

ITEM 2
TEST CLAIM
PROPOSED DECISION

Penal Code Sections 745 and 1473

Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

County of Los Angeles, Claimant

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For CSM Use Only	
Filing Date:	RECEIVED December 19, 2024 Commission on State Mandates
Revised March 27, 2025	
TC #:	24-TC-02

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

AB 256 Criminal Procedure: Discrimination

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

Oscar Valdez, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number

2139748302

Email Address

ovaldez@auditor.lacounty.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#).)

Name and Title of Claimant Representative:

Fernando Lemus, Principal Accountant-Auditor

Organization: County of Los Angeles, Department of Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number

2139740324

Email Address

flemus@auditor.lacounty.gov

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it:

Assembly Bill No. 256 (2021-2022 Regular Session)

Statutes of 2022, Chapter 739, Section 1: Criminal Procedure: Discrimination, to amend Section 745 and 1473 of the Penal Code

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12 / 19 / 2024

☐ A: Which is not later than 12 months (365 days) following [insert effective date] / / , the effective date of the statute(s) or executive order(s) pled; or

☒ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 01 / 01 / 2024, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5](#).)

Section 5 – Written Narrative:

☒ Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564](#).)

☒ Includes all of the following elements for each statute or executive order alleged **pursuant to [Government Code section 17553\(b\)\(1\)](#)**:

☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2024 - 2025 Total Costs: \$2,190,000

☐ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: No dedicated funding source. (General funds are used to cover costs)

Other nonlocal agency funds: None

Fee authority to offset costs: None

☐ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: _____

None

☐ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to [Government Code Section 17553\(b\)\(2\)](#) and [California Code of Regulations, title 2, section 1187.5](#), as follows:

- ☐ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- ☐ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- ☐ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).
- ☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).
- ☐ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to [Government Code section 17553\(b\)\(3\)](#) and [California Code of Regulations, title 2, § 1187.5](#):

- ☐ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages 9 to 18.
- ☐ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 122 to 125.

- ☐ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 19 to 121.
- ☐ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* ([Cal. Code Regs., tit. 2, § 1187.5](#).) Pages 7 to 8.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- ☐ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) and [Government Code section 17514](#). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. ([Cal. Code Regs., tit.2, §§ 1183.1](#) and [1187.5](#).)

Oscar Valdez

Auditor-Controller

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Print or Type Title



Signature of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)












Test Claim Form

Final Audit Report

2025-03-26

Created:	2025-03-25
By:	CSM Sign (csmsign@csm.ca.gov)
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Transaction ID:	CBJCHBCAABAAHB-DI6r54hq67e2HX1ifBxQqeismHKuu

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-  Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
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COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 256: CRIMINAL PROCEDURE: DISCRIMINATION

Statutes of 2022, Chapter 739, Section 1: Criminal Procedure: Discrimination
Assembly Bill No. 256 (2021-2022 Regular Session)
to amend Section 745 of the Penal Code

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COUNTY OF LOS ANGELES TEST CLAIM

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**Statutes of 2022, Chapter 739, Section 1: Criminal Procedure: Discrimination
Assembly Bill No. 256 (2021-2022 Regular Session)
to amend Section 745 of the Penal Code**

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SECTION 5: WRITTEN NARRATIVE

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 256: CRIMINAL PROCEDURE: DISCRIMINATION

**Statutes of 2022, Chapter 739, Section 1: Criminal Procedure: Discrimination
Assembly Bill No. 256 (2021-2022 Regular Session)
to amend Section 745 of the Penal Code**

SECTION 5: WRITTEN NARRATIVE
COUNTY OF LOS ANGELES TEST CLAIM
Statutes of 2022, Chapter 739, Section 1: Criminal Procedure: Discrimination
Assembly Bill No. 256 (2021-2022 Regular Session)
to amend Section 745 of the Penal Code

I. STATEMENT OF THE TEST CLAIM

Assembly Bill (AB) 256, also known as the Racial Justice Act for All was approved by the governor on September 29, 2022, to apply the Racial Justice Act of 2020 retroactively to ensure equal access to all. AB 256 amended Penal Code (PC) § 745 to add subdivision (j)(3) to allow any petitioner currently serving a sentence in State prison or in county jail pursuant to PC § 1170(h) or committed to the Division of Juvenile Justice to file a motion or habeas corpus writ petition alleging a racially biased prosecution under PC § 1473(f). The County of Los Angeles (County or Claimant) Office of the Public Defender (Public Defender) provides legal defense to financially disadvantaged people facing criminal charges following a request by the sentenced prisoner/defendant or upon appointment by the court.¹ Defendants do not have a constitutional right to court-appointed counsel in post-conviction proceedings, unless a State or federal statute specifies otherwise. AB 256 now requires the Public Defender to represent State prisoners that allege a racially biased prosecution. The petitions contemplated by the Racial Justice Act for All, and specifically PC § 745(j)(3), involve State prisoners who have already been convicted and sentenced.

A. DESCRIPTION OF THE NEW MANDATED ACTIVITIES

Commencing on January 1, 2024, PC § 745(j)(3) authorizes State prisoners to petition the court if they believe that their prosecution was impacted by racial, ethnic, or national origin bias.² As a result, the courts appoint the Public Defender to provide representation to petitioners claiming that race, ethnicity, or national origin bias occurred in their case.³ Once the petitioner reaches out to the Public Defender and/or the court appoints the Public Defender to represent petitioners, the Public Defender must run conflict checks to ensure there is no ethical conflict in representing the petitioner.⁴ Once this process is completed and no conflict is found, the Public Defender must investigate the claims made by the petitioner, retrieve and review records, communicate with the petitioner in prison, draft and file writs or motions where appropriate, make court appearances, and document files.⁵ Prior to AB 256, the Public Defender was under no legal or otherwise statutory obligation to represent petitioners in State prison alleging a racially biased prosecution.

¹ Government Code § 27706(a)

² PC § 745(j)(3)

³ Declaration of Elizabeth Lashley-Haynes; PC § 1473(e)

⁴ Declaration of Elizabeth Lashley-Haynes

⁵ Declaration of Elizabeth Lashley-Haynes

B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE

Existing law prohibits the State from seeking a criminal conviction or sentence based on race, ethnicity, or national origin in a case where judgment has not been entered prior to January 1, 2021. The Public Defender is required to represent individuals charged with crimes if they are indigent and are appointed by the court or if the defendant/petitioner requests counsel.⁶

C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE

The Public Defender first incurred costs related to implementing the mandate in AB 256 on January 1, 2024.⁷ The Public Defender has incurred \$155,667 in Fiscal Year (FY) 2023-24 for their work related to implementing the mandate of AB 256 as codified in PC § 745(j)(3).

D. ACTUAL OR ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED

The Public Defender estimates incurring \$657,000 in costs related to implementing the mandate in PC § 745(j)(3) for FY 2024-25.⁸

E. STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE

The Public Defender estimates an increased statewide cost of \$2,190,000 in FY 2024-25.⁹

F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM

Claimant is not aware of, nor did it receive any State, federal, or other non-local agency funds available for this program, and all the increased costs were paid and will be paid from the Claimant's General Fund appropriations.¹⁰

⁶ Government Code § 27706(a)

⁷ Declaration of Elizabeth Lashley-Haynes

⁸ Declaration of Elizabeth Lashley-Haynes

⁹ Declaration of Elizabeth Lashley-Haynes

¹⁰ Declaration of Elizabeth Lashley-Haynes

G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES

The Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter.

H. IDENTIFICATION OF LEGISLATIVELY-DETERMINED MANDATES THAT ARE ON THE SAME STATUTE OR EXECUTIVE ORDER

The Claimant is not aware of any legislatively-determined mandates related to AB 256, Statutes of 2022, Chapter 739, pursuant to Government Code § 17573.

II. MANDATE MEETS BOTH SUPREME COURT TESTS

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase “new program or higher level of service”, language that was approved by the voters when they passed Proposition 4 in 1979, which added article XIII B to the California Constitution. In reaching its decision, the Court held that:

“ . . . the term ‘higher level of service’ . . . must be read in conjunction with the predecessor phrase ‘new program’ to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs’. But the term ‘program’ itself is not defined in Article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local government and do not apply generally to all residents and entities in the state¹¹.”

A program can either carry out the governmental function of providing services to the public or be a law that implements State policy that imposes unique requirements on the local government that does not apply to the entire State. Only one part of this definition has to apply in order for the mandate to qualify as a program. The activities mandated by AB 256 meet both prongs.¹²

III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT

The sections of the law alleged in this Test Claim (TC) are unique to the Claimant. The activities described in section A are provided by local government agencies.

¹¹ *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46, 56

¹² *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App. 3d 521, 537

IV. MANDATE CARRIES OUT STATE POLICY

The new State statute, the subject of this TC, imposes a higher level of service by requiring local agencies to provide the mandated activities described in section A.

V. STATE MANDATE LAW

Article XIII B § 6 requires the State to provide a subvention of funds to local government agencies any time the legislature or a State agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

Whenever the legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service . . .

The purpose of § 6 “is to preclude the state from shifting financial responsibility for carrying our governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹³ The section was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.¹⁴ In order to implement § 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.¹⁵ Under this scheme, the Legislature established the parameters regarding what constitutes a State-mandated cost, defining “costs mandated by the state” to include:

...any increased costs which a local agency is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of § 6 of Article XIII B of the California Constitution.¹⁶

VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556, which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code § 17556. None of the seven disclaimers apply to this TC:

¹³ *County of San Diego v. State of California* (1997) 15 Cal. 4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487

¹⁴ *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976-985

¹⁵ Government Code § 17500, et seq.; *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 331, 333

¹⁶ Government Code § 17514

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts, which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the State mandate in an amount sufficient to fund the cost of the State mandate.
6. The statute or executive order imposes duties, which were expressly included in a ballot measure approved by the voters in Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.¹⁷

None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement apply to this TC.

The enactment of AB 256 imposes new State-mandated activities and costs on the Claimant, and none of the exceptions in Government Code § 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the required activities. AB 256 therefore, represents a State mandate for which the Claimant is entitled to reimbursement pursuant to § 6 of the State Constitution.

VII. CONCLUSION

AB 256, Statutes of 2022, Chapter 739, imposes State-mandated activities and costs on the Claimant. Those State-mandated costs are not exempted from the subvention requirements of § 6 of the State Constitution. There are no funding sources, and the Claimant lacks authority to develop and impose fees to fund any of these new State-mandated activities. Therefore, Claimant respectfully requests that the Commission on

¹⁷ Government Code § 17556

State Mandates find that the mandated activities set forth in the Test Claim are State mandates that require subvention under the California Constitution § 6.

SECTION 6: DECLARATIONS

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 256: CRIMINAL PROCEDURE: DISCRIMINATION

DECLARATION OF ELIZABETH LASHLEY-HAYNES

I, ELIZABETH LASHLEY-HAYNES, declare as follows:

1. I am an attorney-at-law licensed to practice in all courts of the State of California and am employed as a Deputy Public Defender IV with the Los Angeles County (County or Claimant) Office of the Public Defender (Public Defender). My current assignment is as senior attorney of the Public Defender's Racial Justice Act (RJA) Unit.
2. Assembly Bill (AB) 256, known as the Racial Justice Act for All, amended Penal Code (PC) § 745 to add sub § (j)(3), which allows any petitioner currently serving a sentence in State prison or in county jail pursuant to PC § 1170(h), or committed to the Division of Juvenile Justice, regardless of when the judgment or disposition became final, to file a motion or habeas corpus writ petition alleging a racially biased prosecution under PC § 1473(e).
3. Prior to the passage of AB 256 and the addition of PC § 745(j)(3), individuals serving State prison sentences were not eligible to file writ petitions to challenge a racially biased prosecution.
4. Prior to PC § 745(j)(3), the Public Defender was not required to represent sentenced prisoners for that purpose nor did the Public Defender file any such petitions.
5. PC § 1473(e) allows for the filing of a writ of habeas corpus after judgement has been entered based on evidence of a violation of PC § 745(a). PC § 1473(e) further states that the court "shall" appoint counsel if the petitioner requests counsel and the petitioner cannot afford counsel.
6. Following the appointment of counsel, an attorney with the Public Defender must consult with clients, run conflict checks, investigate claims, retrieve and review records, draft and file writs or motions where appropriate, make court appearances, and document files, among other activities.
7. The Public Defender first incurred costs related to implementing the mandates in PC § 745(j)(3) on January 1, 2024.
8. In Fiscal Year (FY) 2023-24, the Public Defender has incurred \$155,667 for their work related to implementing the mandates of AB 256 as codified in PC § 745(j)(3).
9. The Public Defender estimates incurring costs of \$657,000 in FY 2024-25 for their work related to implementing the mandates of AB 256 as codified in PC § 745(j)(3).

10. The Public Defender estimates an increased statewide cost of \$2,190,000 in FY 2024-25 for work related to implementing the mandates of AB 256 as codified in PC § 745(j)(3).¹
11. The Public Defender has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct and indirect costs associated with the implementation of AB 256.
12. The Public Defender is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to AB 256.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 9th day of December, 2024 in Los Angeles, California.



ELIZABETH LASHLEY-HAYNES
Deputy Public Defender IV
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¹ According to the Vera Institute of Justice, 30% of the state prison population came from Los Angeles County in 2021. Based on this percentage and using the Public Defender's projected costs of \$657,000, the Public Defender estimates an increased statewide cost of \$2,190,000 ($\$657,000 \div 0.30$) in FY 2024-25.

SECTION 7: SUPPORTING DOCUMENTS
COUNTY OF LOS ANGELES TEST CLAIM
ASSEMBLY BILL 256: CRIMINAL PROCEDURE: DISCRIMINATION

STATE AND SENATE BILL
COMMITTEES AND RULES
CASELAW AND CODES

Assembly Bill No. 256

CHAPTER 739

An act to amend Sections 745 and 1473 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2022. Filed with
Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 256, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, vacating the conviction or sentence and ordering new proceedings.

This bill would additionally authorize that petition to be filed for cases in which a judgment was entered as final prior to January 1, 2021, as specified, and in cases in which a juvenile disposition resulted in a commitment to the Division of Juvenile Justice, as specified. The bill would, if a motion under these provisions is based on the conduct or statements by the judge, require the judge to disqualify themselves from those proceedings. The bill would additionally make other technical changes.

Existing law allows a defendant to file a motion requesting disclosure of all evidence related to a potential violation of the prohibition on seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, and requires the court to order the records to be released upon a showing of good cause. If the records are not privileged, existing law allows the court to permit the prosecution to redact information prior to disclosure.

This bill would require the court, upon a showing of good cause, to order disclosure unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order.

Under existing law, a conviction or sentence is unlawfully imposed on the basis of race, ethnicity, or national origin if the defendant proves, among other things, that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, or received a longer or more severe sentence, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin, as specified, or if a longer or more severe sentence was more frequently imposed on defendants of a particular race, ethnicity, or

national origin, as specified. Existing law requires this determination to be made pursuant to statistical evidence or aggregate data, as specified.

This bill would allow that evidence to include nonstatistical evidence and would require the court to consider the totality of the evidence in determining whether a significant difference in seeking or obtaining convictions or in imposing sentences has been established. The bill would require the court to consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall.

This bill would incorporate additional changes to Section 1473 of the Penal Code proposed by SB 467 to be operative only if this bill and SB 467 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.

SEC. 2. Section 745 of the Penal Code is amended to read:

745. (a) The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.

(2) During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently

imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(b) A defendant may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under Section 1473.7 in a court of competent jurisdiction, alleging a violation of subdivision (a). If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(c) If a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of subdivision (a), the trial court shall hold a hearing. A motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed waived, in the discretion of the court.

(1) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.

(2) The defendant shall have the burden of proving a violation of subdivision (a) by a preponderance of the evidence. The defendant does not need to prove intentional discrimination.

(3) At the conclusion of the hearing, the court shall make findings on the record.

(d) A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (f), or for an initiative approved by the voters, if the court finds, by a

preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(1) Before a judgment has been entered, the court may impose any of the following remedies:

(A) Declare a mistrial, if requested by the defendant.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(2) (A) After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph (3) of subdivision (a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) When the court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.

(4) The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) As used in this section, the following definitions apply:

(1) “More frequently sought or obtained” or “more frequently imposed” means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions,

and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

(2) “Prima facie showing” means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

(3) “Relevant factors,” as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions.

(4) “Racially discriminatory language” means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant’s physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

(5) “State” includes the Attorney General, a district attorney, or a city prosecutor.

(6) “Similarly situated” means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant’s conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

SEC. 3. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at

a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 3.5. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, “new evidence” means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) A significant dispute has emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert’s conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner’s conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant’s presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Senate Bill 467. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends

Section 1473 of the Penal Code, and (3) this bill is enacted after Senate Bill 467, in which case Section 3 of this bill shall not become operative.



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Declined to Follow by [Connell v. Superior Court](#), Cal.App. 3 Dist.,
November 20, 1997

190 Cal.App.3d 521, 234 Cal.Rptr. 795

CARMEL VALLEY FIRE PROTECTION
DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA
et al., Defendants and Appellants.

RINCON DEL DIABLO MUNICIPAL WATER
DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA
et al., Defendants and Appellants.

COUNTY OF LOS ANGELES,
Plaintiff and Respondent,

v.

THE STATE OF CALIFORNIA
et al., Defendants and Appellants.

No. B006078., No. B011941., No. B011942.

Court of Appeal, Second District, Division 5, California.

Feb 19, 1987.

SUMMARY

The trial court, in separate proceedings brought by three counties against the state for reimbursement of funds expended by the counties in complying with a state order to provide protective clothing and equipment for county fire fighters, issued writs of mandate compelling the state to reimburse the counties. Previously, the counties had filed test claims with the State Board of Control for reimbursement of similar expenses. The board determined that there was a state mandate and the counties should be reimbursed. The state did not seek judicial review of the board's decision. Thereafter, a local government claims bill, Sen. Bill No. 1261 (Stats. 1981, ch. 1090, p. 4191) was introduced to provide appropriations to pay some of the counties' claims for the state-mandated costs. After various amendments, the legislation was enacted into law without the appropriations. The counties then sought reimbursement by filing petitions for writs of mandate and complaints for declaratory relief. (Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge;

No. C514623 and No. C515319, Jack T. Ryburn, Judge.)

***522**

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

HEADNOTES**Classified to California Digest of Official Reports**

(1a, 1b)

Estoppel and Waiver § 23--Waiver--Trial and Appeal--Failure to Seek Judicial Review of Administrative Decision--Waiver of Right to Contest Findings.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

(2)

Estoppel and Waiver § 19--Waiver--Requisites.

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable *523 belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

[See [Cal.Jur.3d](#), Estoppel and Waiver § 21; [Am.Jur.2d](#), Estoppel and Waiver § 154.]

(3a, 3b, 3c, 3d)

Judgments § 81--Res Judicata--Collateral Estoppel--County's Action for Reimbursement of State-mandated Costs--Findings of State Board of Control.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

(4)

Judgments § 81--Res Judicata--Collateral Estoppel--Elements.

In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

(5)

Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Privity--Governmental Agents.

The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

(6)

Judgments § 96--Res Judicata--Collateral Estoppel--Matters Concluded--Questions of Law.

A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

(7)

State of California § 11--Fiscal Matters--Reimbursement to County for State-mandated Costs--New Programs.

A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#), is one which carries out the governmental function of providing services *524 to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

(8)

State of California § 7--Actions--Reimbursement of County Funds for State-mandated Costs--New Programs.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under [Cal. Const., art. XIII B, § 6](#). Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

(9)

Constitutional Law § 37--Doctrine of Separation of Powers--Violations of Doctrine--Judicial Order of Appropriation.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

(10)

Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power and Its Limits--Order Directing Treasurer to Pay on Already Appropriated Funds.

Once funds have been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

(11)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to County for State-mandated Costs.

Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement *525 by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

(12a, 12b)

Fires and Fire Districts § 2--Statutes and Ordinances--County Compliance With State Executive Order to Provide Protective Equipment--Federal Mandate.

A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

(13)

Statutes § 20--Construction--Judicial Function--Legislative Declarations.

The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

(14a, 14b)

Statutes § 10--Title and Subject Matter--Single Subject Rule. In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit.

8, §§ 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.


(15)

Statutes § 10--Title and Subject Matter--Single Subject Rule. The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's *526 title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

(16)

Statutes § 5--Operation and Effect--Retroactivity--Reimbursement to County for State-mandated Costs.

The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of

 [Rev. & Tax. Code, § 2207](#) and former [Rev. & Tax. Code, § 2231](#), unavailable to a county seeking reimbursement ([Cal. Const., art. XIII B, § 6](#)) for expenditures made in purchasing state-required protective clothing and equipment for county fire fighters ([Cal. Admin. Code, tit. 8, §§ 3401-3409](#)), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.


(17)

State of California § 13--Fiscal Matters--Limitations on Disposal-- Reimbursement to Counties for State-mandated Costs.

The budget control language of § 28.40 of the 1981 Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

(18)

Constitutional Law § 4--Legislative Power to Create Workers' Compensation System--Effect on County's Right to Reimbursement.

 [Cal. Const., art. XIV, § 4](#), which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

(19)

Constitutional Law § 7--Mandatory, Directory, and Self-executing Provisions--Subvention Provisions--County Reimbursement for State-mandated Costs.

The subvention provisions of [Cal. Const., art. XIII B, § 6](#), operate so as to require the state to reimburse counties for *527 state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the

state did not have to begin reimbursement until the effective date of the amendment.

(20)

Mandamus and Prohibition § 5--Mandamus--Conditions Affecting Issuance--Exhaustion of Administrative Remedies--County Reimbursement for State-mandated Costs.

A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

(21)

Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.

A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

(22a, 22b)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--County's Right to Offset Fines and Forfeitures Due to State.

In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

(23)

Equity § 5--Scope and Types of Relief--Offset.

The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in [Code Civ. Proc., § 431.70](#) (limited to cross-demands for money).

(24)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Use of Statutory Offset Authority.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state *528 order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority (Gov. Code, § 12419.5) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

(25)

State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Right to Revert or Dissipate Undistributed Appropriations.

In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by Gov. Code, § 16304.1, from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

(26)

Parties § 2--Indispensable Parties--County Auditor Controller--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief


(27)

Parties § 2--Indispensable Parties--Fines and Forfeitures--County Action to Collect Reimbursement From State.

In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

(28)

Interest § 4--Interest on Judgments--County Action for Reimbursement of State-mandated Costs--State Reliance on Invalid Statute.

An *529 invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under  Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

(29)

Appellate Review § 127--Review--Scope and Extent--Interpretation of Statutes.

An appellate court is not limited by the interpretation of statutes given by the trial court.

(30)

Appellate Review § 162--Determination of Disposition of Cause-- Modification--Action Against State--Appropriation.

In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

COUNSEL

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EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together *530 under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.¹ For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

Appeal In Case No. 2 Civil B011942

(County of Los Angeles Case)

Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by [title 8, California Administrative Code, sections 3401-3409](#), enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated “new program” or “higher level of service.” County relies on [Revenue and Taxation Code section 2207](#)² and former *531 section 2231,³ and [California Constitution, article XIII B, section 6](#)⁴ to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.⁵ After hearings were held on the matter, the Board determined on November 20, 1979, that there was a

state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.⁶

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate ([Code Civ. Proc., § 1085](#)) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of *532 February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.⁷ *533

Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a “new program,” and do not provide a “higher level of service.” Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a “new program” or “higher level of service” exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

Discussion

I

Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs “costs mandated by the state”

in either complying with a “new program” or providing “an increased level of service of an existing program.”⁸ State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a “new program” as that phrase has been recently defined by

our Supreme Court in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202]. *534

As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a “new program” within the meaning of article XIII B, section 6.

