding and Proposal

This program requires that the domestic violence incident reports and face sheets be stored for an additional three years. The Commission found that cities and counties were already required to keep these documents for two years under prior law. Accordingly, any activities that flow from this previous requirement are not reasonably necessary to carry out this mandate. Such activities include the claimant's proposed activities 2, 3, 4, 6, and 7.

As to the proposed activity for developing policies and procedures, staff agrees with the SCO and DOF that this activity would also fall under those that flow from the prior law requirement. However, staff finds that it is reasonably necessary to revise any existing policies and procedures regarding the storage of domestic violence incident reports and face sheets in a readily accessible format to include the additional three-year requirement. Staff limited this to a one-time activity.

Also, staff limited the proposed activity to store domestic violence incident reports and face sheets to the cost of retaining the documents in a readily accessible format, including file storage, for the three-year period of time after the mandatory two-year retention period provided in Government Code sections 26202 and 34090.

V. Claim Preparation and Submission

The claimant included in its proposal a provision providing that actual costs may be claimed based on a uniform allowance per stored domestic violence report, including the face sheet, per year. The claimant states that the proposed uniform allowance of \$1.00 per record per year was based on the 1997-1998 base year allowance.

Staff finds that there is no written evidence in the record to substantiate the claimant's proposal. Therefore, staff revised the proposed parameters and guidelines to require that only actual costs, as defined in section IV, be claimed. A uniform allowance will only be considered if the proposal is substantiated by a valid time study.

Further, since there is no evidence in the record that travel is required for the purpose of the reimbursable activities, staff did not include it as a direct cost that is eligible for reimbursement.

VIII. State Controller's Claiming Instructions

This section previously contained language regarding the certification the SCO requires when local agencies and school districts submit reimbursement claims. On January 23, 2002, the Commission determined that it is not authorized to include certification requirements in the parameters and guidelines. Instead, the SCO is authorized to include such requirements in their claiming instructions. Therefore, this section was revised to detail the statutory requirements for issuing claiming instructions. The revised language conforms to language recently adopted by the Commission.

Staff Recommendation

Staff recommends that the Commission adopt staff's proposed parameters and guidelines, beginning on page 7.

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, AS MODIFIED BY STAFF

Penal Code Section 13730

Family Code Section 6228

Statutes 1984, Chapter 1609

Statutes 1995, Chapter 965

Statutes 1999, Chapter 1022

Crime Victim's Domestic Violence Incident Reports (99-TC-08)

County of Los Angeles, Claimant

I. SUMMARY OF THE MANDATE

On September 25, 2003, the Commission on State Mandates (Commission) adopted a corrected Statement of Decision finding that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandated a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposed costs mandated by the state pursuant to Government Code section 17514 for the following activity only:

- Storing domestic violence incident reports and face sheets for three years. (Fam. Code, § 6228, subd. (e).)

The Commission further found that under prior law, cities and counties were already required to keep the domestic violence incident reports for two years.

Family Code section 6228, as added by Statutes of 1999, Chapter 1022, also known as the "Access to Domestic Violence Reports Act of 1999", requires local law enforcement agencies to provide, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence upon request, generally within 48 hours.

~~On April 24, 2003, the Commission on State Mandates [Commission] determined that only one of the provisions of the "Access to Domestic Violence Reports Act of 1999", as added by Statutes of 1999, Chapter 1022, mandated a new program or a higher level of service for local law enforcement agencies within the meaning of section 6, article XIII B of the California Constitution. Specifically, only those activities related to "storing domestic violence incident reports and face sheets for five years" pursuant to Family Code section 6228, subdivision (e) were deemed to be reimbursable "costs mandated by the State" as defined in Government Code Section 17514.~~

~~On September 25, 2003, the Commission corrected an error of law in its April 24, 2003 decision, now finding that pre-existing law already required claimants to retain records for two years prior to destruction. Accordingly, claimants are eligible to receive reimbursement only for costs in~~

~~03 fiscal year and subsequent claims, if the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed.~~

If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

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

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

~~For each eligible claimant, the following activities are eligible for reimbursement during the first three years of storage, unless made optional under Government Code Section 17581.~~

A. One-Time Activity

- ~~1. Develop~~Revise existing policies and procedures for regarding the storage of domestic violence incident reports and face sheets in a readily accessible format for five years to include the additional three-year requirement.

B. Ongoing Activities

1. Store domestic violence incident reports and face sheets in a readily accessible hard copy, microfiche, or electronic image format for an additional three years. This is limited to the cost of retaining domestic violence incident reports and face sheets in a readily accessible format, including file storage, for the three-year period of time after the mandatory two-year retention period provided in Government Code sections 26202 and 34090.
- ~~2. Itemize, label, package, transfer and ship domestic violence incident reports and face sheets for storage in readily accessible hard copy format, or for storage in a readily accessible microfilm format, or for storage in an electronic image format.~~

contract consultant and attorney 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.

B. Indirect Cost Rates

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

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

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

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

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

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

~~E. 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 V.A. Salaries and Benefits, for each applicable reimbursable activity.~~

~~F. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element V.A., Salaries and Benefits, and V.B., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element V.C., Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in Section VI.~~

~~G. 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 or (2) the indirect costs of administering reimbursable contract(s), or (3) 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 Office of Management and Budget (OMB) Circular A87. Claimants have the option of using 10% of labor, excluding fringe benefits, or, where applicable, 10% of the amount of reimbursable contract(s), if 50% or more of all reimbursable services are provided under contract, 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 and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B).~~

- ~~II. Alternatively, actual costs may be claimed based on a uniform allowance per stored domestic violence report, including face sheet, per year. The uniform allowance shall be adjusted each subsequent year by the Implicit Price Deflator referenced in Government Code section 17523 based on the 1997-98 base year allowance of \$1.00 per record per year.~~

~~The uniform allowance covers all the direct and indirect costs of performing the activities described in Section IV. I. [above]. Reimbursement is determined by multiplying the uniform allowance by the number of domestic violence reports, including face sheets, by the number of reports stored during reimbursable storage periods.~~

~~on behalf of other eligible claimant jurisdiction(s), such services may be certified if included in claim(s) filed by the jurisdiction providing the reimbursable services.~~

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 statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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

IX. ~~PARAMETERS AND GUIDELINES AMENDMENTS~~

~~Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations, section 1183.2.~~

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), 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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