A. Waiver

(1a) We initially conclude that State has waived its right to contest the Board's findings. (2) Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived.

(*Medico-Dental etc. Co. v. Horton & Converse* (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; *Loughan v. Harger-Haldeman* (1960) 184 Cal.App.2d 495, 502-503 [7 Cal.Rptr. 581].) A right that is waived is lost forever. (*L.A. City Sch. Dist. v. Landier Inv. Co.* (1960) 177 Cal.App.2d 744, 752 [2 Cal.Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. (*People v. Murphy* (1962) 207 Cal.App.2d 885, 888 [24 Cal.Rptr. 803].)

(1b) State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that November 20, 1979 decision (*Code Civ. Proc.*, § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (*Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256]; *Code Civ. Proc.*, § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On

February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. Administrative Collateral Estoppel

(3a) We next conclude that State is collaterally estopped from attacking the Board's findings. (4) Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must *535 be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People v. Sims* (1982) 32 Cal.3d 468, 484 [186 Cal.Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.) All of the elements of administrative collateral estoppel are present here.

(3b) The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 452 [206 Cal.Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (*Gov. Code*, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative

of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5) “[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]” (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal.Rptr. 657, 380 P.2d 97].) As we stated in our introduction of the parties in this case, the party *536 known as “State” is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781 [200 Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here. (6) A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal.App.3d 274, 286-287 [93 Cal.Rptr. 907]; Rest.2d Judgments, § 28, p. 273.)⁹

(3d) Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum—Board or court—

the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording “great weight” to “the contemporaneous administrative construction of the enactment by those charged with its enforcement” (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)



There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679 [159 Cal.Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally *537 estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. Executive Orders—A “New Program” Under Article XIII B, Section 6

(7) The recent decision by our Supreme Court in *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of “program” that is subject to the constitutional imperative of subvention under article XIII B, section 6.¹⁰ We conclude that they are.

In *State of California*, the Court concluded that the term “program” has two alternative meanings: “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.



(8) First, fire protection is a peculiarly governmental function.

( *County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [ 105 Cal.Rptr. 374, 503 P.2d 1382].) “Police and fire protection are two of the most essential and basic functions of local government.” (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function.¹¹ *538

The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.




State of California only defined the scope of the word “program” as used in [California Constitution, article XIII B, section 6](#). We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (


 *County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [ 66 P.2d 658].)

II



Issue of Whether Court Orders Exceeded Its Jurisdiction

A. The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine

(9) State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (Cal. Const., art. III, § 3; art. XVI, § 7;  *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [ 174 Cal.Rptr. 841, 629 P.2d 935].)¹² State *539 observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory ( *Rev. & Tax. Code*, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S. F. v. Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. ( *Mandel v. Myers, supra*, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (*Code Civ. Proc.*, § 1085) is the correct method of compelling State to




perform a clear and present ministerial legal obligation. ( *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in  Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already “appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund” shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10) By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: “[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures *540 from such funds. [Citations.]” (*Mandel v. Myers*, *supra.*, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that as long as appropriated funds were “reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds.” (*Id.* at p. 542.) The court went on to find that money in a general “operating expenses and equipment” fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation.

Although there was evidence of a prior administrative practice of paying counsel fees from funds in the “operating expenses and equipment” budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a “catchall” appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (*Id.* at pp. 543-544.)

Another illustration of this principle is found in  *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [ 182 Cal.Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for \$800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the \$800,000 award, plus interest, from funds appropriated by the Legislature for “operating expenses and equipment” of the Department of Education, Superintendent of Public Instruction and State Board of Education.  (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11) State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel v. Myers*, *supra.*, 29 Cal.3d at pp. 543-544. Likewise, in *Committee to Defend *541 Reproductive Rights v. Cory*, *supra.*, 132 Cal.App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to


prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on" The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.)



***542**

Again, in 1974, the Legislature stated: "Notwithstanding  [Section 2231 of the Revenue and Taxation Code](#), there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... [Sections 3401 to !\[\]\(3211b5d1d968fc1665909b34f9f16010_img.jpg\) 3409, inclusive, of Title 8 of the California Administrative Code.](#)" (Stats. 1981, ch. 1090, § 3, p. 4193.)¹³

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a) State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in  *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 196-197 [ 203 Cal.Rptr. 258] disapproved on other grounds in *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or ***543** new programs. However, under [Revenue and Taxation Code section 2271](#), "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the

California Constitution through the initiative process. [Article XIII B, section 6](#), enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of [Revenue and Taxation Code section 2207](#) and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended [Revenue and Taxation Code section 2206](#) to expand the definition of nonreimbursable “costs mandated by the federal government” to include the following: “costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.”

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13)(See *fn. 14*.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate.¹⁴

(12b)Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: “OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than *544 federal OSHA standards, are applicable to fire departments in that state” This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. ([29 U.S.C. § 652\(5\)](#).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's




obedience to the 1978 executive orders is not federally mandated.





(14a)The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (*fn. 7, ¶ 7, ante*) because it violated the single subject rule.¹⁵ This legislative restriction purported to make the reimbursement provisions of [Revenue and Taxation Code section 2207](#) and former section 2231 unavailable to County.

(15)The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent “log-rolling” in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. ([Planned Parenthood Affiliates v. Swoap](#) (1985) 173 Cal.App.3d 1187, 1196 [[219 Cal.Rptr. 664](#)].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. ([Metropolitan Water Dist. v. Marquardt](#) (1963) 59 Cal.2d 159, 172-173 [[28 Cal.Rptr. 724, 379 P.2d 28](#)].)

(14b)The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an “act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately.” (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction *545 alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.


This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have

been made in connection with the enactment of a budget bill are appropriate here. “[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. ‘History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.’ [Citation.]” ( *Planned Parenthood Affiliates v. Swoap*, *supra.*, 173 Cal.App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. ( *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [ 211 Cal.Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.


(16)The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in  *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: “A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred ... ‘Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.’” ( *Id.* at p. 459, quoting  *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal.App.3d 907, 912 [ 159 Cal.Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims. *546

(17)Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00¹⁶ of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. ( *Association for Retarded Citizens v. Department of Developmental Services*, *supra.*, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement. *547

C. The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement

(18)State contends that  article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers'

compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980

(19)State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in *City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation *548 and upon a prior published opinion of the Attorney General,

the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred

(20)State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (*County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77 [222 Cal.Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period.¹⁷ (*Lerner v. Los Angeles City Board of Education*, *supra.*, 59 Cal.2d at p. 398.) *549

F. Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order

State continues its general attack on the order directing payment by arguing that the Legislature has “defined” the remedy available to a local agency if a mandate is unfunded. That remedy is found in [Government Code section 17612, subdivision \(b\)](#) and reads: “If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that [Government Code section 17612, subdivision \(b\)](#) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21) A party is not required to exhaust a remedy that was not in existence at the time the action was filed. ([Ross v. Superior Court](#) (1977) 19 Cal.3d 899, 912, fn. 9 [[141 Cal.Rptr. 133, 569 P.2d 727](#)].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. ([Serrano v. Priest, supra.](#), 131 Cal.App.3d at p. 201.)

Also, this remedy is purely a discretionary course of action. By using the permissive word “may,” the Legislature did not intend to override [article XIII B, section 6](#) and [Revenue and Taxation Code section 2207](#) and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. ([Code Civ. Proc.](#), § 1085.)¹⁸ *550


G. The Court's Order Properly Allows County the Right of Offset

(22a) As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante.ante.*) The fines and forfeitures are those found in [Penal Code sections 1463.02](#), [1463.03](#), [1463.5a](#) and [1464](#); [Government Code sections 13967](#), [26822.3](#) and [72056](#); [Fish and Game Code section 13100](#); [Health and Safety Code section 11502](#); and [Vehicle Code sections 1660.7, 42004](#) and [41103.5](#).¹⁹

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there “to the credit” of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23) The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. ([Kruger v. Wells Fargo Bank](#) (1974) 11 Cal.3d 352, 362 [[113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266](#)].) Although this doctrine exists independent of statute, its governing principle has been partially codified ([Code Civ. Proc.](#), § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In [County of Sacramento v. Lackner](#) (1979) 97 Cal.App.3d 576 [159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the “Legislature's control over the 'submission, approval and enforcement of

budgets....” ( *Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

(22b) The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified *551 fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds “to the credit” of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. State's Use of its Statutory Offset Authority Was Properly Enjoined

(24) State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.)²⁰ This order complemented that portion of the order discussed, *infra.*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

I. The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper

(25) State continues that the order (fn. 7, ¶ 4, *ante*) *ante* enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates [Government Code section 16304.1](#).²¹ This section reverts undisbursed *552 balances in any appropriation to the fund from which the appropriation was made. No

authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. The Auditor Controller and the Specified Funds Are Not Indispensable Parties


(26, 27) State next contends that the Auditor Controller of Los Angeles County and the “specified” fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.²² State cites only the general statutory definition of an indispensable party ([Code Civ. Proc., § 389](#)) to support this assertion.

The Auditor Controller is an officer of the County and is subject to the *553 direction and control of the County board of supervisors. ([Gov. Code, § 24000, subds. \(d\), \(e\)](#), 26880; [L.A. County Code, § 2.10.010](#).) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.




The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. County is Entitled to Interest

(28) State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

 Civil Code section 3287, subdivision (a) allows interest to any person “entitled to recover damages certain, or capable of being made certain by calculation....” Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, “including the state...or any political subdivision of the state.”

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. “An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under  Civil Code section 3287, subdivision (a).” ( *Olson v. Cory* (1983) 35 Cal.3d 390, 404 [ 197 Cal.Rptr. 843, 673 P.2d 720].)

Appeal in Case No. 2 Civil B011941**(Rincon et al. Case)**

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter. *554

County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled

to reimbursement in the amount of \$39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.²³ Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento v. Loeb, supra*, 160 Cal.App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.²⁴

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

Appeal in Case No. 2 Civil B006078**(Carmel Valley et al.)**

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.



County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here. *555

On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling \$159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment

was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.


The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as \$159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of  [Revenue and Taxation Code section 2207](#) and former section 2231. In doing so, the court did not have the benefit of the decision in  [City of Sacramento v. State of California, supra., 156 Cal.App.3d at p. 182.](#)²⁵ That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to [article XIII B, section 6 of the California Constitution](#), but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by [article XIII B, section 6.](#)
*556


State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial


court admissions because the state mandate issue is purely a question of law.

(29)State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. ( [City of Merced v. State of California, supra., 153 Cal.App.3d at p. 781.](#)) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. ([Cal. Const., art. XIII B, § 6, subd. \(c\).](#)) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See [Code Civ. Proc., § 389; fn. 22, ante.](#))

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra.*, which we rejected as meritless. The department is part of the State of [California. \(Lab. Code, § 50.\)](#) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. ( [People v. Sims, supra., 32 Cal.3d at p. 487.](#))

 [Ross v. Superior Court, supra., 19 Cal.3d at p. 899](#) demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, *557 who

were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	\$94,673,000	\$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

(30)An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest*, *supra.*, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments. *558

Disposition

2d Civ. B011942 (County of Los Angeles Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano v. Priest*, *supra.*, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B011941 (Rincon et al. Case)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same

account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B006078 (Carmel Valley et al. Case)

The judgment is modified as follows: *559

(1) The following sentences are added to paragraph 2: “The reimbursement amounts total \$159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts.”

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P. J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellant's petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

*560

Footnotes

- 1 *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.


The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.


Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be “local agencies,” as defined in [Revenue and Taxation Code section 2211](#).

- 2 The pertinent parts of  [Revenue and Taxation Code section 2207](#) provide: “ ‘Costs mandated by the state’ means any incureased costs which a local agency is required to incur as a result of the following” [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or a n incureased level of service of an existing program: [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute

and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973 ..."

- 3 The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all 'costs mandated by the state', as defined in  Section 2207." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by [Government Code section 17561](#). We will refer to the earlier code section.
- 4 The pertinent parts of [section 6, article XIII B of the California Constitution](#), enacted by initiative measure, provide: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.
- 5 County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. ([Gov. Code, §§ 17525, 17630](#).)

- 6 The final legislation did include appropriations for other local agencies on other types of approved claims.
- 7 "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with] this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [sic] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [sic] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of \$307,685 in this case, together

with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in [Penal Code Sections 1463.02](#), [1463.03](#), [14\[6\] 3.5\[a\]](#), and [1464](#); [Government Code Sections 13967](#), [26822.3](#) and [72056](#), [Fish and Game Code Section 13100](#); [Health and Safety Code Section 11502](#) and [Vehicle Code Sections 1660.7](#), [42004](#), and [41103.5](#).

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through [3409](#) as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.



"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through [3409](#) were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of [Title 8, California Administrative Code Sections 3401](#) through [3409](#) subsequent to fiscal year 1979-80.



....."


"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of [Title 8, California Administrative Code Sections 3401](#) through [3409](#)."

8 This language is taken from [Revenue and Taxation Code section 2207](#) and former section 2231. [Article XIII B, section 6](#) refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

- 9 As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.
- 10 State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.
- 11 County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in [title 8, California Administrative Code section 3402](#), which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."
- 12 [Article III, section 3 of the California Constitution](#) provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."
- [Article XVI, section 7 of the California Constitution](#) provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."
- 13 When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.
- 14 We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.
- Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. ( [City of Sacramento v. State of California, supra.](#), 156 Cal.App.3d at pp. 196-197.)
- 15 [Article IV, section 9 of the California Constitution](#) reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."
- 16 Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in [section 2209 of the Revenue and Taxation Code](#) or subject to the provisions of  [section 2231 of the Revenue and Taxation Code](#), unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the

Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines.”

- 17 Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. ( *Ventura County Employees' Retirement Association v. Pope* (1978) 87 Cal.App.3d 938, 956 [ 151 Cal.Rptr. 695].)

- 18 We leave undecided the question of whether this type of legislation could ever be held to override [California Constitution, article XIII B, section 6](#). The Constitution of the State is supreme. Any statute in conflict therewith is invalid. ( *County of Los Angeles v. Payne, supra.*, 8 Cal.2d at p. 574.)

Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

- 19 At oral argument, County conceded that the order authorizing offset of [Fish and Game Code section 13100](#) fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. ([Cal. Const., art. XVI, § 9](#); 20 Ops. Cal. Atty. Gen. 110 (1952).)
- 20 [Government Code section 12419.5](#) provides: “The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.” (See also *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 975-976 [185 Cal.Rptr. 49].)
- 21 [Government Code section 16304.1](#) provides: “Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years...following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made....”
- 22 [Code of Civil Procedure section 389, subdivision \(a\)](#) provides: “A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.”
- 23 Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

- 24 Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.
- 25 The decision in *City of Sacramento, supra.*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

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43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38

Supreme Court of California

COUNTY OF LOS ANGELES

et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et

al., Defendants and Respondents.

CITY OF SONOMA et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA

et al., Defendants and Respondents

L.A. No. 32106.

Jan 2, 1987.

SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that [Cal. Const., art. XIII B, § 6](#), requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and

should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted [art. XIII B, § 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by [art. XIII B, § 6](#). Finally,

the court held that no pro tanto repeal of [Cal. Const., art. XIV, § 4](#) (workers' compensation), was intended or made necessary by *47 the adoption of [art. XIII B, § 6](#). (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

HEADNOTES**Classified to California Digest of Official Reports**

(1)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.

When the voters adopted [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2)

Statutes § 18--Repeal--Effect--“Increased Level of Service.” The statutory definition of the phrase “increased level of service,” within the meaning of [Rev. & Tax. Code, § 2207, subd. \(a\)](#) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature,

by deleting an express provision of a statute, intended a substantial change in the law.

[See **Am.Jur.2d**, Statutes, § 384.]

(3)

Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4)



Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."

The word "program," as used in [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on *48 local governments and do not apply generally to all residents and entities in the state.

(5)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.

The provisions of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of [art. XIII B, § 6](#). Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits.

(Disapproving  [City of Sacramento v. State of California](#) (1984) 156 Cal.App.3d 182 [ 203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to

expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See **Cal.Jur.3d**, State of California, § 78.]


(6)

Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.

Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7)

Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.

The goals of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of [art. XIII B, § 6](#), did not effect a pro tanto repeal of  [Cal. Const., art. XIV, § 4](#), which gives the Legislature plenary power over workers' compensation. *49

COUNSEL

De Witt W. Clinton, County Counsel, Paula A. Snyder, Senior Deputy County Counsel, Edward G. Pozorski, Deputy County Counsel, John W. Witt, City Attorney, Kenneth K. Y. So, Deputy City Attorney, William D. Ross, Diana P. Scott, Ross & Scott and Rogers & Wells for Plaintiffs and Appellants.

James K. Hahn, City Attorney (Los Angeles), Thomas C. Bonaventura and Richard Dawson, Assistant City Attorneys, and Patricia V. Tubert, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, for Defendants and Respondents.

Laurence Gold, Fred H. Altshuler, Marsha S. Berzon, Gay C. Danforth, Altshuler & Berzon, Charles P. Scully II, Donald C. Carroll, Peter Weiner, Heller, Ehrman, White & McAuliffe, Donald C. Green, Terrence S. Terauchi, Manatt, Phelps,

Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted [article XIII B, section 6](#), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or *50 increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by [section 6](#).

We recognize also the potential conflict between [article XIII B](#) and the grant of plenary power over workers' compensation bestowed upon the Legislature by [section 4 of article XIV](#), but in accord with established rules of construction our construction of [article XIII B, section 6](#), harmonizes these constitutional provisions.

I


On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in [section 6](#) (hereafter

[section 6](#)): "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning.¹


The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which *51 employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.


The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of [Labor Code sections 4453](#), [§ 4453.1](#) and [§ 4460](#) increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from \$231 per week to \$262.50 per week. The amendment of [section 4702 of the Labor Code](#) increased certain death benefits from \$55,000 to \$75,000. No appropriation for increased state-mandated costs was made in this legislation.²

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in


providing an increased level of service mandated by the state pursuant to  [Revenue and Taxation Code section 2207](#).³ They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly *52 excepted from the requirement of state reimbursement in [section 6](#) the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922, p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from \$73.50 to \$168, and the maximum from \$262.50 to \$336. For permanent partial disability the weekly wage was raised from a minimum of \$45 to \$105, and from a maximum of \$105 to \$210, in each case for injuries occurring on or after January 1, 1984. ([Lab. Code, § 4453](#).) A \$10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed ([Lab. Code, § 4553](#)), and the maximum death benefit was raised from \$75,000 to \$85,000 for deaths in 1983, and to \$95,000 for deaths on or after January 1, 1984. ( [Lab. Code, § 4702](#).)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding [section 6 of Article XIII B of the California Constitution](#) and  [section 2231 ... of the Revenue and Taxation Code](#)." (Stats. 1982, ch. 922, § 17, p. 3372.)⁴


Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation

benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in  [Revenue and Taxation Code section 2207, subdivision \(a\)](#).



The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or *53 [section 6](#). The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings ([Lab. Code, § 3202.5](#)); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine ([Lab. Code, §§ 3601-3602](#)); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. ([Lab. Code, § 4551](#).)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of [section 6](#), or are an "increased level of service"⁵ described in subdivision (a) of  [Revenue and Taxation Code section 2207](#). The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of [section 6](#) is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The




Court of Appeal addressed the problem as one of defining "increased level of service."





The court rejected appellants' argument that a definition of "increased level of service" that once had been included in  section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of  section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the *54 definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].)⁶ On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.




The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions.⁷


III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." ( Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been *55 included in  Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when  Revenue and

Taxation Code section 2231, which had replaced  section 2164.3 in 1973, was repealed and a new  section 2231 enacted. (Stats. 1975, ch. 486, §§ 6 & 7, p. 999.)⁸ Prior to repeal,  Revenue and Taxation Code section 2164.3, and later  section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " "Increased level of service" means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting  section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." ( *Lake Forest Community Assn. v. County of Orange* (1978) 86 Cal.App.3d 394, 402 [ 150 Cal.Rptr. 286]; see also *Eu v. Chacon*, *supra*, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of  section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been *56 aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must

look to the language of the provision itself. (ITT World Communications, Inc. v. City and County of San Francisco (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any “new program or higher level of service.” Because workers’ compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

(4) Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: “Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.” (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase “to force programs on local governments” confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not *57 for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and

entities. Laws of general application are not passed by the Legislature to “force” programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word “program” was being used in such a unique fashion.

(Cf. Fuentes v. Workers’ Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; Big Sur Properties v. Mott (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote.⁹ Certainly no such intent is reflected in the language or history of article XIII B or section 6.

(5) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers’ compensation *58 benefits that employees of private individuals or organizations receive.¹⁰ Workers’ compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are

indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See *Lab. Code*, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of *section 6*.

IV

(6) Our construction of *section 6* is further supported by the fact that it comports with controlling principles of construction which “require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)” (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because *article XIV, section 4*,¹¹ gives the Legislature “plenary power, unlimited by any provision of *59 this Constitution” over workers' compensation. Although seemingly unrelated to workers' compensation, *section 6*, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature.

The potential conflict between *section 6* and the plenary power over workers' compensation granted to the Legislature by *article XIV, section 4* is apparent.

The County of Los Angeles, while recognizing the impact of *section 6* on the Legislature's power over workers' compensation, argues that the “plenary power” granted by *article XIV, section 4*, is power over the substance of workers' compensation legislation, and that this power would be unaffected by *article XIII B* if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural *60 limitations on the Legislature, such as the “single subject rule” (art. IV, § 9), as to which *article XIV, section 4*, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If *section 6* were applicable, therefore, *article XIII B* would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed *article XIII B* would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of *article XIV, section 4*, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of *section 6* permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as *section 6* to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Husted v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, *article XIV, section 4*, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, *article*

XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that *61 amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power—the disciplining of attorneys—that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd.*, *supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending.

(*Huntington Park Redevelopment Agency v. Martin* (1985)

38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage—costs which all employers must bear—neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in *62 benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal—whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims

lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither [article XIII B, section 6, of the Constitution](#) nor [Revenue and Taxation](#)

[Code sections 2207](#) and [§ 2231](#) require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of [§ section 2231, subdivision \(a\)](#), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living *63 adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. *64




Footnotes

- 1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...







The one ballot argument which made reference to [section 6](#), referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

- 2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either [Revenue and Taxation Code section 2231](#), or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.



Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of \$510 on which to base benefits, an unspecified appropriation was included.


- 3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.
- 4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.
- 5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.
- 6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of  Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf.  *California Employment Stabilization Co. v. Payne* (1947) 31 Cal.2d 210, 213-214 [ 187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

- 7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See  Code Civ. Proc. § 1094.5, subd. (f).)
- 8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to  Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of  Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in  Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." ( *County of Orange v. Flourney* (1974) 42 Cal.App.3d 908, 913 [ 117 Cal.Rptr. 224].)
- 9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through

revision of the Constitution is an open question. (See  *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [ 149 Cal.Rptr. 239, 583 P.2d 1281].)

10 The Court of Appeal reached a different conclusion in  *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [ 203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a “state mandated cost,” rather than as whether the provision of an employee benefit was a “program or service” within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

11  **Section 4:** “The Legislature is hereby *expressly vested with plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

“The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

“The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

“Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.” (Italics added.)

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15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134,
Med & Med GD (CCH) P 45,112, 97 Cal. Daily
Op. Serv. 1555, 97 Daily Journal D.A.R. 2296
Supreme Court of California

COUNTY OF SAN DIEGO, Cross-
complainant and Respondent,

v.

THE STATE OF CALIFORNIA et
al., Cross-defendants and Appellants.

No. S046843.

Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate ([Code Civ. Proc.](#), § 1085) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under [Cal. Const.](#), art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, * Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that [Cal. Const.](#), art. XIII B, § 6, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court

of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of [Cal. Const.](#), art. XIII B, § 6. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least \$41 million on the CMS *69 program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., [Health & Saf. Code](#), § 1442.5, former subd. (c), [Welf. & Inst. Code](#), §§ 10000, 17000) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code](#), § 17000, enacted in 1965, rather than the 1982 legislation, and since [Cal. Const.](#), art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code](#), § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While [Welf. & Inst. Code](#), § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of [Welf. & Inst. Code](#), § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with

George, C. J., Mosk, and Baxter, JJ., Anderson, J.,^{*} and Aldrich, J.,[†] concurring. Dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.

***70** Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, [Cal. Const., art. XIII B, § 6](#), essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

(2a, 2b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.

The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to

the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3)

Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.

The power of superior courts to perform mandamus review of administrative decisions derives in part from [Cal. Const., art. VI, § 10](#). ***71** That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

(4)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was [Welf. & Inst. Code, § 17000](#), enacted in 1965, rather than the 1982 legislation, and since [Cal. Const., art. XIII B, § 6](#), did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, [Welf. & Inst. Code, § 17000](#), requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided

prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules ([Welf. & Inst. Code, § 14000.2](#)), and Medi-Cal was administered by state departments and agencies.



[See 9 Witkin, *Summary of Cal. Law* (9th ed. 1989) *Taxation*, § 123.]

(5a, 5b)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards-- *72 Eligibility.


In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While [Welf. & Inst. Code, § 17001](#), confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of [Welf. & Inst. Code, § 17000](#) (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although [Welf. & Inst. Code, § 17000](#), does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under [Welf. & Inst. Code, § 17000](#). The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would

have taken corrective action if it disagreed. (Disapproving

 *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944 [ 203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under [Welf. & Inst. Code, § 17000](#), extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [Welf. & Inst. Code, § 17000](#), but do not qualify for Medi-Cal.)

(6)


Public Aid and Welfare § 4--County Assistance--Counties' Discretion.


Counties may exercise their discretion under [Welf. & Inst. Code, § 17001](#) (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose ( [Gov. Code, § 11374](#)). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. *73

(7)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. [Welf. & Inst. Code, § 17000](#), mandates that medical care be provided to indigents, and [Welf. & Inst. Code, § 10000](#), requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing [Welf. & Inst. Code, § 17000](#), have

held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, [Health & Saf. Code, § 1442.5](#), former subd. (c), also spoke to the level of services that counties had to provide under [Welf. & Inst. Code, § 17000](#), requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving  [Cooke v. Superior Court \(1989\) 213](#)

[Cal.App.3d 401](#) [ [261 Cal.Rptr. 706](#)] to the extent it held that [Health & Saf. Code, § 1442.5](#), former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county *74 had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, [Welf. & Inst. Code, former § 16990, subd. \(a\)](#), did not mandate a minimum funding requirement. Nor did [Welf. & Inst. Code, former § 16991, subd. \(a\)\(5\)](#), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under



 [Welf. & Inst. Code, § 16703](#), for 1988-1989. Nothing

about this requirement imposed on the county a minimum funding requirement.

(9)

State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.

In a county's action against the state to determine the county's rights under [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under [Code Civ. Proc., § 1085](#), was not an improper vehicle for challenging the commission's

position. Mandamus under  [Code Civ. Proc., § 1094.5](#), commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under [Code Civ. Proc., § 1085](#), as one brought under  [Code Civ. Proc., § 1094.5](#), and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. *75

COUNSEL

Daniel E. Lungren, Attorney General, Charlton G. Holland III, Assistant Attorney General, John H. Sanders and Richard T. Waldow, Deputy Attorneys General, for Cross-defendants and Appellants.

Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

CHIN, J.

[Section 6 of article XIII B of the California Constitution \(section 6\)](#) requires the State of California (state), subject

to certain exceptions, to “provide a subvention of funds to reimburse” local governments “[w]henver the Legislature or any state agency mandates a new program or higher level of service” In this action, the County of San Diego (San Diego or the County) seeks reimbursement under [section 6](#) from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see [Welf. & Inst. Code, § 14063](#))¹ because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted [section 6](#), the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See [Kinlaw v. State of California](#) (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks *76 reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal “mandate[d] a new program or higher level of service” within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, “the indigent in California were provided health care services through a variety of different programs and institutions.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p.

3 (Preliminary Report).) County hospitals “provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from” other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established “a program of basic and extended health care services for recipients of public assistance and for medically indigent persons.” ([Morris v. Williams](#) (1967) 67 Cal.2d 733, 738

[63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*); [id.](#) at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It “represent[ed] California's implementation of the

federal Medicaid program ([42 U.S.C. §§ 1396-1396v](#)), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]” ([Robert F. Kennedy Medical Center v. Belshé](#) (1996) 13 Cal.4th 748, 751 [[55 Cal.Rptr.2d 107, 919 P.2d 721](#)] (*Belshé*)). “[B]y meeting the requirements of federal law,” Medi-Cal “qualif[ied] California for the receipt of federal funds made available


under title XIX of the Social Security Act.” ([Morris](#), *supra*, 67 Cal.2d at p. 738.) “Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients” (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, [Pub.L. No. 89-97, § 121\(a\), 79 Stat. 286](#), reprinted in 1965 U.S. Code *77 Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements “with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources”].)²

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of

1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report.) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were “not sufficient to meet the cost of health care.” (*Morris, supra*, 67 Cal.2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, “a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of” the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*).) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: “The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council “to study this problem and report its findings to the Legislature no later than March 1, 1967.” (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would “leave them with [s]ufficient funds to provide hospital care for those persons not eligible for Medi-Cal.” (*Hall, supra*, 23 Cal.App.3d at p. 1061, fn. omitted.) Former section 14150.1, *78 which was known as the “county option” or the “option plan,” required a county “to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care.”³ (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*).) Under the county option, “the state agreed to assume all county health care costs ... in excess of” the county's payment.

 (*Id.* at p. 586.) It “made no distinction between ‘linked’ and ‘nonlinked’ persons,” and “simply guaranteed a medical cost ceiling to counties electing to come within the option plan.” (*Ibid.*) “Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state.” (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option “guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs.”⁴ (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a “significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately \$76 million for care of non-Medi-Cal indigents in county hospitals.” (Preliminary Rep., *supra*, at p. 31.) These state funds paid “costs that would otherwise have been borne by counties through increases in property taxes.” (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) “[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the ‘option’ plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons *79 served by a county within the ‘option’ plan.” (*Lackner, supra*, 97 Cal.App.3d at p. 589; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults “who [were] financially unable to pay for their medical care.” (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met “the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient.” (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring “approximately 800,000 additional medically needy Californians” into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as “[n]oncategorically related needy person [s].” (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as “medically indigent person[s]” (MIP's) and provided

them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (Kinlaw, *supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible *80 under the MIP category (adult MIP's or Medically Indigent Adults).⁵ (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; Cooke v. Superior Court (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (Cooke).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section

14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)






After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.


II. Unfunded Mandates


Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (County of Fresno v. State of California (1991) 53 Cal.3d 482, 486 [280 Cal.Rptr. 92, 808 P.2d 235] (County of Fresno).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (San Francisco Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal.4th 571, 574 [7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (City of Sacramento v. State of California (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202] (County of Los Angeles).)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It

provides in relevant part: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments.

( *County of Fresno, supra*, 53 Cal.3d at p. 487.) Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are “ill equipped” to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. ( *County of Fresno, supra*, 53 Cal.3d at p. 487;  *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 “[e]ssentially” requires the state “to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]” ( *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [ 15 Cal.Rptr.2d 547].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (*Gov. Code*, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (*Gov. Code*, §§ 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (*Gov. Code*, § 17557.) The local agency must then follow certain statutory procedures to *82 obtain reimbursement. (*Gov. Code*, § 17558 et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file “an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” (*Gov. Code*, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under  section 1094.5 of the Code of Civil Procedure. (*Gov. Code*, § 17559.)

 *Government Code* section 17552 declares that these provisions “provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6”

III. Administrative and Judicial Proceedings

A. The Los Angeles Action

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.⁶ (*Kinlaw, supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a “pre-existing duty” to provide medical care to the medically indigent under section 17000. That section provides in relevant part: “Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it “was enacted prior to January 1, 1975” Finally, the Commission found no mandate because the 1982 legislation “neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors” pursuant to section 17001.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory *83 writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)⁷ In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this

agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand.⁸

B. The San Diego Action

1. Administrative Attempts to Obtain Reimbursement

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (*Gov. Code*, § 17525.) On April 12, the Controller returned the invoice “without action,” stating that “[n]o appropriation has been given to this office to allow for reimbursement” of medical costs for adult MIP’s and noting that litigation was pending regarding the state’s reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. *84

2. Court Proceedings

Responding to San Diego’s notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego “from taking any action to reduce or terminate” the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under *Code of Civil Procedure* section 1085 against the state, the Commission, and various state officers.⁹ The cross-complaint alleged that, by excluding adult MIP’s from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse

San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had “previously denied the claims of other counties, ruling that county medical care programs for [adult MIP’s] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs.” “Under these circumstances,” San Diego asserted, “denial of the County’s claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act.”

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it “is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991”; (2) that section 6 requires the state “to fully fund the CMS Program” (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the *85 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.


In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego’s cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego’s CMS program, granted San Diego’s request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing

to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate.¹⁰ The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San ***86** Diego's mandate claim. According to the  state, in *Kinlaw, supra*, 54 Cal.3d 326, we “unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time.” Thus, if a test claim is pending, “other potential claims must be held in abeyance” Applying this principle, the state asserts that, since “the test claim litigation was pending” in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, “the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein.”

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which “are the exclusive means” for determining and enforcing

the state's section 6 obligations, “are available only to local agencies and school districts directly affected by a state mandate” (*Kinlaw, supra*, 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 “is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services.” (*Id.* at p. 334.) We concluded that “[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues.” (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing [Government Code section 17500](#), we explained that “the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process.” (*Kinlaw, supra*, 54 Cal.3d at p. 331.) Thus, the governing statutes “establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.” (*Id.* at p. 333.) Specifically, “[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies” (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: “The test claim by the County of Los Angeles was filed prior to that ***87** proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [*Gov. Code*,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues Los Angeles County declined a request from Alameda County that it be included in the test claim” (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of “the express purpose[s]”

of the statutory procedure: to “avoid[] multiple proceedings ... addressing the same claim that a reimbursable state mandate has been created.” (*Kinlaw, supra*, 54 Cal.3d at p. 333.)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from article VI, section 10 of the California Constitution. (¶ *Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [¶ 93 Cal.Rptr. 234, 481 P.2d 242]; ¶ *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [¶ 20 Cal.Rptr.2d 246].) That section gives “[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus” (Cal. Const., art. VI, § 10.) “The jurisdiction thus vested may not lightly be deemed to have been destroyed.” (¶ *Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [¶ 196 P.2d 884], overruled on another ground in ¶ *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [¶ 95 Cal.Rptr. 197, 485 P.2d 261].) “While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.” (¶ *Garrison, supra*, at p. 436.) (2b) Here, we find no statutory provision that either “expressly provide[s]” (¶ *id.* at p. 435) or otherwise “clearly intend[s]” (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: “Where any trust *88 has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust.” (Stats. 1889, ch. 228, § 1, p. 337.) We explained

that, under this section, “the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust.” (*Dowdall, supra*, 183 Cal. at p. 353.) However, we further observed that “the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof.” (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction “is not without jurisdiction.” (*Dowdall, supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; ¶ *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) [“rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void”]; ¶ *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 718 [¶ 53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in *89 deference

to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits[.])¹¹

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court.¹² (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (🚩 *Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [🚩 21 Cal.Rptr.2d 453]; 🚩 *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (🚩 *County of Contra Costa, supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also 🚩 *County of Contra Costa, supra*, 177 Cal.App.3d at pp. 77-78.) *90

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement" Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in 🚩 *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar, supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations]" (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar, supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (🚩 *Lucia Mar, supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6" (*Lucia Mar, supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state

from shifting to local agencies the financial responsibility for providing public services in view of the [] *91 restrictions on the taxing and spending power of the local entities” that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar*, *supra*, at pp. 835-836.) “The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6” (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* “that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—an obligation the school districts did not have at the time article XIII B was adopted—it calls for [the school districts] to support a 'new program' within the meaning of section 6.” (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us “are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs.” (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) “Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties.” (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).)

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* “is inapposite.” The school program at issue in *Lucia Mar* “had been wholly operated, administered and financed by the state” and “was unquestionably a 'state program.' ” “ ‘In

contrast,’ ” the state argues, “ ‘the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for’ ” it under section 17000 and its predecessors.¹³ The courts have interpreted section 17000 as “impos[ing] upon counties a duty to *92 provide hospital and medical services to indigent residents. [Citations.]” (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [*254 Cal.Rptr.* 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to “mandates enacted prior to January 1, 1975,” there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties “complete discretion” in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, “would erroneously expand the definition of what constitutes a 'new program' under” section 6. As we explain, we reject these arguments.

A. The Source and Existence of San Diego's Obligation

1. The Residual Nature of the Counties' Duty Under Section 17000

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That section creates “the residual fund” to sustain indigents “who cannot qualify ... under any specialized aid programs.” (*Mooney*, *supra*, 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [*223 Cal.Rptr.* 716] [general assistance “is a program of last resort”].) By its express terms, the statute requires a county to relieve and support indigent persons *only* “when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” (§ 17000.)¹⁴ “Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced” (*Kinlaw*, *supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.).)¹⁵

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it initially required counties to *93 contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs.¹⁶

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under [section 17000](#). After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under [section 17000](#). It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under [section 17000](#); the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of [MIP's] to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons.*" (*Id.* at p. 571, italics added.) *94

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of [section 17000](#). Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program" (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred.*" (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics

added.) If, as the state contends, counties had always been responsible under [section 17000](#) for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under [section 17000](#), counties had always borne the responsibility for providing medical care to adult MIP's.

2. The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal

To support its argument that it never relieved counties of their obligation under [section 17000](#) to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." *95 (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "[Section 14150 of the Welfare and Institutions Code](#) is repealed." (Stats. 1979, ch. 282, § 74,

p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: “The adoption of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.” (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, “[u]nder existing law, the counties pay a specified annual share of the cost of” Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that “[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal” (*Ibid.*) The 1979 legislation, the digest continued, “provid[ed] for state assumption of all county costs of Medi-Cal.” (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as “temporary.” In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as “a long-term local financing measure” (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which “[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State” (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: “Item 287 includes the state cost of ‘buying out’ the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated \$418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs.*” (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal “only temporarily.”





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3. State Administration of Medical Care for Adult MIP's Under Medi-Cal



The state argues that, unlike the school program before us in [Lucia Mar](#), *supra*, 44 Cal.3d 830, which “had been wholly operated, administered and financed by the state,” the program for providing medical care to adult MIP's “‘has never been operated or administered by’” the state. According to the state, Medi-Cal was simply a state “reimbursement program” for care that [section 17000](#) required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was “to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) “In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program.” ([California Medical Assn. v. Brian](#) (1973) 30 Cal.App.3d 637, 642 [[106 Cal.Rptr. 555](#)].) Medi-Cal “provided for reimbursement to both public and private health care providers for medical services rendered.” ([Lackner](#), *supra*, 97 Cal.App.3d at p. 581.) It further directed that, “[i]nsofar as practical,” public assistance recipients be afforded “free choice of arrangements under which they shall receive basic health care.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to “prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs.” (§ 14000.2.) Thus, “Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility).” (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons “a choice of medical facilities for treatment,” Medi-Cal placed county health care providers “in competition with private hospitals.” ([Hall](#), *supra*, 23 Cal.App.3d at p. 1061.)



Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203;

 *Belshé, supra*, 13 Cal.4th at p. 751;  *Morris, supra*, 67 Cal.2d at p. 741; Summary of Major Events,  *supra*, at pp. 2-3, 15.) Thus, “[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State *97 responsibility under the Medi-Cal program. [Citation.]” ( *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal “shifted to the state” the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from  *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [ 38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that Penal Code section 987.9, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 “to reimburse counties for their costs under” the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because Penal Code section 987.9 merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates, supra*, at pp. 814-816.) Thus, the court stated, “[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program” under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates, supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under  *Lucia Mar, supra*, 44 Cal.3d 830, the state's “decision not to reimburse the counties for their programs under [Penal Code] section 987.9” imposed a new program by shifting financial responsibility for the program to counties. ( *County of Los Angeles v. Commission on State Mandates,*

supra, 32 Cal.App.4th at p. 817.) The court explained: “In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility.” (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a *98 method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced.¹⁷

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under section 17000. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: “transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public.”¹⁸ ( *County of Los Angeles, supra*, 43 Cal.3d at p. 56; see also  *City of Sacramento v. State of California, supra*, 50 Cal.3d at p. 68 [A “central purpose” of section 6 was “to prevent the state's transfer of the *cost of government* from *itself* to the local level.”].) Accordingly, we view the 1982 legislation as having mandated a “ ‘new program’ ” on counties by “compelling them to accept financial responsibility in whole or in part for a program,” i.e., medical care for adult MIP's, “which was funded entirely by the state before the advent of article XIII B.”¹⁹ (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. “County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further” (*Kinlaw, supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.)) As we have previously explained,

the voters, recognizing that articles XIII A and XIII B left counties “ill equipped” to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (¶ *99 *County of Los Angeles, supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, “focus[] on one phase in th[e] shifting pattern of [financial] arrangements” between the state and the counties. Under section 6, the state simply cannot “compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B”²⁰ (*Lucia Mar, supra*, 44 Cal.3d at p. 836.)

B. County Discretion to Set Eligibility and Service Standards

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds “only on those whom the *county* deems eligible *under § 17000*,” “gave the county exclusive authority to determine the level and type of benefits it would provide,” and required counties “to include [adult MIP’s] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**”²¹ (Original emphasis.) According to the state, under section 17001, “[t]he counties have *100 complete discretion over the determination of eligibility, scope of benefits and how the services will be provided.”²²

The state exaggerates the extent of a county’s discretion under section 17001. It is true “case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]” (¶ *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*).) However, there are “clear-cut limits” to this discretion. (*Ibid.*) (6) The counties may exercise their discretion “only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency’s regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (¶ Gov. Code, § 11374.)” (*Mooney, supra*, 4 Cal.3d at p. 679.) Thus, the counties’ eligibility

and service standards must “carry out” the objectives of section 17000. (*Mooney, supra*, 4 Cal.3d at p. 679; see also ¶ *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [¶ 261 Cal.Rptr. 545]; § 11000 [“provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program”].) County standards that fail to carry out section 17000’s objectives “are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.” (*Morris, supra*, 67 Cal.2d at p. 737.) Courts, which have “‘final responsibility for the interpretation of the law,’ ” must strike them down. (*Id.* at p. 748.) Indeed, despite the counties’ statutory discretion, “courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]” (¶ *Robbins, supra*, 38 Cal.3d at p. 212.)

1. Eligibility

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP’s. As we emphasized in *Mooney*, section 17000 requires counties to relieve and support “‘all indigent persons lawfully resident therein, ”when such persons are not supported and relieved by their relatives“ or by some other means.’ ” (*Mooney, supra*, 4 Cal.3d at p. 678; see also ¶ *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [¶ 130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory “purpose” of division 9 of the Welfare and Institutions Code, which includes *101 section 17000, “is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed.” (Italics added.) Thus, counties have no discretion to refuse to provide medical care to “indigent persons” within the meaning of section 17000 who do not receive it from other sources.²³ (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not “defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support”]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly “voided county ordinances which have attempted to redefine eligibility standards set by state statute”].)

Although [section 17000](#) does not define the term “indigent persons,” the 1982 legislation made clear that all adult MIP’s fall within this category for purposes of defining a county’s obligation to provide medical care.²⁴ As part of its exclusion of adult MIP’s, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c) (1), to require that a county board of supervisors, in applying for MISA funds, “assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to [Section 17000](#) ...” (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that “[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided.” (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, “counties had to include [Medically Indigent Adults] in their [[section](#)] 17000 eligibility” standards. By requiring counties to make all adult MIP’s eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under [section 17000](#), the Legislature established that all adult MIP’s are “indigent persons” for purposes of the counties’ duty to provide medical care under [section 17000](#). Otherwise, the counties could not comply with their promise. *102

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it “operative only until June 30, 1985, unless a later enacted statute extends or deletes that date.”²⁵ As we have explained, the subdivision established that adult MIP’s are “indigent persons” within the meaning of [section 17000](#) for medical care purposes. As we have also explained, [section 17000](#) requires counties to relieve and support *all* “indigent persons.” Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP’s from eligibility for medical services, [section 17000](#) has that effect.²⁶





Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP’s as “indigent persons” within the meaning of [section 17000](#) for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal

program, which covered only categorically linked persons, it “declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered” by Medi-Cal, “whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs.” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties’ Medi-Cal cost share would not leave counties “with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal,” the Legislature also created the county option. (*Hall, supra*, 23 Cal.App.3d at p. 1061.) Through the county option, “the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases.” (*Lackner, supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all “indigent persons” entitled to medical care under [section 17000](#), and required the state to share in the financial responsibility for providing that care.

In adding adult MIP’s to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons “who [were] financially unable to pay for their medical care.” (Legis. Counsel’s Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This *103 description was consistent with prior judicial decisions that, for purposes of a county’s duty to provide “indigent persons” with hospitalization, had defined the term to include a person “who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support.” (*Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [*54 P.2d 510*].)

Moreover, the fate of amendments to [section 17000](#) proposed at the same time suggests that, in the Legislature’s view, the category of “indigent persons” entitled to medical care under [section 17000](#) extended even *beyond* those eligible for Medi-Cal as MIP’s. The June 17, 1971, version of Assembly Bill No. 949 amended [section 17000](#) by adding the following: “however, the health needs of such persons shall be met under [Medi-Cal].” (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: “The proposed amendment to [Section 17000](#), ... which would

have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid.” (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)





The Legislature's failure to amend [section 17000](#) in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal “did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal.” (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and “the history of state medical care programs.” (*Id.* at p. 570.) The opinion concluded: “The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under [section 17000](#), we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under [section 17000](#) to continue to provide services to those eligible under [section 17000](#) but not under [Medi-Cal].” (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. *104 ( *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829 [ 25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of [section 17000](#) and would have taken corrective action if it disagreed with that construction. ( *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [ 270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under [section 17000](#) to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are “indigent persons” under [section 17000](#)

for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population.²⁷

2. Service Standards

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. [Section 17000](#) requires in general terms that counties “relieve and support” indigent persons. [Section 10000](#), which sets forth the purpose of the division containing [section 17000](#), declares the “legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life,” so “as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society.” (§ 10000.) “[Section 17000](#), as authoritatively interpreted, mandates that medical care be provided to indigents and [section 10000](#) requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care” (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*).)

Courts construing [section 17000](#) have held that it “imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just *105 emergency care. [Citation.]” ( *County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [ 18 Cal.Rptr.2d 487]; see also  *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [ 40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge “before [it] renders medically necessary services to ... persons entitled to services under [Section 17000](#)”].) It further “ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall.” (*Tailfeather*, *supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that “[section 17000](#) requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health” (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke*, *supra*, 213 Cal.App.3d at page 404, which held that [section 17000](#) requires counties to provide “dental care sufficient to remedy substantial pain and infection.” (See also § 14059.5 [defining “[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent

significant illness or significant disability, or to alleviate severe pain”].)

During the years for which San Diego sought reimbursement, [Health and Safety Code section 1442.5](#), former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under [Welfare and Institutions Code section 17000](#).²⁸ As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people “is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county.” (Stats. 1974, ch. 810, § 3, p. 1765.) The express “purpose and intent” of the act that contained former subdivision (c) was “to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled.” (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,²⁹ former subdivision (c) “[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county.” (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.)

Summary Dig., p. 130; see also [Gardner v. County of Los Angeles](#), *supra*, 34 Cal.App.4th at p. 216; *106 [Board of Supervisors v. Superior Court](#), *supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided “be comparable to that enjoyed by the nonindigent”].³⁰ “For the 1990-91 fiscal year,” the Legislature qualified this obligation by providing: “nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs.” (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied

with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.³¹

VI. Minimum Required Expenditure

(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least \$41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on [Welfare and Institutions Code section 16990, subdivision \(a\)](#), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's “ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award.” *107

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at [Rev. & Tax. Code, § 30121 et seq.](#)). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services.

[Kennedy Wholesale, Inc. v. State Bd. of Equalization](#) (1991) 53 Cal.3d 245, 248, 254 [[279 Cal.Rptr. 325, 806 P.2d 1360](#)].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, “at a minimum,” to “maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year,” adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least \$41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds “for allocation to counties *participating in*” the program. (Stats. 1989, ch. 1331, § 10, p. 5436, *italics added*.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments “upon application of the county assuring that it will comply with” applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: “To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under [Section 17000](#) or reduce the scope of benefits compared to those which were in effect on November 8, 1988.” (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through [Revenue and Taxation Code section 30125](#), which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 “shall be used to supplement existing levels of service and not to fund existing levels of service.” (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to ***108** seek CHIP funds did so voluntarily.³² Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally “establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA).” (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under [section 16703](#) for fiscal year 1988-1989.³³ Nothing

about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a \$41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., §§ [10000](#), [17000](#), and [Health & Saf. Code, § 1442.5](#), former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. ***109**

VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under [Code of Civil Procedure section 1085](#) was an improper vehicle for challenging the Commission's position. It asserts that, under [Government Code section 17559](#), review by administrative mandamus under [Code of Civil Procedure section 1094.5](#) is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under [Code of Civil Procedure section 1085](#) because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. “[M]andamus pursuant to [\[Code of Civil Procedure\] section 1094.5](#), commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]” ([Woods v. Superior Court](#) (1981) 28 Cal.3d 668, 673-674 [[170 Cal.Rptr. 484, 620 P.2d 1032](#)].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under [Code of Civil Procedure section 1085](#) as one brought under [Code of Civil Procedure section 1094.5](#) and should deny a demurrer asserting that the wrong mandamus statute has been invoked. ([Woods, supra](#), 28 Cal.3d at

pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal" (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman, supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh, supra*, 14 Cal.App.4th at p. 1584.)

As the state concedes, even under *Code of Civil Procedure* section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. *110

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under *Code of Civil Procedure* section 170.6. We will not review this ruling, however, because it is reviewable only by writ of mandate under *Code of Civil Procedure* section 170.3, subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under *Code of Civil Procedure* section 904.1, subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.³⁴ (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256

Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment.

(*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc., supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees" This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least \$41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is *111 remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., *Health & Saf. Code*, § 1442.5, former subd. (c); *Welf. & Inst. Code*, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J., * and Aldrich, J., †]]]] concurred.

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new

program or higher level of service on any local government,” the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state “may, but need not,” provide such reimbursement *if the state mandate was enacted before January 1, 1975.* (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (Mooney v. Pickett (1971) 4 Cal.3d 669, 677-678 *112 [94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: “Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (Board of Supervisors v. Superior Court (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor “were provided in different ways and were funded by the state, county, and federal governments in varying amounts.” (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (42 U.S.C. § 1396 et seq.; see Morris v. Williams (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons “linked” to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (County of Santa Clara v. Hall (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called “noncategorically linked” persons, or “medically indigent persons.” (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (Id. at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) *113 Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of “medically indigent persons” that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties

through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category “to the extent that state funds are provided” (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that [Welfare and Institutions Code section 17000](#) imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of “medically indigent persons” from Medi-Cal eligibility mandated a “new program or higher level of service” within the meaning of [section 6 of article XIII B of the California Constitution](#), because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, [section 6](#) required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. *114 The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.


The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against

the state for reimbursement of the county's expenditures for medical care to the indigent.¹ The majority holds that the county is entitled to such reimbursement. I disagree.

II

[Article XIII B, section 6 of the California Constitution](#) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*” (Italics added.)²

Of importance here is [Welfare and Institutions Code section 17000](#) (hereafter sometimes [section 17000](#)). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Vilorio* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) [Section 17000](#) was enacted long before and has existed continuously since January 1, 1975, the date set forth in [subdivision \(c\) of section 6 of article XIII B of the California Constitution](#). Thus, [section 17000](#) falls within [subdivision \(c\)'s](#) language of “[l]egislative mandates enacted prior to January 1, 1975,” rendering it exempt from the reimbursement provision of [section 6](#).

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of “medically indigent persons” from Medi-Cal did not meet [California Constitution, article XIII B, section 6](#)'s requirement of imposing on local government “a new program or higher level of service,” and therefore did not entitle the counties to reimbursement from the state under [section 6 of article XIII B](#). The counties' legal obligation to provide medical care arises from [section 17000](#), not from the subsequently enacted *115 1982 legislation. The majority itself concedes that the 1982 legislation merely “trigger[ed] the counties' responsibility to provide medical care as providers of last resort under [section 17000](#).” (Maj. opn.,  *ante*, at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under [section](#)

17000 to furnish such care. (Cooke v. Superior Court (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; Madera Community Hospital v. County of Madera (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on *116 the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal

[that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id.*, § 10753.8, subd. (b).)


The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal.

(See Neary v. Regents of University of California (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees.*" (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources

prove insufficient to *117 reimburse the counties under [section 6 of article XIII B of the California Constitution](#) for the “new program or higher level of service” of providing medical care to the poor under [section 17000](#). In that event, the state may be required to modify this “new program or higher level of service” in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under [section 17000](#). A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file “in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement.” ([Gov. Code, § 17612, subd. \(c\)](#); see maj. opn.,  [ante](#), at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under [Welfare and Institutions Code section 17000](#) to provide medical care for the poor. As I have explained, the Legislature's assumption













thereafter of some of the resulting financial burden to the counties did not repeal [section 17000](#)'s mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.





I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing *118 and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their [section 17000](#) obligations to provide for the poor, and whether to continue to impose the obligations of [section 17000](#) on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under [section 17000](#), counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. *119




Footnotes



- * Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- * Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- † Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).
- 1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

- 2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, *The Medi-Cal Program: A Brief Summary of Major Events* (Mar. 1990) p. 1 (Summary of Major Events).)
- 3 Former section 14150.1 provided in relevant part: “[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)
- 4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, “a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals Financial responsibility for nonlinked individuals ... remained with the counties.” (📖 *Lackner, supra*, 97 Cal.App.3d at p. 581.)
- 5 In this opinion, the terms “adult MIP’s” and “Medically Indigent Adults” refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.
- 6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.
- 7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)
- 8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would “cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal” that “[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.” (📖 *Rev. & Tax. Code*, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.
- 9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to “the state” include these officers.
- 10 The judgment dismissed all of San Diego's other claims.

- 11 In  *Garamendi, supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.
- 12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."
- 13 "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." ( *Mooney v. Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)
- 14 See also  *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [ 122 P.2d 526] (construing former section 2500);  *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [ 212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support");  *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [ 196 Cal.Rptr. 602];  *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [ 128 Cal.Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").
- 15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on  *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and  *Cooke, supra*, 213 Cal.App.3d 401. (Dis. opn., post, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons "meeting all eligibility standards for the Medi-Cal program." ( *Madera, supra*, 155 Cal.App.3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera's* holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (*Madera, supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that "[t]he county obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera, supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. ( *Cooke, supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.
- 16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

- 17 Because  *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.
- 18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See  *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)
- 19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing [section 17000](#) programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See  *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)
- 20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under [section 17000](#) there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.
- 21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to [Section 17000](#) and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)
- 22 [Section 17001](#) provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."
- 23 We disapprove  *Bay General*, *supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under [section 17000](#) extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of [section 17000](#) but do not qualify for Medi-Cal.


- 24 Our conclusion is limited to this aspect of a county's duty under [section 17000](#). We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under [section 17000](#).
- 25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)
- 26 Given our analysis, we express no opinion about the statement in  [Cooke, supra, 213 Cal.App.3d at page 412, footnote 9](#), that the “life” of section 16704, subdivision (c)(3), “was implicitly extended” by the fact that the “paragraph remains in the statute despite three subsequent amendments to the statute”
- 27 Although asserting that nothing required San Diego to provide “all” adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not “indigent persons” under [section 17000](#). On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under [section 17000](#) extended even beyond adult MIP's. It asserts: “At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care.” (Original italics.)
- 28 The state argues that former subdivision (c) is irrelevant to our determination because, like [section 17000](#), it “predate[d] 1975.” Our previous analysis rejecting this argument in connection with [section 17000](#) applies here as well.
- 29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.
- 30 We disapprove [Cooke, supra, 213 Cal.App.3d at page 410](#), to the extent it held that [Health and Safety Code section 1442.5](#), former subdivision (c), was merely “a limitation on a county's ability to close facilities or reduce services provided in those facilities,” and was irrelevant absent a claim that a “county facility was closed [or] that any services in [the] county ... were reduced.” Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.
- 31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.
- 32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would “[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service” Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.
- 33 Former section 16991, subdivision (a)(5), provided in full: “If the sum of funding that a county received from its allocation pursuant to  [Section 16703](#), the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to  [Section 16703](#) in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the

sum of funding received from its allocation, pursuant to  [Section 16703](#) and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to  [Section 16703](#) in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.” (Stats. 1989, ch. 1331, § 9, p. 5428.)

34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn.,  [ante](#), at pp. 86-90.)

2 [Section 6 of article XIII B](#) pertains to two types of mandates: new programs and higher levels of service. The words “such subvention” in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.



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53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92

Supreme Court of California

COUNTY OF FRESNO, Plaintiff and Appellant,

v.

THE STATE OF CALIFORNIA et

al., Defendants and Respondents.

No. S015637.

Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under [Cal. Const., art. XIII B, § 6](#) (state must provide subvention of funds to reimburse local governments for costs of state-mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under [Gov. Code, § 17556, subd. \(d\)](#), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that [Gov. Code, § 17556, subd. \(d\)](#), was facially constitutional under [Cal. Const., art. XIII B, § 6](#). It held [art. XIII B](#) was not intended to reach beyond taxation, and [§ 6](#) was included in [art. XIII B](#) in recognition that [Cal. Const., art. XIII A](#), severely restricted the taxing powers of local governments. It held that [art. XIII B, § 6](#) was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only

when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that [Gov. Code, § 17556, subd. \(d\)](#), effectively construed the term “cost” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, *483 Panelli, Kennard, JJ., and Best (Hollis G.), J., * concurring. Separate concurring opinion by Arabian, J.)

HEADNOTES**Classified to California Digest of Official Reports**

(1)

State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.

In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by [Cal. Const., art. XIII B, § 6](#), to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act ([Health & Saf. Code, § 25500 et seq.](#)), the trial court properly found that [Gov. Code, § 17556, subd. \(d\)](#) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. [Cal. Const., art. XIII B](#), was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. [Gov. Code, § 17556, subd. \(d\)](#), effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound.

Accordingly, [Gov. Code, § 17556, subd. \(d\)](#), is facially constitutional under [Cal. Const., art. XIII B, § 6](#).

[See [Cal.Jur.3d \(Rev\)](#), Municipalities, § 361; 9 [Witkin, Summary of Cal. Law](#) (9th ed. 1988) Taxation, § 124.]



COUNSEL

Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.


B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. *484

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.


MOSK, J.

We granted review in this proceeding to decide whether  [section 17556](#), subdivision (d), of the  [Government Code](#) ([section 17556\(d\)](#)) is facially valid under [article XIII B, section 6](#), of the [California Constitution](#) ([article XIII B, section 6](#)).

[Article XIII B, section 6](#), provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”


The Legislature enacted [Government Code](#) sections 17500 through 17630 to implement [article XIII B, section 6](#). ([Gov. Code](#), § 17500.) It created a “quasi-judicial body” (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to “hear and decide upon [any] claim” by a local government that the local government “is entitled to be reimbursed by the state for costs” as required by [article XIII B, section 6](#). ([Gov. Code](#), § 17551, subd. (a).) It defined “costs” as “costs mandated by the state”—“any increased costs” that the local government “is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program” within the meaning of [article XIII B, section 6](#). ([Gov. Code](#), § 17514.) Finally, in  [section 17556\(d\)](#) it declared that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy



service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.”

For the reasons discussed below, we conclude that  [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#). *485



I. Facts and Procedural History



The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). ([Health & Saf. Code](#), § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)


The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called “test” or initial claim with the commission ([Gov. Code](#), § 17521) seeking reimbursement from the State of California (State) under [article XIII B, section 6](#). After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a “new program”; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs,  [section 17556\(d\)](#) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that  [section 17556\(d\)](#) is unconstitutional under [article XIII B, section 6](#). While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a “program” under the rationale of  [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.





After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter

alia, that mandate under  [Code of Civil Procedure section 1094.5](#) was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that  [section 17556\(d\)](#) is constitutional under [article XIII B, section 6](#). It did not address the question whether the Act constituted a “program” under *County of Los Angeles*. Judgment was entered accordingly.


The Court of Appeal affirmed. It held the Act did indeed constitute a “program” under  [County of Los Angeles, supra](#), 43 Cal.3d 46. It also held  [section 17556\(d\)](#) is constitutional under [article XIII B, section 6](#). *486

(1) We granted review to decide a single issue, i.e., whether  [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new “special taxes.” ( [Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization](#) (1978) 22 Cal.3d 208, 231-232 [ 149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. ( [City of Sacramento v. State of California](#) (1990) 50 Cal.3d 51, 59, fn. 1 [ 266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)




At the November 6, 1979, Special Statewide Election, [article XIII B](#) was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

“Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.” ( [City of Sacramento, supra](#), 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide “permanent protection

for taxpayers from excessive taxation” and “a reasonable way to provide discipline in tax spending at state and local levels.” (See [County of Placer v. Corin](#) (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an “appropriations limit” for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no “appropriations subject to limitation” in excess thereof (*id.*, § 2). (See [County of Placer v. Corin, supra](#), 113 Cal.App.3d at p. 446.) It defines the relevant “appropriations subject to limitation” as “any authorization to expend during a fiscal year the proceeds of taxes” (Cal. Const., art. XIII B, § 8, subd. (b).) It defines “proceeds of taxes” as including “all tax revenues and the proceeds to ... government from,” inter alia, “regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by [government] in providing the regulation, product, or service” (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such “excess” proceeds from “licenses,” “charges,” and “fees” “are but *487 taxes” for purposes here. ([County of Placer v. Corin, supra](#), 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 “would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.” (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

[Section 6](#) was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See  [County of Los Angeles, supra](#), 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see  [Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830, 836, fn. 6 [ 244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such

revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context [section 6 of article XIII B](#) requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of [section 17556\(d\)](#) under [article XIII B, section 6](#), can be readily resolved. As noted, the statute provides that “The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that” the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” Considered within its context, the section effectively construes the term “costs” in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).

The County argues to the contrary. It maintains that [section 17556\(d\)](#) in essence creates a new exception to the reimbursement requirement of [article XIII B, section 6](#), for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting [section 17556\(d\)](#) the Legislature created a new exception to the reimbursement requirement of [article XIII B, section 6](#). As explained, the Legislature effectively—and properly—construed the term “costs” as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, [section 17556\(d\)](#) is indeed inconsistent with [article XIII B, section 6](#). Its contention is in substance as follows: the source of [section 17556\(d\)](#) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State

Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into [article XIII B, section 6](#), but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a “self-financing” provision; and such an intent is confirmed by the “legislative history” set out at page 55 in *Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent*: “the state may not arbitrarily declare that it is not going to comply with [Section 6](#) ... if the state provides new compensating revenues.”


In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See [County of Los Angeles, supra](#), 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the “legislative history” cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument:

“Based on the authority of [[section 17556\(d\)](#)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program.” *489

The County appears to be making one or both of the following arguments: (1) the commission applies [section 17556\(d\)](#) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of [section 17556\(d\)](#) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of [section 17556\(d\)](#).

III. Conclusion


For the reasons set forth above, we conclude that  [section 17556\(d\)](#) is facially constitutional under [article XIII B, section 6](#).



The judgment of the Court of Appeal is affirmed.


Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J., * concurred.



ARABIAN, J.,

Concurring.






I concur in the determination that  [Government Code section 17556, subdivision \(d\)](#)¹ ([section 17556\(d\)](#)), does not offend [article XIII B, section 6](#), of the California Constitution ([article XIII B, section 6](#)). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

[Article XIII B, section 6](#), unequivocally commands that “the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service” except as specified therein. [Article XIII B](#) does not define this reference to “costs.” (See [Cal. Const., art. XIII B, § 8](#).) Rather, the Legislature assumed the task of explicating the related concept of “costs mandated by the state” when it created the Commission on State Mandates and enacted procedures intended to implement [article XIII B, section 6](#), more effectively. (See [§ 17500 et seq.](#)) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving [article XIII B, section 6](#) ( [§ 17556, subds. \(a\), \(c\), & \(g\)](#); see [§ 17514](#)), while others are strictly of legislative formulation and derive from [*490](#) former Revenue and Taxation Code section 2253.2. ( [§ 17556, subds. \(b\), \(d\), \(e\), & \(f\).](#))

The majority find  [section 17556](#) valid notwithstanding the mandatory language of [article XIII B, section 6](#), based on the circular and conclusory rationale that “the Legislature

effectively—and properly—construed the term ‘costs’ as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach.” (Maj. opn., *ante*, at p. 488*ante*, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word “except” should not be necessary to construe the result for what it clearly is. In this circumstance, “I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck.” ( [In re Deborah C.](#) (1981) 30 Cal.3d 125, 141 [ [177 Cal.Rptr. 852, 635 P.2d 446](#)] (conc. opn. by Mosk, J.).)

Of at least equal importance, [section 17500 et seq.](#) constitutes a legislative implementation of [article XIII B, section 6](#). As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of [article XIII B, section 6](#), to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. “[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand.” ( [Rose v. State of California](#) (1942) 19 Cal.2d 713, 723 [ [123 P.2d 505](#)]; see also  [County of Los Angeles v. State of California](#) (1987) 43 Cal.3d 46, 58 [ [233 Cal.Rptr. 38, 729 P.2d 202](#)].) To this end, it is a fundamental premise of our form of government that “the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden” ( [People v. Coleman](#) (1854) 4 Cal. 46, 49.) “Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people’s right of initiative and referendum, is vested in the [*491](#)

Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (¶ *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [¶ 97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel*, *supra*, 37 Cal.2d at p. 101; ¶ *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [¶ 57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see ¶ Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. ¶ *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505

[¶ 246 Cal.Rptr. 21] ["'fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]'"]; ¶ *Terminal Plaza Corp. v. City* *492 and *County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [¶ 223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See ¶ *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [¶ 149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (¶ *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 61; ¶ *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [¶ 211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at p. 56; see ¶ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [¶ 266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to

The self-executing nature of article XIII B does not alter this analysis. “It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]” (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) “ ‘ Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it.” [Citations.] ’ ” (*Id.*, at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not “merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly.” (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates

“[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.' [Citation.]” (Hunt v. Mayor & Council of Riverside (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) *494

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.³ Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the diverse voices of the people, for such is the nature of our office. ***495**

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

- * Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.
- 1 Unless otherwise indicated, all further statutory references are to the Government Code.
- 2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 454 [“Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]”].)
- 3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel*, *supra*, 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside*, *supra*, 31 Cal.2d 619.



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Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464REDEVELOPMENT AGENCY OF THE CITY
OF SAN MARCOS, Plaintiff and Appellant,
v.
CALIFORNIA COMMISSION ON STATE
MANDATES, Defendant and Respondent;
CALIFORNIA DEPARTMENT OF
FINANCE, Intervener and Respondent.

No. D026195.

Court of Appeal, Fourth District, Division 1, California.
May 30, 1997.**SUMMARY**

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under [Gov. Code, § 17550 et seq.](#) (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to [Health & Saf. Code, §§ 33334.2 and 33334.3](#), of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [Cal. Const., art. XIII B, § 6](#). The trial court found that the source of funds used by the agency was exempt, under [Health & Saf. Code, § 33678](#), from the scope of [Cal. Const., art. XIII B, § 6](#). (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under [Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the

source of funds used by the agency was exempt ^{*977} from the scope of [Cal. Const., art. XIII B, § 6](#). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, §§ 33334.2 and 33334.3](#). (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

HEADNOTES**Classified to California Digest of Official Reports**

(1)

State of California § 11--Fiscal Matters--Subvention: Words, Phrases, and Maxims--Subvention.

"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2)

State of California § 11--Fiscal Matters--Subvention--Judicial Rules.

Under [Gov. Code, § 17559](#), review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under [Cal. Const., art. XIII B, § 6](#), is a question of law. On appellate review, the following standards apply: [Gov. Code, § 17559](#), governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions

about the meaning and effect of constitutional and statutory provisions.

(3a, 3b)

State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.

The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its low and moderate-income housing fund pursuant to [Health & Saf. Code, §§ 33334.2 and 33334.3](#), which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under [Health & Saf. Code, § 33678](#), which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of [Cal. Const., art. XIII B, § 6](#) (subvention). Although [Cal. Const., art. XIII B, § 6](#), does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of [Health & Saf. Code, §§ 33334.2 and 33334.3](#).

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4)

Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.

The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

(5)

State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.

The goal of [Cal. Const., arts. XIII A and XIII B](#), is to protect California residents from excessive taxation and government spending. A central purpose of [Cal. Const., art. XIII B, § 6](#) (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL

Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.

Gary D. Hori for Defendant and Respondent. *979

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

HUFFMAN, J.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) ([Gov. Code, § 17550 et seq.](#)), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to [Health and Safety Code](#)¹ [sections 33334.2 and 33334.3](#). Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1)(See **fn. 2**)The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under [article XIII B of the California Constitution, section 6](#) (hereafter [section 6](#); all further references to articles are to the California Constitution).² ([Cal. Const., art. XVI, § 16](#); [§ 33670](#).)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission.

([Code Civ. Proc., § 1094.5](#); [Gov. Code, § 17559](#).) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to [section 33678](#) from the

scope of [section 6](#), as not constituting “proceeds of taxes” which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for low and moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of [section 6](#), and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. *980

I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under [section 6](#). (*Gov. Code, § 17500 et seq.*)³ The Commission hearing consisted of oral argument on the points and authorities presented.

(2) Under [Government Code section 17559](#), review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. “The determination whether the statutes here at issue established a mandate under [section 6](#) is a question of law. [Citation.]” (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: “[Government Code section 17559](#) governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]” (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set

forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: “Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which ‘imposes a limit on the power of state and local governments to *981 adopt and levy taxes. [Citation.]’ [Citation.] The next year, the voters added article XIII B to the Constitution, which ‘impose[s] a complementary limit on the rate of growth in governmental spending.’ [Citation.] These two constitutional articles ‘work in tandem, together restricting California governments’ power both to levy and to spend for public purposes.’ [Citation.] Their goals are ‘to protect residents from excessive taxation and government spending. [Citation.]’ [Citation.]” (*County of San Diego v. State of California, supra*, 15 Cal.4th at pp. 80-81.)

[Section 6, part of article XIII B](#) and the provision here at issue, requires that whenever the Legislature or any state agency mandates a “new program or higher level of service” on any local government, “ ‘the state shall provide a subvention of funds to reimburse such local government for *the costs of such program* or increased level of service’ ” (*County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here.⁴

In *County of San Diego v. State of California, supra*, 15 Cal.4th at page 81, the Supreme Court explained that [section 6](#) represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California, supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of [sections 33334.2 and 33334.3](#), requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (**982 Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100,

106 [211 Cal.Rptr. 133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: “Redevelopment agencies finance real property improvements in blighted areas. Pursuant to [article XVI, section 16 of the Constitution](#), these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law ([Health & Saf. Code, § 33000 et seq.](#)). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. ([Health & Saf. Code, §§ 33640, 33641, 33670, 33675](#)). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. ([Cal. Const., art. XVI, § 16.](#))” (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].)⁵

In *Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting [section 33678](#), the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute “proceeds of taxes” subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency*, *supra*, at p. 1019).⁶ This ruling was based on [section 33678](#), providing in pertinent part: “This section implements and fulfills the intent ... of Article XIII B and [*983 Section 16 of Article XVI of the California Constitution](#). *The allocation and payment to an agency of the portion of taxes specified in [subdivision \(b\) of Section](#)*

33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ... or any statutory provision enacted in implementation of Article XIII B. The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.” (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined “proceeds of taxes” in this way: “Under [article XIII B](#), with the exception of state subventions, the items that make up the scope of ‘proceeds of taxes’ concern charges levied to raise *general revenues* for the local entity. ‘Proceeds of taxes,’ in addition to ‘all tax revenues’ includes ‘proceeds ... from ... regulatory licenses, user charges, and user fees [only] to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....’ (§ 8, subd. (c).) (Italics added.) Such ‘excess’ regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] We conclude ‘proceeds of taxes’ generally contemplates only those impositions which raise general tax revenues for the entity.” (Italics added.)⁷

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under [section 6](#) as a “cost” of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and [*984](#) accordingly we need not discuss the alternate grounds of decision stated by the Commission.⁸

III. Housing Fund Allocations: Reimbursable Costs?

1. Arguments

The Agency takes the position that the language of [section 33678](#) is simply inapplicable to its claim for subvention

of funds required to be deposited into the Housing Fund. It points out that [section 6](#) expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante.ante.*) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under [section 33678, for purposes of appropriations limitations](#), tax increment financing is not deemed to be the “proceeds of taxes.” (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a “plain meaning” rule to [section 6](#) (see, e.g., *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under [section 6](#), the Agency cites to [Government Code section 17556](#). That section is a legislative interpretation of [section 6](#), creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In [County of Fresno v. State of California](#) (1991) 53 Cal.3d 482, 487 [[280 Cal.Rptr. 92, 808 P.2d 235](#)], the Supreme Court upheld the facial constitutionality of [Government Code section 17556, subdivision \(d\)](#), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that [section 6](#) “was designed to protect the tax revenues of local governments from state mandates that *985 would require expenditure of such revenues.” ([County of Fresno v. State of California, supra](#), at p. 487.) Based on the language and history of the measure, the court stated, “Article XIII B of the Constitution, however, was not intended to reach beyond taxation.” (*Ibid.*) The court therefore concluded that in view of its textual and historical context, [section 6](#) “requires subvention only when the costs in question can be recovered *solely from tax revenues*.” (*Ibid.*, original italics.) Interpreting [section 6](#), the court stated: “Considered within its context, the section effectively construes the term ‘costs’ in the constitutional provision as excluding expenses that are recoverable from

sources other than taxes.” (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. Interpretation of Section 6

Here, the Agency contends the authority of [County of Fresno v. State of California, supra](#), 53 Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court’s broad statements defining “costs” in this context read as mere dicta. It also continues to argue for a “plain meaning” reading of [section 6](#), which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read [section 6](#) in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of [section 6](#), because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. ([City of San Jose v. State of California, supra](#), 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. ([County of Los Angeles v. State of California, supra](#), 15 Cal.4th at p. 81.) A central purpose of [section 6](#) is to prevent the state’s transfer of the cost of government from itself to the local level. ([City of Sacramento v. State of California, supra](#), 50 Cal.3d at p. 68.) (3b) The related goals of these enactments require us to read the term “costs” in [section 6](#) in light of the enactment as a whole. The “costs” for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 *et seq.*) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the *986 assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra*, 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which [section 6](#) was designed to protect? ([County of Fresno v. State of California, supra](#), 53 Cal.3d at p. 487.)

3. Relationship of Appropriations Limitations and Subvention

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: “[A]rticle XIII B does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on ‘appropriations subject to limitation,’ which consists primarily of the authorization to expend during a fiscal year the ‘proceeds of taxes.’ (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute ‘proceeds of taxes.’”⁹

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any “proceeds of taxes.” Nor do they raise, through tax increment financing, “general revenues for the local entity.” (*County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally

and financially *987 responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817 [*38 Cal.Rptr.2d 304*].)¹⁰

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016-1020.) Section 6 “requires subvention only when the costs in question can be recovered *solely from tax revenues*.” (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies’ collection of tax revenues. (§ 33000 *et seq.*) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable “cost” under section 6. We therefore need not interpret any remaining portions of section 6.



Disposition



The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.
Appellant’s petition for review by the Supreme Court was denied September 3, 1997.

Footnotes

- 1 All further statutory references are to the Health and Safety Code unless otherwise noted.
- 2 “ ‘Subvention’ generally means a grant of financial aid or assistance, or a subsidy. [Citation.]” (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [*15 Cal.Rptr.2d 547*].)
- 3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest

in the mandamus proceeding. ( *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [ 51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

- 4 [Section 6](#) lists the following exclusions to the requirement for subvention of funds: “(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” In  *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [ 266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of [section 6](#). (See also [Gov. Code, § 17514](#), definition of “costs mandated by the state,” using the same “new program or higher level of service” language of [section 6](#).)
- 5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of low and moderate-income housing, as well as expanding employment opportunities and improving the social environment.
- 6 The term of art, “proceeds of taxes,” is defined in [article XIII B, section 8](#), as follows: (c) “ ‘Proceeds of taxes’ shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, ‘proceeds of taxes’ shall include subventions received from the state, other than pursuant to [Section 6](#), and, with respect to the state, proceeds of taxes shall exclude such subventions.” (Italics added.)
- 7 The issues before the court in *County of Placer v. Corin*, *supra*, 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. [Section 6](#) is not discussed; the court’s analysis of other concepts found in [article XIII B](#) is nevertheless instructive.
- 8 The alternate grounds of the Commission’s decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated “new program or higher level of service” under this section.
- 9 The term of art, “appropriations subject to limitation,” is defined in [article XIII B, section 8](#), as follows: [¶] (b) “ ‘Appropriations subject to limitation’ of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to [Section 6](#)) exclusive of refunds of taxes.” (Italics added.)
- 10 We disagree with respondents that the legislative history of [sections 33334.2 and 33334.3](#) is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

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54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66

Supreme Court of California

FRANCES KINLAW et al., Plaintiffs and Appellants,

v.

THE STATE OF CALIFORNIA et

al., Defendants and Respondents.

No. S014349.

Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to [Code Civ. Proc., § 526a](#), against the state, alleging that it had violated [Cal. Const., art. XIII B, § 6](#) (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature ([Gov. Code, § 17500 et seq.](#)), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under [Cal. Const., art. XIII B, § 6](#), were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES**Classified to California Digest of Official Reports**

(1)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.

[Gov. Code, § 17500 et seq.](#), creates an administrative forum for resolution of state mandate claims arising under [Cal. Const., art. XIII B, § 6](#), and establishes *327 procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid ([Gov. Code, § 17612](#)). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [Cal. Const., art. XIII B, § 6](#).

(2)

State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.

In an action by medically indigent adults and taxpayers seeking to enforce [Cal. Const., art. XIII B, § 6](#), for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy ([Gov. Code, § 17500 et seq.](#)) by which affected local agencies could enforce their constitutional right under [art. XIII B, § 6](#) to reimbursement for the cost of state mandates did not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under [art. XIII B, § 6](#); unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further

action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See [Cal.Jur.3d](#), [State of California](#), § 78; 7 [Witkin](#), Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1127 [Witkin](#), Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]


COUNSEL

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Catherine I. Hanson, Astrid G. Meghrigian, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce [section 6 of article XIII B](#) (hereafter, [section 6](#)) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to  [Code of Civil Procedure section 526a](#) and as persons affected by the alleged failure of the state to comply with [section 6](#). The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under [section 6](#) are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

[Section 6](#), adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: *329

“Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

“(a) Legislative mandates requested by the local agency affected;

“(b) Legislation defining a new crime or changing an existing definition of a crime; or

“(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

A complementary provision, [section 3 of article XIII B](#), provides for a shift from the state to the local agency of a portion of the spending or “appropriation” limit of the state when responsibility for funding an activity is shifted to a local agency:

“The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.”

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services

to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time [section 6](#) was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly ***330** situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi-Cal program to the counties without adequate reimbursement violated the California Constitution.¹

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission).²

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of [section 6](#). Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of [section 6](#).³ ***331**

III Enforcement of [Article XIII B, Section 6](#)

In 1984, almost five years after the adoption of [article XIII B](#), the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of [section 6](#). ([§ 17500](#).) The Legislature did so because the absence

of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in [section 17500](#):


“The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state’s responsibilities under [Section 6 of Article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*” (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, “State-Mandated Costs,” which commences with [section 17500](#), the Legislature created the Commission ([§ 17525](#)), to adjudicate disputes over the existence of a state-mandated program ([§§ 17551, 17557](#)) and to adopt procedures for submission and adjudication of reimbursement claims ([§ 17553](#)). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. ([§ 17525](#).)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ([§ 17554](#)),⁴ establishes the method of ***332** payment of claims ([§§ 17558, 17561](#)), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates ([§§ 17562, 17600, 17612, subd. \(a\).](#))

Pursuant to procedures which the Commission was authorized to establish ([§ 17553](#)), local agencies⁵ and school districts⁶ are to file claims for reimbursement of state-mandated costs with the Commission ([§§ 17551, 17560](#)), and reimbursement is to be provided only through this statutory procedure. ([§§ 17550, 17552](#).)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a “test claim.” (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting “parameters and guidelines” for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to  [Code of Civil Procedure section 1094.5](#). (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations ***333** bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subs. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a “local government claims bill.” If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of [section 6](#) lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in [section 17500](#): “It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIII B of the California Constitution](#) and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ...” And section 17550 states: “Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter.”





Finally, section 17552 provides: “This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by [Section 6 of Article XIII B of the California Constitution](#).” (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce [section 6](#). ***334**







IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under [section 6](#) to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge.

(*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607];  *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [ 103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668];  *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [ 5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of [section 6](#) independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. [Section 6](#) provides that the “state shall provide a subvention of funds to reimburse ... local governments” (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement [section 6](#). That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under [section 6](#). Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. ( *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [ 268 P.2d 723];  *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [ 101 P.2d 1106];  *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [ 222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce [section 6](#) as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost *335 of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of

any kind. Nothing in [article XIII B](#) or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, [section 17563](#) gives the local agency complete discretion in the expenditure of funds received pursuant to [section 6](#), providing: “Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose.”

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under [section 6](#). That test-claim statute expressly provides that not only the claimant, but also “any other interested organization or individual may participate” in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must “provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, and any other interested person.” (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive.⁷

The alternative relief plaintiffs seek—reinstatement to Medi-Cal pending further action by the state—is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists *336 and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.)⁸

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the

question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard.⁹


Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.


The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the *337 Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in  *Dix v. Superior Court* (1991) 53 Cal.3d 442

 279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs—citizens, taxpayers, and persons in need of medical care—allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned *338 itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds.¹

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about \$40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than \$20 million per year. The county has inadequate funds to discharge its new obligation

for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated" "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need" "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people"

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of [article XIII B](#), and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of [article XIII B](#), which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda *339 County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with [article XIII B](#).

Plaintiffs first claim standing as taxpayers under [Code of Civil Procedure section 526a](#), which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against

any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..." As in [Common Cause v. Board of Supervisors](#) (1989) 49 Cal.3d 432, 439 [[261 Cal.Rptr. 574, 777 P.2d 610](#)], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under [Code of Civil Procedure section 526a](#), because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates [article XIII B](#). A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See [California Assn. of Psychology Providers v. Rank](#) (1990) 51 Cal.3d 1, 9 [[270 Cal.Rptr. 796, 793 P.2d 2](#)], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under [article XIII B](#). The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce [section 6 of article XIII B](#).

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.² Such an action may be brought by any person "beneficially interested" in the issuance of the writ. ([Code Civ. Proc., § 1086](#).) In [Carsten *340 v. Psychology Examining Com.](#) (1980) 27 Cal.3d 793, 796 [[166 Cal.Rptr. 844, 614 P.2d 276](#)], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, *Administrative Law Treatise* (1958) p. 291.) Cases applying this standard include [Stocks v. City of Irvine](#) (1981) 114 Cal.App.3d 520

[170 Cal.Rptr. 724], which held that low-income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner v. City Council*, *supra*, 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: *Carsten v. Psychology Examining Com.*, *supra*, 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; *Parker v. Bowron* (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, *341 plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under [Government Code section 17563](#) "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention.³

This argument would be sound if the county were already meeting its obligations to MIA's under [Welfare and Institutions Code section 17000](#). If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by [Welfare and Institutions Code section 17000](#), to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under [section 17000 of the Welfare and Institutions Code](#). If it refused, an action in mandamus would lie to compel performance. (See *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with [article XIII B](#) ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right *342 and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

Green v. Obledo presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that “[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety.” (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo*, *supra*, 29 Cal.3d 126, 144, and concluded that “[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication.” (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to “hear and decide upon [any] claim” by a local government that it “is entitled to be reimbursed by the state” for costs under article XIII B. (*343 Gov. Code, § 17551, subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)



The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is


expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.⁴ I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that “[t]his chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.” (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that “any other interested organization or individual may participate” in the commission hearing. Under these circumstances the Legislature’s choice of words—“the sole and exclusive procedure by which a local agency or school district may claim reimbursement”—limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*—“the expression of certain things in a statute necessarily involves exclusion of other things not expressed.” (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d 432. Here defendants contend that the counties’ right of action under Government Code sections 17551-17552 impliedly excludes *344 any citizen’s remedy; in *Common Cause* defendants claimed the Attorney General’s right of action under Elections Code section 304 impliedly excluded any citizen’s remedy. We replied that “the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a ‘public interest’ exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations].” (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a

right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in  *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that “[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program.” (P. 420 [ 25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, [article XIII B](#) was enacted to protect taxpayers, not governments.  [Sections 1 and 2 of article XIII B](#) establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. [Section 6 of article XIII B](#) prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce [article XIII B](#), and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to [article XIII B](#). The drafters of [article XIII B](#) and the voters who enacted it would not accept that the state Legislature—the principal body regulated by the article—could establish a procedure [*345](#) under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.





One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce [article XIII B](#). An example is the Brown-Presley



Trial Court Funding Act ([Gov. Code, § 77000 et seq.](#)), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation.⁵ The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of [article XIII B](#).

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to [*346](#) determine the amount of the mandate—which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of [article XIII B](#) requires that standing to enforce that measure be given to those harmed by its violation—in this case, the medically indigent—and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.


C. Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see  *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90 [ 181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent decision in  *Dix v. Superior Court*, *supra*, 53 Cal.3d 442 (hereafter *Dix*). In *Dix*, the victim of a crime sought to challenge the trial court's decision to recall a sentence under  [Penal Code section 1170](#). We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning

the trial court's authority to recall a sentence under  Penal Code section 1170, subdivision (d). We explained that the sentencing issues “are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]” ( 53 Cal.3d at p. 454.) In footnote we added that “Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues—standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision.” (Pp. 454-455, fn. 8.)



I see no grounds on which to distinguish *Dix*. The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., ante, p. 330, fn. 2 ante, p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. *347

The majority, however, notes that various state officials—the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research—did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., ante, p. 336, fn. 9 ante, p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae.⁶

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix*. Judges rarely recall sentencing under  Penal

Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. Conclusion as to standing.

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude *348 that plaintiffs have standing both as persons “beneficially interested” under Code of Civil Procedure section 1086 and under the doctrine of  *Green v. Obledo*, supra, 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as  Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. State funding of care for MIA's.

Welfare and Institutions Code section 17000 requires every county to “relieve and support” all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources.⁷ From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully

met through other sources, the counties had no duty under [Welfare and Institutions Code section 17000](#) to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time [article XIII B](#) became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when [article XIII B](#) became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was *349 initially relatively constant, generally more than \$400 million per year. By 1990, however, state funding had decreased to less than \$250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its [article XIII B](#) "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About \$1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. The function of [article XIII B](#).

Our recent decision in [County of Fresno v. State of California](#) (1991) 53 Cal.3d 482, 486-487 [[1991\] 280 Cal.Rptr. 92, 808 P.2d 235](#)] (hereafter *County of Fresno*), explained the

function of [article XIII B](#) and its relationship to [article XIII A](#), enacted one year earlier:

"At the June 6, 1978, Primary Election, [article XIII A](#) was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' ([Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization](#) (1978) 22 Cal.3d 208, 231-232 [[1978\] 149 Cal.Rptr. 239, 583 P.2d 1281](#).) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. ([City of Sacramento v. State of California](#) (1990) 50 Cal.3d 51, 59, fn. 1 [[1990\] 266 Cal.Rptr. 139, 785 P.2d 522](#)] (*City of Sacramento*).)




"At the November 6, 1979, Special Statewide Election, [article XIII B](#) was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' ([City of Sacramento, supra](#), 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See [County of Placer v. Corin](#) (1980) 113 Cal.App.3d 443, 446 [[1980\] 170 Cal.Rptr. 232](#)], quoting and following *Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument *350 in favor of Prop. 4, p. 18.*) To this end, it establishes an 'appropriations limit' for both state and local governments ([Cal. Const., art. XIII B, § 8, subd. \(h\)](#)) and allows no 'appropriations subject to limitation' in excess thereof (*id.*, § 2).⁸ (See [County of Placer v. Corin, supra](#), 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes' ([Cal. Const., art. XIII B, § 8, subd. \(b\).](#))" ([County of Fresno, supra](#), 53 Cal.3d at p. 486.)

Under [section 3 of article XIII B](#) the state may transfer financial responsibility for a program to a county if the state

and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount.⁹ Absent such an agreement, however, [section 6 of article XIII B](#) generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of [article XIII B](#). It does so by requiring that “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the cost of such program or increased level of service”¹⁰

“Section 6 was included in [article XIII B](#) in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See  *County of Los Angeles [v. State of California]* (1987)] 43 Cal.3d 46, 61 [ 233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see  *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax *351 revenues of local governments from state mandates that would require expenditure of such revenues.” (*County of Fresno*, *supra*, 53 Cal.3d at p. 487.)



C. Applicability of [article XIII B](#) to health care for MIA's.


The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any “new program” or “higher level of service” on the counties within the meaning of [section 6 of article XIII B](#). Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when [article XIII B](#) took effect. The purpose of [article XIII B](#) supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and [article XIII B](#) are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. [Article XIII B](#), enacted

one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not county financing for these programs. [Article XIII B](#) further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that [article XIII B](#) was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under [article XIII B](#), both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when [article XIII B](#) was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of [article XIII B](#).

Our decisions interpreting [article XIII B](#) demonstrate that the state's subvention requirement under [section 6](#) is not vitiated simply because the *352 “program” existed before the effective date of [article XIII B](#). The alternate phrase of [section 6 of article XIII B](#), “ ‘higher level of service[,]’ ... must be read in conjunction with the predecessor phrase ‘new program’ to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing ‘programs.’*” ( *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [ 233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

 *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute to education of those students from the district at the state schools*. In 1979, in response to the restrictions on school district revenues

imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when [Education Code section 59300](#) (hereafter [section 59300](#)), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under [section 6 of article XIII B](#). The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by [section 59300](#) imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that [section 59300](#) called for only an “adjustment of costs” of educating the severely handicapped, and that “a shift in the funding of an existing program is not a new program or a higher level of service” within the meaning of [article XIII B](#). (¶ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. “[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since at the time [section 59300](#) became effective they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying [section 6 of article XIII B](#). That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of [article XIII A](#), which severely limited the taxing [*353](#) power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control ¹¹ of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate [section 6 of article XIII B](#) because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of [article XIII B](#), the result seems equally violative of the fundamental purpose underlying [section 6](#) of that

article.” (¶ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from ¶ *Lucia Mar Unified School Dist. v. Honig, supra*, 44 Cal.3d 830: “[B]ecause [section 59300](#) shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—an obligation the school districts did not have at the time [article XIII B](#) was adopted—it calls for plaintiffs to support a 'new program' within the meaning of [section 6](#).” (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the “program” requiring school district funding in that case *was not required by statute* at the effective date of [*354 article XIII B](#). The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been “temporarily” ¹² suspended when [article XIII B](#) became effective. I fail to see the distinction between a case—*Lucia Mar*—in which no existing statute as of 1979 imposed an obligation on the local government and one—this case—in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of [section 6 of article XIII B](#) does not depend upon when the program was created, but upon who had the burden of funding it when [article XIII B](#) went into effect. Our conclusion in *Lucia Mar* that the

educational program there in issue was a “new” program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new as to the districts depended on when they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal.¹³ Both are correct, but irrelevant to this case.¹⁴ The county's obligation to MIA's is defined by *Welfare and Institutions Code section 17000*, not by the former Medi-Cal program.¹⁵ If the *355 state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately \$1 billion in spending authority, generated by its previous total funding of the health

care program in question, as a portion of its initial *base spending limit* calculated pursuant to *sections 1 and 3 of article XIII B*. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of *article XIII B* which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce *article XIII B* both to those persons whom it was designed to protect—the citizens and taxpayers—and to those harmed by its violation—the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate *article XIII B* and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. *356

Footnotes

- 1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce *section 6*.
- 2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (*Code Civ. Proc.*, § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)





- 3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.



An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. ([Gov. Code, § 17612.](#)) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce [section 6](#).

All further statutory references are to the Government Code unless otherwise indicated.



- 4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)
- 5 “ 'Local agency' means any city, county, special district, authority, or other political subdivision of the state.” (§ 17518.)
- 6 “ 'School district' means any school district, community college district, or county superintendant of schools.” (§ 17519.)
- 7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of [section 6](#) before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because [section 6](#) creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.
- 8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000 and 17001](#), and by judicial action. (See, e.g., [Mooney v. Pickett \(1971\) 4 Cal.3d 669](#) [[94 Cal.Rptr. 279, 483 P.2d 1231](#)].)
- 9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. [Dix v. Superior Court \(1991\) 53 Cal.3d 442](#) [[279 Cal.Rptr. 834, 807 P.2d 1063](#)].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.
- 1 The majority states that “Plaintiffs are not without a remedy if the county fails to provide adequate health care They may enforce the obligation imposed on the county by [Welfare and Institutions Code sections 17000 and 17001](#), and by judicial action.” (Maj. opn., ante, p. 336, fn. 8; ante, p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

- 2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In  *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 56 [ 107 Cal.Rptr. 214] (overruled on other grounds in  *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 [ 135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that “[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend.”

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See  *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 127-128 [ 109 Cal.Rptr. 724].)

- 3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.
- 4 The majority emphasizes the statement of purpose of [Government Code section 17500](#): “The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [section 6 of article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.”

The “existing system” to which [Government Code section 17500](#) referred was the Property Tax Relief Act of 1972 ([Rev. & Tax. Code, §§ 2201-!\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\) 2327](#)), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g.,  *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [ 222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

- 5 “(a) The initial decision by a county to opt into the system pursuant to Section 77300 *shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate*; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent

notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987.” (Gov. Code, § 77203.5, italics added.)

“As used in this chapter, 'state-mandated local program' means any and all reimbursements owed or owing by operation of either [Section 6 of Article XIII B of the California Constitution](#), or [Section 17561 of the Government Code](#), or both.” (Gov. Code, § 77005, italics added.)

- 6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in [Lucia Mar Unified School Dist. v. Honig](#) (1988) 44 Cal.3d 830 [[244 Cal.Rptr. 677](#), [750 P.2d 318](#)], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.
- 7 [Welfare and Institutions Code section 17000](#) provides that “[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.”
- 8 [Article XIII B, section 1](#) provides: “The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article.”
- 9 [Section 3 of article XIII B](#) reads in relevant part: “The appropriations limit for any fiscal year ... shall be adjusted as follows:

“(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ...”
- 10 [Section 6 of article XIII B](#) further provides that the “Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.” None of these exceptions apply in the present case.
- 11 The state notes that, in contrast to the program at issue in *Lucia Mar*, it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar*, while appropriate to the facts of that case, was not intended to establish a rule limiting [article XIII B, section 6](#), to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

- 12 The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time [article XIII B](#) was enacted, the voters did not know which programs would be temporary and which permanent.
- 13 It must, however, provide a *comparable* level of services. (See [Board of Supervisors v. Superior Court](#) (1989) 207 Cal.App.3d 552, 564 [[254 Cal.Rptr. 905](#)].)
- 14 Certain language in [Madera Community Hospital v. County of Madera, supra](#), 155 Cal.App.3d 136, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds*, notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) [Welfare and Institutions Code section 17000](#) by its terms, however, requires the county to provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.
- 15 The county's right to subvention funds under [article XIII B](#) arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program " 'mandated' " by the state; i.e., that Alameda County has any option other than to pay these costs. ([Lucia Mar Unified School Dist. v. Honig, supra](#), 44 Cal.3d at pp. 836-837.)

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 1. Legislative Intent (Refs & Annos)

West's Ann.Cal.Gov.Code § 17500

§ 17500. Legislative findings and declarations

Effective: January 1, 2005

[Currentness](#)

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under [Section 6 of Article XIII B of the California Constitution](#). The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of [Section 6 of Article XIII B of the California Constitution](#). Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of [Section 6 of Article XIII B of the California Constitution](#).

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by [Stats.2004, c. 890 \(A.B.2856\)](#), § 2.)

[Notes of Decisions \(10\)](#)

West's Ann. Cal. Gov. Code § 17500, CA GOVT § 17500

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[Government Code \(Refs & Annos\)](#)

[Title 2. Government of the State of California](#)

[Division 4. Fiscal Affairs \(Refs & Annos\)](#)

[Part 7. State-Mandated Local Costs \(Refs & Annos\)](#)

[Chapter 2. General Provisions \(Refs & Annos\)](#)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

[Currentness](#)

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of [Section 6 of Article XIII B of the California Constitution](#).

Credits

(Added by Stats.1984, c. 1459, § 1.)

[Notes of Decisions \(16\)](#)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514

Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

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West's Annotated California Codes

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 4. Fiscal Affairs (Refs & Annos)

Part 7. State-Mandated Local Costs (Refs & Annos)

Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)

Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

[Currentness](#)

The commission shall not find costs mandated by the state, as defined in [Section 17514](#), in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

Editors' Notes

VALIDITY

A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Assn. v. State of California (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Notes of Decisions (35)

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
Current with all laws through Ch. 997 of 2022 Reg.Sess.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 4, 2025, I served the:

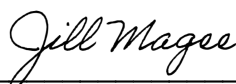
- **Current Mailing List dated March 19, 2025**
- **Second Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued April 4, 2025**
- **Response to Request for Clarification of Pleading and Second Notice of Incomplete Test Claim filed March 27, 2025**
- **Test Claim filed by the County of Los Angeles (claimant) on December 19, 2024 revised on March 27, 2025.**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 4, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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March 18, 2025

Juliana Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
March 18, 2025
Commission on
State Mandates

Response to Test Claim 24-TC-02, Criminal Procedure: Discrimination

Dear Director Gmur:

The Department of Finance has reviewed Test Claim 24-TC-02 submitted to the Commission on State Mandates (Commission) by the County of Los Angeles (Claimant) Office of the Public Defender. The Claimant alleges there are state-mandated, reimbursable costs associated with Chapter 739, Statutes of 2022 (Assembly Bill 256).

Chapter 317, Statutes of 2020 (AB 2542) added Penal Code section 745 to prohibit the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, in cases where judgment had not been entered prior to January 1, 2021.

Effective January 1, 2024, AB 256 amended Penal Code section 745 (j)(3) to apply its provisions retroactively to cases where judgment was entered prior to January 1, 2021. Under AB 256, persons with criminal convictions who are serving a sentence in state prison or county jail may file a motion (or petition for writ of habeas corpus) if they believe they were subject to discrimination in the criminal proceedings resulting in their convictions. The provisions of AB 256 apply to misdemeanor, felony, and juvenile delinquency cases, and cases where the death penalty has been imposed.

The Claimant alleges it incurred \$155,667 in state-mandated, reimbursable costs in fiscal year 2023-24 to represent persons with criminal convictions who file a petition to comply with Penal Code section 745 (j)(3). The Claimant estimates \$657,000 in these costs for 2024-25.

Finance asserts that any costs incurred by the Claimant in relation to AB 256 are not state-reimbursable pursuant to subdivision (g) of Government Code Section 17556, excerpted below, which provides that the Commission **shall not** find state reimbursable costs in a test claim that changes the penalty for a crime or infraction.

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: ...

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

AB 256 authorizes a court to vacate an existing sentence and impose a new sentence when it finds that the original sentence had been imposed on discriminatory grounds. This authority to change sentences represents a change in the penalty for a crime or infraction and therefore falls within an established exception to the requirement for state reimbursement. For this reason, Finance believes the Commission should deny this test claim in its entirety.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Teresa Calvert

TERESA CALVERT
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 19, 2025, I served the:

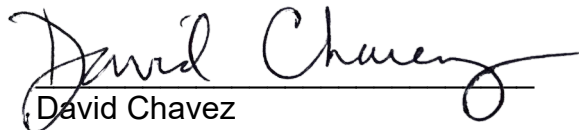
- **Current Mailing List dated March 18, 2025**
- **Finance's Comments on the Test Claim filed March 18, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2025 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/18/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

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Exhibit C

RECEIVED
April 17, 2025
**Commission on
State Mandates**

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**MAJIDA ADNAN
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ROBERT G. CAMPBELL**

April 17, 2025

Via Drop Box

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

Dear Ms. Halsey:

**RESPONSE TO THE DEPARTMENT OF FINANCE'S
COMMENTS ON THE COUNTY'S CRIMINAL
PROCEDURE: DISCRIMINATION TEST CLAIM**

The County of Los Angeles ("Claimant") submits the attached Comments in response to the Department of Finance's comments on our *Criminal Procedure: Discrimination, 24-TC-02* Test Claim.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at flemus@auditor.lacounty.gov.

Very truly yours,

Oscar Valdez
Auditor-Controller

OV:CY:RA:EW:RC:FL

Attachment

**RESPONSE TO THE DEPARTMENT OF FINANCE
COMMENTS ON THE COUNTY'S CRIMINAL PROCEDURE:
DISCRIMINATION TEST CLAIM**

The County of Los Angeles (Claimant) has reviewed the comments from the Department of Finance (Finance) related to Test Claim 24-TC-02.

Contrary to Finance's position, Claimant's mandated activities and the associated costs incurred in implementing Assembly Bill (AB) 256 are not exempt from reimbursement under constitutional or statutory grounds. California Constitution Article XIII B, Section 6 requires the State to pay for any new governmental programs or higher levels of service under existing programs that it imposes on local public agencies. However, the Constitution exempts reimbursement when legislation defines a new crime or changes the existing definition of a crime. AB 256 and the amendment in Penal Code (PC) § 745(j)(3) do not define a new crime or change the existing definition of a crime. Rather, PC § 745(j)(3) authorizes State prisoners to petition the court if they believe their prosecution was impacted by racial, ethnic, or national bias. Accordingly, the Commission on State Mandates (Commission) may find that Claimant is entitled to reimbursement since it is not barred under the Constitution.

Finance argues that the Commission should deny this Test Claim under Government Code (GC) § 17556(g). They contend that AB 256 changes the penalty of a crime and argue that, because a court may vacate an existing sentence and impose a new sentence, this represents a change in the penalty for a crime. For this reason, Finance believes the Commission should deny this Test Claim in its entirety.

GC § 17556(g) is not applicable to AB 256. GC § 17556(g) states that a claimant is exempt from reimbursement when the Test Claim statute creates a new crime or infraction, eliminates a crime or changes the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

AB 256 amended the Racial Justice Act (RJA) of 2020 to apply the RJA retroactively to ensure equal access to all. Specifically, AB 256 amended PC § 745(j)(1) to allow persons currently serving a sentence in State prison or county jail to file a habeas corpus writ petition or motion to challenge a racially biased prosecution. The RJA provides that if a court finds that an RJA violation occurred, "it shall impose a remedy specific to the violation" found in the list of enumerated remedies.

AB 256 offers a procedural remedy to challenge the existence of racial bias, but it does not change the penalty for crimes. It allows the court to consider evidence of unlawful animus and then determine how best to remedy the harm to the defendant's case and restore the integrity of the judicial system. Having a sentence changed is only a possible remedy and certainly not a right or guarantee. This is evidenced in a recent case where

the court of appeals determined that even when a Racial Justice Act violation was found that the court declining to impose a remedy at all was within the court's discretion.¹

Additionally, imposing a new or lesser sentence is not an automatic function of an RJA violation. Pursuant to PC § 745(k), the prosecution has a right to prove that the violation was "harmless error" and did not affect the outcome of the trial.² If they are successful in this, then the court may find an RJA violation but not impose any kind of remedy, such as reducing the sentence. It is clear that AB 256 does not change the penalty of a crime but rather offers paths for relief for cases in which racial bias infected the trial. After appointment of counsel, the RJA violation will be litigated and only if the judge determines a violation has occurred and the error was not harmless, then they may choose a remedy, or according to new case law, choose not to impose a remedy if that is in the interest of justice.

Further, for GC § 17556(g) to apply, the Commission must not only find that the RJA changed the penalty for a crime, but it must also find that it changed the penalty for a crime, but only for that portion of the statute relating directly to the enforcement of the crime. Assuming arguendo that the Commission finds that the RJA changed the penalty of the crime, it must determine whether the change in penalty is *related directly to the enforcement of the crime*. In *County of San Diego v. Commission on State Mandates*, the Court of Appeals found that GC § 17556(g) exempted reimbursement because it determined that parole flowed directly from the parolee's underlying crime and was a direct consequence of a criminal conviction.³ Here, any remedy that a court imposes following an RJA violation is unrelated to the crime perpetrated by the convicted person. Rather, the remedy directly relates to eliminating discriminatory practices in the justice system.⁴ Therefore, AB 256 does not meet the second prong of GC § 17556(g), in that the Test Claim statute does not directly relate to the enforcement of the crime.

For the reasons stated above, Claimant requests that the Commission find that no exemption to reimbursement applies and that the Test Claim be granted.

¹ "However, if there is not a remedy specific to the particular violation, or imposition of a remedy under subdivision (e)(1)(C) that would not be in the interest of justice, the court retains discretion to decline to impose a remedy." *R.D. v. Superior Court of Sacramento County*, (2025) Cal.App. 3 Dist., 330 Cal.Rptr.3d 155.

² "For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment." (PC § 745 (k))

³ *County of San Diego v. Commission on State Mandates*, (2023) 91 Cal.App.5th 625, 643.

⁴ Assembly Bill 2542, § 2, subd. (i)

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 18, 2025, I served the:

- **Current Mailing List dated April 10, 2025**
- **Claimant's Rebuttal Comments filed April 17, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 18, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/10/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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RECEIVED

March 17, 2025

**Commission on
State Mandates**

March 18, 2025

Commission on State Mandates

980 9th Street Suite 300

Sacramento, CA 95814

Exhibit D

RE: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

I am writing in support of approving the claim underlying *Criminal Procedure: Discrimination*, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the new costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had traditionally handled before.

Reimbursement for these new, additional costs is crucial to the effective implementation of RJA and AB 256. The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

The California Court of Appeal's recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[:]" "In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide

specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense.” (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that “. . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]” (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender’s office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties’ ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court’s responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles’ test claim, Criminal Procedure: Discrimination, 24-TC-02.

We appreciate your review of our comments and your consideration. Thank you for your attention to this important matter.

Respectfully,



Elena D’Agustino
Public Defender
Solano County Public Defender
edagustino@solanocounty.gov

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 18, 2025, I served the:

- **Current Mailing List dated March 18, 2025**
- **Solano County Office of the Public Defender's Comments on the Test Claim filed March 17, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 18, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/18/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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PUBLIC DEFENDER
Contra Costa County

Ellen McDonnell
Public Defender

Post-Conviction Unit Supervisor
Rebecca Brackman

RECEIVED
March 19, 2025
**Commission on
State Mandates**

March 20, 2025

Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814

Exhibit E

RE: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

We write in support of approving the claim underlying *Criminal Procedure: Discrimination, 24-TC-02*, which would reimburse the County of Los Angeles for costs incurred by the Public Defender's Office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The Contra Costa Office of the Public Defender is entrusted with representing indigent defendants in our county. We aim to provide vigorous advocacy within a holistic defense framework.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden for our county and office similar to the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the additional costs the public defender's office has incurred to effectuate its obligations to clients in line with the newly enacted law. This new type of appointment for defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas corpus petitions are not a type of litigation our offices have traditionally handled.

Reimbursement for these new, additional costs is crucial to the effective implementation of the RJA and AB 256. The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

In Contra Costa County, we currently have multiple attorneys representing clients on retroactive RJA claims, in addition to ancillary staff supporting their representation. We also have expended resources on gathering data and for expert review of materials.

The California Court of Appeal's recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB 256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[:]" "In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that ". . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent individuals bringing retroactive RJA claims. This means that in counties where there is a public defender's office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislative mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties' ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking eroding public confidence in the court's responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02.

We appreciate your review of our comments and your consideration. Thank you for your attention to this important matter.

Respectfully,



Ellen McDonnell

Public Defender

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 19, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **Contra Costa Office of the Public Defender's Comments on the Test Claim filed March 19, 2025**
- **Ella Baker Center for Human Rights' Comments on the Test Claim filed March 19, 2025**

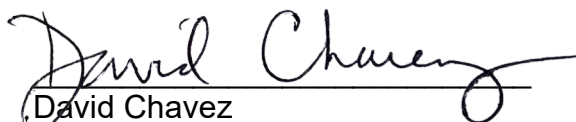
Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2025 at Sacramento, California.



David Chavez

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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March 19, 2025

Commission on State Mandates
980 9th Street
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RECEIVED
March 19, 2025
*Commission on
State Mandates*

Exhibit F

Re: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

The Ella Baker Center for Human Rights writes in support of approving the claim underlying Criminal Procedure: Discrimination, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

Based in Oakland, California, the Ella Baker Center for Human Rights (EBC) works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color. As a co-sponsor of every iteration of the Racial Justice Act, EBC finds it imperative that the law is equitably implemented to ensure that individuals who have been affected by the deleterious impact of racism and prejudice receive proper relief as our state's Legislature intended in their passage of the law and as our Governor intended in his signing of it.

The enactment of AB 256 (Kalra 2022) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased responsibilities from what the public defender's office has previously performed: habeas petitions are not a type of litigation these offices have traditionally handled. Reimbursement for these new, additional costs is crucial to the effective implementation of RJA.

The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) The language of Penal Code section 745 provides currently incarcerated individuals with the right to counsel - most often a public

defender - when bringing a claim under the RJA. At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

The California Court of Appeals' recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB 256. *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[.]" "In 2022, the RJA amended [Penal Code] section 1473 [- the statute codifying grounds and procedures for prosecuting a writ of habeas corpus -] to add subdivision (e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that ". . . [Penal Code section 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender's office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties' ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court's responsibility to ensure fair and equitable administration of justice.

Racism and prejudice have no place within our criminal legal system. Without laws like the RJA which have created new pathways to both challenge and rectify such bigotry, we would be moving in the opposite direction of progress. Our state has a duty to uphold those laws that we have passed and to protect rights for all individuals - especially those who are incarcerated. By providing funding to county public defenders who have taken on this mandate and filled a much-needed gap in legal support, we can ensure that the law is more equitably applied to those indigent communities who would not otherwise have access to counsel. As EBC works alongside attorneys, community-based organizations, and community members - both free and currently incarcerated - to support successful implementation of this law, we see the extreme importance in ensuring not only the right to counsel provided for in



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statute, but also said counsel's access to the monetary resources needed to effectuate proper representation.

For the reasons above, we urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02. We appreciate your review of our comments. If you have any questions or concerns, please contact us at policy@ellabakercenter.org or you can reach me directly at morgan@ellabakercenter.org.

Thank you for your attention to this important matter.

Sincerely,

Morgan Zamora
Prison Advocacy Coordinator

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 19, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **Contra Costa Office of the Public Defender's Comments on the Test Claim filed March 19, 2025**
- **Ella Baker Center for Human Rights' Comments on the Test Claim filed March 19, 2025**

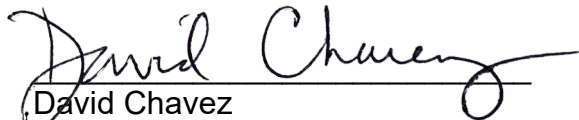
Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

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SUSAN E. CHAPMAN
PUBLIC DEFENDER



March 19, 2025

Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814

RECEIVED
March 19, 2025
**Commission on
State Mandates**

Exhibit G

RE: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

I write in support of approving the claim underlying *Criminal Procedure: Discrimination*, 24-TC-02, which would reimburse the County of Los Angeles for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA).

I write this letter on behalf of the Office of the Public Defender for the County of Monterey. Our office has been appointed in numerous cases wherein the client is seeking "retroactive relief" under the RJA. In that capacity, an assigned attorney reviews, investigates, and pursues defendant's claims of discrimination in the criminal justice system.

The implementation of AB 256 (2022, Kalra) has added significant financial strain on our office, similar to the burden the County of Los Angeles has faced, due to the expanded application of the RJA to retroactive cases. Their claim highlights the additional costs the public defender's office has incurred to fulfill its new obligations to clients. The appointment of clients' cases post-conviction has increased the office's responsibilities, as habeas petitions were not previously handled by our office.

Securing reimbursement for these additional costs is essential for the effective enforcement of RJA and AB 256. The Legislature has clearly stated its goal to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, [and] is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020)). Currently, the county public defender is responsible for investigating RJA claims, gathering and reviewing records, communicating with incarcerated clients, drafting legal documents, and providing court representation where necessary—all without receiving additional funding for these new tasks.

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OFFICE OF THE PUBLIC DEFENDER

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Continuing to fulfill these responsibilities without proper funding would place the public defender's office in an untenable position.

The California Court of Appeal's recent decision in *Bemore v. Superior Court of San Diego County* further cemented these obligations when it recognized "specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that "... [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) We note that Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims, which means that in counties where there is a public defender's office, that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most significant and impactful laws ever passed in this state. Without adequate reimbursement, the purpose and intent of the RJA would be undermined. Failing to address this mandate would also create disparities between counties, as the law's implementation would depend on each county's ability to independently secure or provide funding, ultimately denying justice to those affected by racism and risking a loss of public trust in the court's role in ensuring a fair and equitable justice system. We strongly urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02.

Thank you for your attention to this important matter.

Respectfully,

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 20, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **Monterey County Office of the Public Defender's Comments on the Test Claim filed March 19, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 20, 2025 at Sacramento, California.



David Chavez
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Chief Deputy Public Defender
Tim Quinn
Chief Deputy Public Defender
Michael Rodriguez
Chief Deputy Public Defender
Larry Carlton
Chief Investigator
Aurora Lazaro
Administrative Services Director

March 20, 2025

Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814

RECEIVED
March 20, 2025
**Commission on
State Mandates**

RE: Criminal Procedure: Discrimination, 24-TC-02

Exhibit H

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

We write in support of approving the claim underlying *Criminal Procedure:*

Discrimination, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The Ventura County Public Defender's Office provides legal services to indigent people charged with a crime. Part of those legal services include identifying and litigating claims involving the Racial Justice Act (California Penal Code Section 745).

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the new costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had traditionally handled before.

Reimbursement for these new, additional costs is crucial to the effective implementation of RJA and AB 256. The Legislature has made clear its intention to “eliminate racial bias from California’s criminal justice system” because “racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice” (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender’s office in an untenable position if required to continue to do so without appropriate funding.

The Ventura County Public Defender’s Office currently has four attorneys working on Racial Justice Act claims. Two attorneys are senior attorneys and two attorneys are Level III attorneys. One of the attorney’s sole duty is to work on retroactive RJA claims.

The California Court of Appeal’s recent decision cements the new obligation the public defender’s office now carries as a result of the enactment of AB256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising “under a new statutory provision enacted by the RJA[:]” “In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense.” (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that “. . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]” (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender’s office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties’ ability to provide or seek funds independently,

denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court's responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02.

We appreciate your review of our comments and your consideration. Thank you for your attention to this important matter.

Respectfully,



Damon Jenkins, Esq.

Certified Criminal Law Specialist

Senior Deputy Public Defender

Ventura County Public Defender's Office

Email: damon.jenkins@ventura.org

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 21, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **University of San Francisco Racial Justice Clinic's Comments on the Test Claim filed March 20, 2025**
- **County of Ventura Office of the Public Defender's Comments on the Test Claim filed March 20, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 21, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

980 Ninth Street, Suite 300

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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March 20, 2025

Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Exhibit I

RE: Criminal Procedure: Discrimination, 24-TC-02

Dear Director Gmur, Chair Stephenshaw, and fellow members of the Commission on State Mandates:

On behalf of the USF Racial Justice Clinic, I write in support of approving the claim underlying *Criminal Procedure: Discrimination, 24-TC-02* to reimburse the County of Los Angeles for its efforts fulfilling the mandate the Legislature has imposed on it. The County seeks reimbursement for costs incurred by the public defender's office resulting from their appointment by the court to represent indigent clients in retroactive petitions for relief under the Racial Justice Act (RJA, Pen. Code, § 745), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The USF Racial Justice Clinic is dedicated to advocating for those who have suffered discrimination, marginalization, and oppression in the criminal legal system based on their race. Among its several projects, the clinic represents currently incarcerated Californians who are eligible for relief under the RJA. We do so on a *pro bono* basis for a very small handful of clients because of the resource-intensive efforts required to appropriately and effectively represent these clients in their RJA claims. In addition to direct representation, the Clinic also supports RJA implementation for both pre-trial and retroactive claims, which has given us a bird's eye view of the challenges county-level public defender offices face in managing this new type of litigation for clients who are currently imprisoned.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024, because of the new applicability of the RJA to previously adjudicated cases. The claim by the County of Los Angeles outlines the new and extensive costs the public defender's office has incurred to effectuate its new obligations to clients in retroactive RJA cases. This new type of appointment to defendants whose convictions are otherwise final has substantially increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had frequently handled before.

It is critical to the effective implementation of RJA and AB 256 that counties be reimbursed for these new, additional representation costs. Through the passage of the RJA and AB 256, the Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial,

is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice” (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has been required to take up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender’s office in an untenable position if they are required to continue to provide these necessary services without appropriate funding.

The new obligation the public defender’s office now carries as a result of the enactment of AB 256 has also been confirmed by the recent decision from the California Court of Appeal in *Bemore v. Superior Court of San Diego County*, which recognized the new right created for indigent RJA petitioners, arising

“under a new statutory provision enacted by the RJA[:.]” “In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have *counsel appointed at public expense*.” (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025) (emphasis added).)

Furthermore, the Court of Appeal held that “. . . [Penal Code s]ection 987.2 is the **exclusive mechanism** for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]” (*Bemore*, *9, emphasis added.) Penal Code section 987.2 directs the superior courts to first appoint public defenders to represent indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender’s office, the current law *dictates* that the public defender’s office will be the first-in-line to be appointed counsel in these retroactive RJA claims and expend costs and resources to provide effective representation in these cases.

The Racial Justice Act is one of the most important and consequential new laws enacted in this state. Without appropriate reimbursement for this mandate imposed by the Legislature, the purpose and intent of the RJA would be rendered meaningless. Failure to effectuate this mandate would deny justice to those whose criminal cases have been impacted by racism and risk the erosion of public confidence both in the Legislature and in the court’s ability to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles’ test claim, Criminal Procedure: Discrimination, 24-TC-02.

//

//

//

We appreciate your review of our comments regarding this test claim and your consideration. Thank you for your attention to this important matter.

Respectfully,

Charlie Nelson Keever
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A handwritten signature in black ink, appearing to read "Belle Yan", with a stylized, flowing script.

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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 21, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **University of San Francisco Racial Justice Clinic's Comments on the Test Claim filed March 20, 2025**
- **County of Ventura Office of the Public Defender's Comments on the Test Claim filed March 20, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 21, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

980 Ninth Street, Suite 300

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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March 20, 2025

Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814**RECEIVED**
March 21, 2025
**Commission on
State Mandates****LATE FILING****Exhibit J****RE: Criminal Procedure: Discrimination, 24-TC-02**

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

I write in support of approving the claim underlying *Criminal Procedure: Discrimination*, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the new costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had traditionally handled before.

Reimbursement for these new, additional costs is crucial to the effective implementation of RJA and AB 256. The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

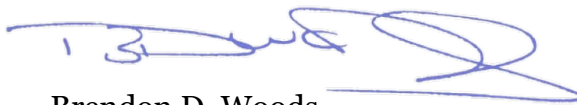
The California Court of Appeal's recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[:]" "In 2022,

the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense.” (*Bemore v. Superior Ct. of San Diego Cnty.*, No. Do84579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that “. . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]” (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender’s office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties’ ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court’s responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles’ test claim, Criminal Procedure: Discrimination, 24-TC-02.

We appreciate your review of our comments and your consideration. Thank you for your attention to this important matter.

Sincerely,
ALAMEDA COUNTY PUBLIC DEFENDER



Brendon D. Woods
Public Defender

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 24, 2025, I served the:


- **Current Mailing List dated March 19, 2025**
- **Alameda County Public Defender's Comments on the Test Claim filed March 21, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 24, 2025 at Sacramento, California.



David Chavez
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

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RECEIVED
April 16, 2025
**Commission on
State Mandates**

April 16, 2025

Exhibit K

Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Rebuttal to the Department of Finance
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745,
subd. (j)(3)
County of Los Angeles, Claimant

Dear Director Gmur:

The County of Santa Clara ("County") files the following rebuttal to the Commission on State Mandates ("Commission") in response to the Department of Finance ("DOF"), which commented on test claim 24-TC-02 ("Test Claim"), concerning discrimination in criminal procedure. The Test Claim asserts that the AB 256, which added subdivision (j)(3) to section 745 of the Penal Code, imposes an unfunded mandate on counties and thus requires subvention pursuant to article XIII B, section 6 of the California Constitution ("Section 6"). In addition to the arguments made here, the County joins the arguments made by the County of Los Angeles, both in its Test Claim and its rebuttal to DOF.

DISCUSSION

The Department of Finance ("DOF") contends that the Commission on State Mandates ("Commission") should deny the County of Los Angeles's test claim in its

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entirety because AB 256 is subject to subdivision (g) of Government Code section 17556 such that the “commission shall not find costs mandated by the state.” (Comment of DOF, at p. 1-2.) Subdivision (g) exempts from reimbursement statutes that “create[] a new crime or infraction, eliminate[] a crime or infraction, or change[] the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” The County of Santa Clara (“County”) files this rebuttal in response to DOF.

A. Setting aside only its treatment of the death penalty, AB 256 is not excepted by subdivision (g) of Government Code section 17556 because it does not create or eliminate a crime or infraction or change the penalty of a crime or infraction.

The Racial Justice Act (“RJA”) prohibits the State from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. (Pen. Code, § 745, subd. (a).) With AB 256, incarcerated petitioners are authorized to bring forward retroactive claims under the RJA by writs of habeas corpus, regardless of when their dispositions or judgments became final. (*Id.*, § 745, subd. (j)(3).)

The Legislature enacted the RJA “with the express intent ‘to eliminate racial bias from California’s criminal justice system’ and ‘to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.’” (*Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, 123 [quoting Assem. Bill No. 2542 (2019–2020 Reg. Sess.) § 2, subd. (i)].) In so doing, the Legislature emphasized the need to root out implicit bias that may have unwittingly affected the decisions to arrest, charge, prosecute, or sentence an individual. (See Assem. Bill No. 2542, *supra*, § 2, subd. (i); *Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 “[T]he primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but implicit bias.”].)

When incarcerated individuals wanted to challenge such exercises of implicit bias in the past, it was “nearly impossible to establish” the burden of proof—purposeful discrimination—required to support an equal protection claim under the federal Constitution. (See Assem. Bill No. 2452, *supra*, § 2, subd. (c); *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 22; see also *Gonzales v. Superior Court* (2024) 108 Cal.App.5th Supp. 36, 56 [“The expressed purpose and scope of the RJA [is] to provide a broader relief for racial discrimination in the criminal justice system than is available under federal equal protection principles”].) Instead of requiring a showing of purposeful discrimination, Penal Code section 745, subdivision (a), identifies four new categories of

conduct which, if proved, are sufficient to establish an RJA violation.¹ (*Young v. Superior Court* (2022) 79 Cal.App.5th 138, 147.) Moreover, the RJA recognizes that bias may infect criminal proceedings at nearly every inflection point—from a law enforcement officer’s decision to stop and arrest a person, to a district attorney’s decision to file charges, to a court’s decision to impose a particular sentence in a criminal case. (See Judge R. Couzens, California Racial Justice Act of 2020 (Apr. 2024) at p. 8 [“The prohibition is sufficiently broad to refer to conduct before, during, or after the defendant’s trial and sentencing”].).

Rather than change any crime or penalty by operation of law, the RJA provides relief from the State’s abuses. Bias on the basis of race, ethnicity, and national origin has never been an element of a crime or infraction, nor has such bias ever been lawfully considered in imposing a penalty. Indeed, “the intent of the Legislature [was] not to punish this type of bias, but rather to remedy the harm to the defendant’s case and to the integrity of the judicial system.” (Assem. Bill No. 2542, *supra*, § 2, subd. (i).)

DOF nonetheless contends that AB 256 “authorizes a court to vacate an existing sentence and impose a new sentence when it finds that the original sentence had been imposed on discriminatory grounds.” (DOF, at p. 2.) It further contends that the mere “authority to change sentences represents a change in the penalty for a crime or infraction.” (*Ibid.*) However, this line of reasoning fails to recognize that the remedies available under AB 256 are intended to cure the results of the State’s unlawful racial bias, not change the penalty for any crime or infraction that was unlawfully imposed in the first instance. Depending on the violation, the remedies may include not only resentencing but also vacating the conviction, finding that it is legally invalid, ordering new proceedings, or modifying the judgment to include a lesser included or lesser

¹ The four new categories of conduct are as follows: (1) “[t]he judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin;” (2) “[d]uring the defendant’s trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant’s race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin, whether or not purposeful;” (3) “[t]he defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant’s race, ethnicity, or national origin in the county where the convictions were sought or obtained;” and (4) “[a] longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense,” and either (i) “longer or more severe sentences were more frequently imposed for that offense on people that share the defendant’s race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed” or (ii) “longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.” (Pen. Code, § 745, subd. (a)(1)–(4).)

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related offense. (Pen. Code, § 745, subd. (e)(2)(A).) These remedies are intended to erase the consequences of the State's violation by effectively placing the petitioner back in the position they would have been in but for the violation. The surest indication that AB 256 is not excepted by subdivision (g) of Government Code section 17556 is that the petitioner can be resentenced to the exact same penalty so long as the resentencing is not infected by a violation of the RJA.

Contrary to DOF's assertion, AB 256 does not operate to change any crimes or penalties other than the death penalty, and instead operates only to remove the missteps of the State. Indeed, AB 256 and the RJA do not impact how criminal defendants are sentenced for particular offenses; defendants convicted of assault, for example, continue to be sentenced the same as they were before the enactment of AB 256 and the RJA. In this regard, AB 256 operates differently from the test claim statutes at issue in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, which "effectively reform[ed] the parole eligibility date of a [youth] offender's original sentence." (91 Cal.App.5th at p. 641 [quoting *People v. Franklin* (2016) 63 Cal.4th 261, 281].) Prior to the enactment of the test claim statutes at issue in that case, youth offenders were subject to the same lengthy prison sentences imposed on adult offenders, whereas after their enactment, the longest possible term of incarceration for most youth offenders before parole eligibility was 25 years. (*Id.*, at p. 640.) In contrast, the remedies available under AB 256 do not change the available penalties for any particular offenses (other than the death penalty) but are instead intended to correct missteps by the State, much like the remedies available to correct a *Brady* Rule violation (see *Brady v. Maryland* (1963) 373 U.S. 83) or a Fourth Amendment violation (see, e.g., *Miranda v. Arizona* (1966) 384 U.S. 436).

The exception to reimbursement in Government Code section 17756, subdivision (g), must be interpreted to apply narrowly, as it applies "only for that portion of the statute relating directly to the enforcement of the crime or infraction." (See Gov. Code, § 17756, subd. (g).) Only in death penalty cases does AB 256 change the penalty of a crime. Penal Code section 745, subdivision (e)(3), provides that the petitioner shall not be eligible for the death penalty if the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).) This change in the penalty of a crime is inapplicable to the overwhelmingly majority of habeas petitions brought under AB 256 as it affects only petitioners sentenced to death. Further, the Legislature's decision to expressly change the application of the death penalty demonstrates its intent to change one penalty while leaving unchanged all others. Accordingly, because AB 256 and the RJA change the penalty only where the petitioner is sentenced to death, only habeas petitions brought in such cases should be excluded from reimbursement.

B. Subdivision (g) of Government Code section 17556 unlawfully expands the grounds upon which the Commission “shall not find costs mandated by the State.”

When the voters adopted Proposition 4 of 1979 and added Section 6 of Article XIII B, they did so “to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.” (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Unfortunately, subdivision (g) of Government Code section 17556 conflicts with subdivision (a)(2) of Article XIII B of the California Constitution and unlawfully frustrates local entities’ right to reimbursement. The Commission may not have the jurisdiction to adopt this argument. (See *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1302; Cal. Const., art. III, § 3.5.) So, the County thus reserves the ability to present this issue before the appropriate adjudicatory body.

Subdivision (g) of Government Code section 17556 narrows the right to reimbursement established by Section 6 of Article XIII B of the California Constitution. Whereas the statutory exception to reimbursement encompasses those mandates where a “statute created a new crime or infraction, eliminated a crime or infraction, or *changed the penalty for a crime or infraction*, but only for that portion of the statute relating directly to the enforcement of the crime or infraction,” the parallel constitutional exception to reimbursement attaches only to “[l]egislation defining a new crime or changing an existing definition of a crime.” (Compare Gov. Code, § 17556, subd. (g) [emphasis added] with Cal. Const., art. XIII B, § 6, subd. (a)(2).)

There is no indication that the voters through Proposition 4, or any relevant ballot initiative since, intended to include a change in penalties alongside the exception to defining new crimes or redefining existing crimes. The “same principles that govern statutory construction” also govern voter initiatives. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900.) Accordingly, where the “the Legislature certainly knows how to impose a penalty when it wants to,” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1107), so too do the voters (Compare Cal. Const., art. XIII B, § 6 with Prop. 36, as approved by voters, Gen. Elec. (Nov. 5, 2024) [distinguishing between crimes and penalties]). If the voters intended to except for reimbursement a change to penalties, that language would be in the California Constitution.

DOF’s comments here and in response to previous test claims demonstrate how the expanded statutory language “lends itself to sweeping imposition of duties on local governments without reimbursement, contrary to the intent of Proposition 4.” (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1215.) Penalties involve an overlapping but still greater array of institutions, activities, and costs relative to those for crimes, so it is unlikely that the voters impliedly assumed that a constitutional exception applicable to crimes would apply interchangeably to penalties.

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Local entities, therefore, are entitled to reimbursement even where a State mandate changes a penalty.

C. Reimbursement for AB 256 is not excepted by the California Constitution either because the legislation does not define a new crime or change an existing definition of a crime.

In asserting that AB 256 does not impose reimbursable costs on the Claimant, DOF focuses only on the statutory exception articulated by subdivision (g) of Government Code section 17556. (DOF, at pp. 1-2.) DOF does not and cannot argue that AB 256 needn't be reimbursed pursuant to subdivision (a)(2) of Section 6 of Article XIII B of the California Constitution ("Subdivision (a)(2)"), which concerns "[l]egislation defining a new crime or changing the existing definition of a crime."

As explained in greater detail above, AB 256 neither defines a new crime nor does it change the definition of any existing crime. AB 256 instead applies the RJA retroactively to prohibit the State from "seek[ing] or obtain[ing] a criminal conviction or seek[ing], obtain[ing], or impos[ing] a sentence on the basis of race, ethnicity, or national origin." (Pen. Code, § 745, subd. (a).) In other words, AB 256 does not subject a person acting on behalf of the State to any criminal charge. To be sure, "the intent of the Legislature [was] not to punish this type of bias, but rather to remedy the harm to the defendant's case and to the integrity of the judicial system." (Assem. Bill No. 2542, *supra*, § 2, subd. (i).) The text and legislative intent for AB 256 demonstrate that the bill does not define a new crime or change the definition of an existing crime for those who violate the RJA.

AB 256 likewise does not operate on the crimes that formed the basis for the petitioner's charge, trial, and conviction. Nothing in the text of either the RJA or AB 256 acts on the definition of any crime. The only reference to a crime is contained in subdivision (g) of Penal Code section 745, which states that the "section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive." This provision does not alter any hate crime or introduce a new type of hate crime. Rather than define a new crime or change the definition of an existing crime, AB 256 remedies violations of the RJA in much the same way that other criminal procedure laws and doctrines address evidentiary violations, like those arising under the *Brady* Rule, or other constitutional violations, like those arising under the Fourth, Fifth, or Sixth Amendment to the United States Constitution, are cured by providing relief directly to the criminal defendant. Subdivision (e) of Penal Code section 745 enumerates the available remedies, none of which change any existing crimes. Thus, Subdivision (a)(2) does not except the entitlement to reimbursement pursuant to Section 6 of Article XIII B.

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CONCLUSION

The County urges the Commission to adopt a decision approving the Test Claim. As the Claimant demonstrates, implementing the retroactive application of the RJA will require significant local government resources. These resources are crucial to ensuring “that race plays no role at all in seeking or obtaining convictions or in sentencing.” (Assem. Bill No. 2542, *supra*, § 2, subd. (i).) With this rebuttal comment, the County respectfully disagrees with DOF and demonstrates that there is no basis upon which to apply either Subdivision (g) of Government Code section 17556 or Subdivision (a)(2) of Section 6 of Article XIII B.

Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Very truly yours,
TONY LOPRESTI
County Counsel

A handwritten signature in black ink, appearing to read "Tara Fonseca", is written over a horizontal line.

TARA FONSECA
Deputy County Counsel

RAJIV NARAYAN
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 17, 2025, I served the:

- **Current Mailing List dated April 10, 2025**
- **County of Santa Clara's Rebuttal Comments filed April 16, 2025**

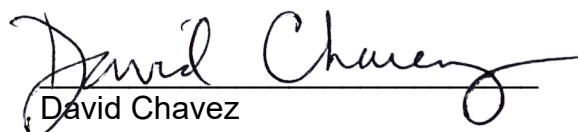
Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 17, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/10/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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May 5, 2025

RECEIVED
May 05, 2025
**Commission on
State Mandates**Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814**Exhibit L****RE: Criminal Procedure: Discrimination, 24-TC-02**

Dear Chair Stephenshaw and Members of the Commission on State Mandates:

The California State Association of Counties (CSAC) submits this comment letter regarding the above-named test claim.¹ The primary purpose of CSAC is to represent county government before the California Legislature, administrative agencies and the federal government. This includes advocating on the value and need for county programs and services and for adequate funding to provide those services.

As explained in Test Claim 24-TC-02, among the services counties now provide through their Offices of the Public Defender are those required by Assembly Bill (AB) 256, also known as the Racial Justice Act for All, which retroactively applies the Racial Justice Act of 2020 to specified cases in which a judgment was filed prior to January 1, 2021. The test claim estimates that the claimed new mandated activities will cost \$2,190,000 statewide in FY 2024-2025.

As part of this test claim, the Commission will be considering whether these costs are exempt from reimbursement under Government Code section 17556, subdivision (g). The Department of Finance (DOF) comment letter, for example, argues that the test claim statute “represents a change in the penalty for a crime or infraction and therefore falls within an established exception to the requirement for state reimbursement.”

CSAC disagrees. The relevant provision of the Racial Justice Act for All, Penal Code section 745, subdivision (j)(3), merely authorizes certain defendants to petition the court to challenge alleged racial, ethnic, or national origin bias in their California state convictions or sentences. Once the petition is filed, the court has a number of options, including: denying the petition as unfounded; vacating the conviction and sentence and ordering new proceedings (which may or may not result in a different sentence); or vacating only the sentence and imposing a new sentence (which the statute states may not be longer than the original sentence but is silent on whether it could be the same). Thus, while one possible outcome of the test claim statute is vacation of an existing sentence and imposition of a new one, as DOF suggests, that

¹ This letter is timely filed in accordance with the Commission’s April 4, 2025 “Second Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date,” which stated that written comments may be submitted until 5:00 p.m. on May 5, 2025.

is by no means the only possible outcome. Fundamentally, the range of possible sentences for underlying crimes remains unchanged by the test claim statute, and any given defendant's actual sentence may also remain unchanged after filing the petition authorized by the statute.

In this way, the test claim here is necessarily different than the *Franklin* proceedings at issue in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625. In that case, the court noted that the test claim statutes created a cap on the number of years all juvenile offenders may be imprisoned before becoming eligible for release on parole. The court particularly emphasized that the length of imprisonment prior to parole eligibility is itself a substantive aspect of the sentence. Thus, prior to the test claim statute, youth offenders were subject to the same lengthy and often mandatory prison sentences imposed on adult offenders, while after the test claim statute, most offenders are eligible for parole at a set number of years (15, 20 or 25) of incarceration. The court characterized this change as “*guaranteeing* youth offenders the chance to obtain release on parole” and “*guaranteeing* parole eligibility for all qualified youth offenders,” which it determined altered defendants’ substantive punishments. (*Id.* at pp. 641, 642 (emphasis added).)

By contrast, in the current test claim, all that is guaranteed to defendants is the ability to petition the court for consideration of their bias claims. Those claims may be rejected or may result in proceedings that impose the same sentence. There is nothing akin to the guarantee of a change to a substantive element of a punishment that was present in the *Franklin* proceedings test claim.

Finally, CSAC notes that Government Code, § 17556, subdivision(g) is itself constitutionally suspect. The State’s subvention requirements and exemptions to those requirements are established by the California Constitution. (Cal. Const., art. XIII B, § 6.) As relevant here, that provision only exempts from the subvention requirement “legislation defining a new crime or changing an existing definition of a crime.” Section 17556(g) goes beyond the constitutional exemption from the subvention requirement by including an additional element: a change in the penalty for a crime or infraction. Given this concern, CSAC urges the Commission not to adopt an overly broad reading of Section 17556(g).

Thank you for your consideration of these issues.

Respectfully submitted,



Jacqueline Wong-Hernandez
Chief Policy Officer

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 6, 2025, I served the:

- **Current Mailing List dated April 10, 2025**
- **California State Association of Counties' (CSAC's) Comments on the Test Claim filed May 5, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 6, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/10/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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June 17, 2025

Exhibit M

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Fernando Lemus
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections
745 and 1473
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments: Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on July 8, 2025**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Hearing: This matter is set for hearing on **Friday, September 26, 2025** at 10:00 a.m. The Proposed Decision will be issued on or about September 12, 2025.

If you plan to address the Commission on this item, please notify the Commission Office not later than noon on the Tuesday prior to the hearing, **September 23, 2025**. Please also include the names of the people who will be speaking for inclusion on the witness list and the names and emails addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Very truly yours,



Juliana F. Gmur
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Penal Code Sections 745 and 1473

Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

The Test Claim alleges new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f) as amended by Statutes 2022, Chapter 739, sections 2 and 3.5, effective January 1, 2023, the Racial Justice Act for All. The test claim statute extended the Racial Justice Act of 2020 (RJA), which prohibited the State from seeking or obtaining a criminal conviction, judgment, or sentence on the basis of race, ethnicity, or national origin prospectively *on or after* January 1, 2021, by making the relief retroactive. The test claim statute allows those persons whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice to file habeas corpus proceedings to collaterally attack their criminal convictions, judgments, and sentences on the basis of racial discrimination and further requires the county to provide counsel to represent indigent habeas corpus petitioners on their petition alleging a violation of the Racial Justice Act, when appointed by the court.¹

For the reasons stated in the analysis, staff finds the test claim statute imposes a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to provide counsel to these indigent habeas corpus petitioners when appointed by the court and recommends the Commission approve this Test Claim.

¹ Penal Code sections 745(j) and 1473(f). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

Procedural History

The claimant filed the Test Claim on December 19, 2024.² The Department of Finance (Finance) filed comments on the Test Claim on March 18, 2025.³ The Solano County Office of the Public Defender filed comments on March 17, 2025.⁴ The Contra Costa Office of the Public Defender,⁵ the Ella Baker Center for Human Rights,⁶ and the Monterey County Office of the Public Defender⁷ filed comments on March 19, 2025. The County of Ventura Office of the Public Defender⁸ and the University of San Francisco Racial Justice Clinic⁹ filed comments on March 20, 2025. The Alameda County Public Defender filed late comments on March 21, 2025.¹⁰ The County of Santa Clara filed comments on April 16, 2025.¹¹ The claimant filed rebuttal comments on April 17, 2025.¹² The California State Association of Counties filed comments on May 5, 2025.¹³

Commission staff issued the Draft Proposed Decision on June 17, 2025.¹⁴

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the

² Exhibit A, Test Claim.

³ Exhibit B, Finance’s Comments on the Test Claim.

⁴ Exhibit D, Solano County Office of the Public Defender’s Comments on the Test Claim.

⁵ Exhibit E, Contra Costa Office of the Public Defender’s Comments on the Test Claim.

⁶ Exhibit F, Ella Baker Center for Human Rights’ Comments on the Test Claim.

⁷ Exhibit G, Monterey County Office of the Public Defender’s Comments on the Test Claim.

⁸ Exhibit H, County of Ventura Office of the Public Defender’s Comments on the Test Claim.

⁹ Exhibit I, University of San Francisco Racial Justice Clinic’s Comments on the Test Claim.

¹⁰ Exhibit J, Alameda County Public Defender’s Late Comments on the Test Claim.

¹¹ Exhibit K, County of Santa Clara’s Comments on the Test Claim.

¹² Exhibit C, Claimant’s Rebuttal Comments.

¹³ Exhibit L, California State Association of Counties’ Comments on the Test Claim.

¹⁴ Exhibit M, Draft Proposed Decision.

opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁵

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) requires test claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days. Government Code section 17557(e) requires: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that year.”	<i>Yes, timely filed –</i> The test claim statute was effective on January 1, 2023, and became operative on January 1, 2024. The Test Claim was filed on December 19, 2024, which is within 12 months of first incurring costs. ¹⁶ Because the Test Claim was filed on December 19, 2024, the potential period of reimbursement began on July 1, 2023.
Do Penal Code sections 745(j)(3) and 1473(f) as	Under prior law (the Racial Justice Act (RJA) of 2020),	Yes. The test claim statute imposes a state-mandated

¹⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

Issue	Description	Staff Recommendation
amended by the test claim statute impose a state-mandated new program or higher level of service on counties?	<p>Penal Code section 745(a), prohibited racial discrimination in criminal prosecutions and sentencing from January 1, 2021, forward. Adult and juvenile defendants charged or sentenced with a crime, were authorized to file motions or petitions for writ of habeas corpus alleging a violation of section 745(a) and seek remedies prospectively beginning January 1, 2021.¹⁷ For judgments entered <i>on or after</i> January 1, 2021, under Penal Code section 1473(f), “the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.”</p> <p>The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.¹⁸ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons</p>	<p>new program or higher level of service on counties to perform the following activity: Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered <i>before</i> January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.</p> <p>This activity is new. There is no pre-existing duty to provide counsel for postconviction habeas corpus petitions.</p> <p>The test claim statute’s requirement is mandatory on counties. County public defenders are the first to be assigned as counsel under the “exclusive” process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel “shall” be</p>

¹⁷ Penal Code section 745(j), as added by Statutes 2020, chapter 317 [“This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021.”]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 [“Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021.”].

¹⁸ Statutes 2022, chapter 739 (AB 256).

Issue	Description	Staff Recommendation
	<p>currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, <i>“regardless of when the judgment or disposition became final”</i> and, thus, applies to criminal judgments entered <i>before</i> January 1, 2021.¹⁹ The appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.²⁰</p> <p>The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered <i>before</i> January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code</p>	<p>appointed for 745(a) petitions.</p> <p>The mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.²² The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.²³</p>

¹⁹ Penal Code section 745(j)(3), as amended by the test claim statute.

²⁰ Penal Code section 1473(f), as amended by the test claim statute.

²² Penal Code section 987.2.

²³ Statutes 2020, chapter 317, section 2.

Issue	Description	Staff Recommendation
	sections 745(j)(3) and 1473(f). ²¹	
Do Penal Code sections 745(j)(3) and 1473(f) as amended by the test claim statute impose costs mandated by the state, or does the exception in Government Code section 17556(g) apply to deny the Test Claim?		<p>Yes, there are costs mandated by the state.</p> <p>No, Government Code section 17556(g) does not apply to deny the Test Claim. The test claim statute does not create or eliminate a crime and does not change a penalty for a crime. The test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly.²⁴ The purpose of the RJA is <i>not</i> to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.²⁵</p>

Staff Analysis

This Test Claim addresses Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, the Racial Justice Act for All.²⁶

²¹ Exhibit A, Test Claim, pages 10-11.

²⁴ Penal Code section 1473(f), as added by Statutes 2020, chapter 317.

²⁵ Statutes 2020, chapter 317 (AB 2542), section 2(i).

²⁶ Statutes 2022, chapter 739 (AB 2542). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

Existing law, the Racial Justice Act (RJA), prohibits the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.²⁷ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.²⁸ To enforce the RJA's prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of four types of violations specified.²⁹ For a post-judgment petition, the judge will evaluate whether it alleges any facts that would establish a violation.³⁰ If so, or on the State Public Defender's request, it "shall" appoint counsel to a petitioner.³¹ The newly appointed counsel may amend the petition.³² The judge then determines if the petition makes a prima facie case.³³ If there is a prima facie case, the claim continues and the petitioner may request discovery.³⁴ Next, the court "shall" hold a hearing.³⁵ The court "shall make findings on the record."³⁶ If a judgment had been entered and a violation is found, the court "shall," under the RJA, vacate the conviction and sentence and find both or either

²⁷ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4).

²⁸ Penal Code section 745(j), as added by Statutes 2020, chapter 317 ["This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021."]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 ["Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021."].

²⁹ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

³⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³¹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³⁴ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

³⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

³⁶ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

legally invalid, as specified.³⁷ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.³⁸ The RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered *on or after* January 1, 2021.³⁹

The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.⁴⁰ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, “regardless of their judgment date” (and, thus, *before* January 1, 2021), and the appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.⁴¹

The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute.⁴²

The Test Claim was timely filed.⁴³ Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.⁴⁴

Staff finds that the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement. The new requirement for the appointed counsel’s

³⁷ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

³⁸ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

³⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁴⁰ Statutes 2022, chapter 739 (AB 256).

⁴¹ Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

⁴² Exhibit A, Test Claim, pages 10-11.

⁴³ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

⁴⁴ Government Code section 17557(e).

representation will continue until the end of the evidentiary hearing required under Penal Code section 1473.

Staff further finds the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court. County public defenders are the first to be assigned as counsel under the “exclusive” process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel “shall” be appointed for 745(a) petitions.

Staff finds that the mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.⁴⁵ The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.⁴⁶

Finally, staff finds there are costs mandated by the state and that none of the exceptions in Government Code section 17556 apply.⁴⁷ The test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Rather, the test claim statute’s habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly.⁴⁸ The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.⁴⁹

Accordingly, staff recommends that the Commission approve this Test Claim and find that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a

⁴⁵ Penal Code section 987.2.

⁴⁶ Statutes 2020, chapter 317, section 2.

⁴⁷ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, paragraphs 8-10).

⁴⁸ Penal Code section 1473(f) (later renumbered as section 1473(e)).

⁴⁹ Statutes 2020, chapter 317 (AB 2542), section 2(i).

violation of the RJA under Penal Code section 745(a), when appointed by the court.

Conclusion

Staff concludes that Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, impose a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Penal Code Sections 745 and 1473

Statutes 2022, Chapter 739, Sections 2
and 3.5 (AB 256), Effective
January 1, 2023

Filed on December 19, 2024

County of Los Angeles, Claimant

Case No.: 24-TC-02

Criminal Procedure: Discrimination

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 26, 2025)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 26, 2025. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	

Summary of the Findings

This Test Claim addresses Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, the Racial Justice Act for All.⁵⁰

Existing law, the Racial Justice Act (RJA), prohibits the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.⁵¹ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.⁵² To enforce the RJA's prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of four types of violations specified.⁵³ For a post-judgment petition, the judge will evaluate whether it alleges any facts that would establish a violation.⁵⁴ If so, or on the State Public Defender's request, it "shall" appoint counsel to a petitioner.⁵⁵ The newly appointed counsel may amend the petition.⁵⁶ The judge then determines if the petition makes a prima facie case.⁵⁷ If there is a prima facie case, the claim continues and the petitioner

⁵⁰ Statutes 2022, chapter 739 (AB 2542). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

⁵¹ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4).

⁵² Penal Code section 745(j), as added by Statutes 2020, chapter 317 ["This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021."]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 ["Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021."].

⁵³ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

⁵⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁶ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁷ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

may request discovery.⁵⁸ Next, the court “shall” hold a hearing.⁵⁹ The court “shall make findings on the record.”⁶⁰ If a judgment had been entered and a violation is found, the court “shall,” under the RJA, vacate the conviction and sentence and find both or either legally invalid, as specified.⁶¹ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.⁶² The RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered *on or after* January 1, 2021.⁶³

The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.⁶⁴ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, “regardless of their judgment date” (and, thus, *before* January 1, 2021), and the appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.⁶⁵

The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute.⁶⁶

⁵⁸ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

⁵⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

⁶⁰ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁶¹ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

⁶² Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

⁶³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁶⁴ Statutes 2022, chapter 739 (AB 256).

⁶⁵ Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

⁶⁶ Exhibit A, Test Claim, pages 10-11.

The Test Claim was timely filed.⁶⁷ Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.⁶⁸

The Commission finds that the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement. The new requirement for the appointed counsel's representation will continue until the end of the evidentiary hearing required under Penal Code section 1473.

The Commission further finds the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court. County public defenders are the first to be assigned as counsel under the "exclusive" process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel "shall" be appointed for 745(a) petitions.

The Commission finds that the mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.⁶⁹ The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.⁷⁰

Finally, the Commission finds there are costs mandated by the state and that none of the exceptions in Government Code section 17556 apply.⁷¹ The test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Rather, the test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either

⁶⁷ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

⁶⁸ Government Code section 17557(e).

⁶⁹ Penal Code section 987.2.

⁷⁰ Statutes 2020, chapter 317, section 2.

⁷¹ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, paragraphs 8-10).

intentionally or implicitly.⁷² The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.⁷³

Accordingly, the Commission approves this Test Claim and finds that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), when appointed by the court.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 01/01/2023 | Penal Code sections 745 and 1473, as amended by Statutes 2022, chapter 739 (AB 256), sections 2 and 3.5, became effective. |
| 01/01/2024 | Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1. |
| 12/19/2024 | The claimant filed the Test Claim and revised it on March 27, 2025. ⁷⁴ |
| 03/12/2025 | Commission staff issued Request for Clarification of Pleading and Second Notice of Incomplete Test Claim. |
| 03/17/2025 | Solano County Office of the Public Defender filed comments on the Test Claim. ⁷⁵ |
| 03/18/2025 | Department of Finance (Finance) filed comments on the Test Claim. ⁷⁶ |
| 03/19/2025 | Contra Costa Office of the Public Defender filed comments on the Test Claim. ⁷⁷ |

⁷² Penal Code section 1473(f).

⁷³ Statutes 2020, chapter 317 (AB 2542), section 2(i).

⁷⁴ Exhibit A, Test Claim.

⁷⁵ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim.

⁷⁶ Exhibit B, Finance's Comments on the Test Claim.

⁷⁷ Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim.

03/19/2025 Ella Baker Center for Human Rights filed comments on the Test Claim.⁷⁸

03/19/2025 Monterey County Office of the Public Defender filed comments on the Test Claim.⁷⁹

03/20/2025 County of Ventura Office of the Public Defender filed comments on the Test Claim.⁸⁰

03/20/2025 University of San Francisco Racial Justice Clinic filed comments on the Test Claim.⁸¹

03/21/2025 Alameda County Public Defender filed late comments on the Test Claim.⁸²

03/27/2025 The claimant filed Response to Request for Clarification of Pleading and Second Notice of Incomplete Test Claim.⁸³

04/04/2025 Commission staff issued Second Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.

04/16/2025 County of Santa Clara filed comments on the Test Claim.⁸⁴

04/17/2025 The claimant filed rebuttal comments on the Test Claim.⁸⁵

05/05/2025 California State Association of Counties filed comments on the Test Claim.⁸⁶

06/17/2025 Commission staff issued the Draft Proposed Decision.⁸⁷

⁷⁸ Exhibit F, Ella Baker Center for Human Rights' Comments on the Test Claim.

⁷⁹ Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim.

⁸⁰ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim.

⁸¹ Exhibit I, University of San Francisco Racial Justice Clinic's Comments on the Test Claim.

⁸² Exhibit J, Alameda County Public Defender's Late Comments on the Test Claim.

⁸³ Exhibit A, Test Claim.

⁸⁴ Exhibit K, County of Santa Clara's Comments on the Test Claim.

⁸⁵ Exhibit C, Claimant's Rebuttal Comments.

⁸⁶ Exhibit L, California State Association of Counties' Comments on the Test Claim.

⁸⁷ Exhibit M, Draft Proposed Decision.

II. Background

A. Prior Law: The Racial Justice Act (RJA) of 2020 (AB 2542)

The Racial Justice Act (RJA),⁸⁸ effective January 1, 2021, added section 745 to the Penal Code and amended Penal Code sections 1473 and 1473.7 to prohibit the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.⁸⁹ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.⁹⁰ Beginning on that date, if trial is pending, an RJA violation can be alleged by motion filed by the defendant.⁹¹ If the case is post-judgment, an RJA violation can be alleged by an incarcerated petitioner through a petition for habeas corpus “if judgment was entered on or after January 1, 2021.”⁹² Those no longer incarcerated can also make a motion to vacate a conviction or sentence on the ground that the conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of subdivision (a) of Section 745.⁹³

To enforce the RJA’s prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of the following:

- (1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin.
- (2) During the defendant’s trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant’s race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin,

⁸⁸ Statutes 2020, chapter 317 (AB 2542).

⁸⁹ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4), as added by Statutes 2020, chapter 317.

⁹⁰ Penal Code section 745(j), as added by Statutes 2020, chapter 317 [“This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021.”]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 [“Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021.”].

⁹¹ Penal Code section 745(b) and (c), as added by Statutes 2020, chapter 317.

⁹² Penal Code sections 745(b) and 1473(f), as added and amended by Statutes 2020, chapter 317.

⁹³ Penal Code sections 745(b) and 1473.7(a)(3), (c), as added and amended by Statutes 2020, chapter 317.

whether or not purposeful. This paragraph does not apply if the person speaking is describing language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4)(A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.⁹⁴

A useful summary of the four above “pathways” to an RJA violation was produced by the Office of the State Public Defender.⁹⁵ In short, the first two pathways prohibit racially discriminatory conduct by law enforcement, legal professionals, and jurors, both inside and outside the courtroom. The second two pathways prohibit racially discriminatory actions in charging and sentencing, which can be based on statistical evidence. Any one of the four constitutes an RJA violation.

The Legislature’s findings and declarations identify the purpose of the RJA is to root out racism in criminal justice proceedings. Accordingly, courts give “considerable weight”⁹⁶ to the Legislature’s extensive social justice findings, which are excerpted as follows:

- “Discrimination undermines public confidence in the fairness of the state's system of justice and deprives Californians of equal justice under law.”⁹⁷

⁹⁴ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

⁹⁵ Exhibit X (1), *Racial Justice Retroactivity*, AB 256, Office of the State Public Defender, pages 3-4.

⁹⁶ *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 157.

⁹⁷ Statutes 2020, chapter 317, section 2(a).

- “We cannot simply accept the stark reality that race pervades our system of justice. Rather, we must acknowledge and seek to remedy that reality and create a fair system of justice that upholds our democratic ideals.”⁹⁸
- “Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because courts generally only address racial bias in its most extreme and blatant forms. More and more judges in California and across the country are recognizing that current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system.”⁹⁹
- “Current legal precedent often results in courts sanctioning racism in criminal trials. Existing precedent countenances racially biased testimony, including expert testimony, and arguments in criminal trials.”¹⁰⁰
- “Existing precedent tolerates the use of racially incendiary or racially coded language, images, and racial stereotypes in criminal trials.”¹⁰¹
- “Existing precedent also accepts racial disparities in our criminal justice system as inevitable.”¹⁰²

The Legislature’s findings cite *McCleskey v. Kemp* (1987) 481 U.S. 279, 295-99, 312, a Georgia case in which a majority decision of the U.S. Supreme Court rejected a statistical approach to proving racial discrimination and reaffirmed the federal “purposeful discrimination” standard for proving racial discrimination in criminal prosecution.¹⁰³ The *McCleskey* decision is summarized as follows:

In *McCleskey*, a death penalty case, habeas corpus petitioner Warren McCleskey challenged his conviction and sentence on Eighth and Fourteenth Amendment grounds, arguing that statistical evidence showed defendants in Georgia who killed white victims were 4.3 times more likely to receive the death penalty than defendants charged with killing blacks. (*McCleskey, supra*, 481 U.S. at p. 287.) He relied on the findings of a statistics expert, Professor David Baldus, who examined 2,000 murder cases throughout the State of Georgia and performed a multiple regression analysis that excluded 230 nonracial explanations for the discriminatory pattern his study confirmed. (*Id.* at pp. 286–288.) The Baldus study showed that prosecutors were most likely to seek the death penalty in a case involving a white victim. Specifically, Georgia

⁹⁸ Statutes 2020, chapter 317, section 2(b).

⁹⁹ Statutes 2020, chapter 317, section 2(c).

¹⁰⁰ Statutes 2020, chapter 317, section 2(d).

¹⁰¹ Statutes 2020, chapter 317, section 2(e).

¹⁰² Statutes 2020, chapter 317, section 2(f).

¹⁰³ *McCleskey v. Kemp* (1987) 481 U.S. 279, 292-293.

prosecutors requested the death penalty in 70 percent of cases involving black defendants and white victims; 32 percent of cases involving white defendants and white victims; 15 percent of cases involving black defendants and black victims; and 19 percent of cases involving white defendants and black victims. (*Id.* at p. 287.) And racial factors were most likely to play a role in capital sentencing in cases that presented the greatest degree of jury discretion. (*Id.* at p. 287, fn. 5.)

The high court accepted the validity of Baldus's findings (*McCleskey, supra*, 481 U.S. at p. 291, fn. 7), but characterized them as evidencing nothing more than a “discrepancy that appears to correlate with race” (*id.* at p. 312). Pointing to the absence of evidence that the State of Georgia enacted its death penalty statute with a racially discriminatory purpose, the court, by a five-to-four vote, declined to find a constitutional defect. (*Id.* at pp. 292–296, 298–299.) The court observed that discretion—as exercised by prosecutors as well as by juries—can work in a defendant's favor as well as against him (*id.* at p. 312 [“ ‘the power to be lenient [also] is the power to discriminate’ ”]), and explained that the jury is a criminal defendant's fundamental bulwark against “ ‘race or color prejudice’ ” (*id.* at p. 310). The court also pointed to *Batson v. Kentucky, supra*, 476 U.S. 79—notably, another focus of our Legislature's criticism in passing the Racial Justice Act [fn. omitted]—to show its own “ ‘unceasing efforts’ to eradicate racial prejudice from our criminal justice system.” (*McCleskey, supra*, 481 U.S. at p. 309.) Taking Warren McCleskey's statistical approach to proving racial discrimination to the full measure of its logic, the court explained, “other claims could apply with equally logical force to statistical disparities that correlate with the race or sex of other actors in the criminal justice system.” (*Id.* at p. 317.) These kinds of statistics-based arguments were “best presented to the legislative bodies,” the court decided. (*Id.* at p. 319.)

Justice Brennan, in dissent, opined that “[t]he statistical evidence in this case ... relentlessly documents the risk that McCleskey's sentence was influenced by racial considerations.” (*McCleskey, supra*, 481 U.S. at p. 328 (dis. opn.)) As Justice Brennan saw it, “This evidence shows that there is a better than even chance in Georgia that race will influence the decision to impose the death penalty: a majority of defendants in white-victim crimes would not have been sentenced to die if their victims had been black.” (*Ibid.*) Given the history of officially sanctioned racial bias in Georgia's criminal justice system, Justice Brennan argued that McCleskey's statistics could not be ignored. (*Id.* at pp. 332–334 (dis. opn.)) What the majority characterized as “ ‘unceasing efforts’ ” to “eradicate” racial discrimination in the criminal justice system (*McCleskey*, at p. 309), Justice Brennan saw as “honorable steps” but merely evidence of the persistence of the underlying problem (*id.* at pp. 333, 344 (dis. opn.)). In a rejoinder quoted by the Legislature in its findings accompanying the Racial Justice Act, Justice Brennan observed that the

majority's "fear ... McCleskey's claim would open the door to widespread challenges to all aspects of criminal sentencing" suggested a "fear of too much justice." (*Id.* at p. 339 (dis. opn.).)¹⁰⁴

As stated above, Justice Brennan criticized the federal standard in his dissent in the *McCleskey* case as a "fear of too much justice."¹⁰⁵ Through the RJA, California rejects the *McCleskey* "purposeful [or intentional] discrimination" standard and allows a showing of discrimination based on implicit bias as follows:¹⁰⁶

- "In California in 2020, we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California, both prospectively and retroactively."¹⁰⁷
- "Examples of the racism that pervades the criminal justice system are too numerous to list."¹⁰⁸
- "It is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California. Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant's case and to the integrity of the judicial system. It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them."¹⁰⁹
- "It is the further intent of the Legislature to provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional discrimination. It is the further intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence,

¹⁰⁴ *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 151-153.

¹⁰⁵ *McCleskey v. Kemp* (1987) 481 U.S. 279, 339 (Brennan, J., dissenting).

¹⁰⁶ *Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 ["Indeed, the primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias."].

¹⁰⁷ Statutes 2020, chapter 317, section 2(g).

¹⁰⁸ Statutes 2020, chapter 317, section 2(h).

¹⁰⁹ Statutes 2020, chapter 317, section 2(i).

regarding potential discrimination in seeking or obtaining convictions or imposing sentences.”¹¹⁰

An RJA claim begins when a defendant or petitioner files an RJA motion or petition. For post-judgment petitions, the judge will evaluate whether it alleges any facts that would establish a violation of section 745(a).¹¹¹ If so, or on the State Public Defender’s request, it will appoint counsel to a petitioner.¹¹² The newly appointed counsel may amend the petition.¹¹³ The judge then determines if the petition makes a prima facie case.¹¹⁴ A prima facie showing under the RJA simply requires that the facts alleged, if true, “establish that there is a substantial likelihood that a violation” occurred.¹¹⁵ A “substantial likelihood” means “more than a mere possibility, but less than a standard of more likely than not.”¹¹⁶ If there is no prima facie case, the petition will be summarily denied with reasons stated on the record.¹¹⁷

If there is a prima facie case, the claim continues and the petitioner may request discovery.¹¹⁸ Because the state may possess or control the relevant evidence, a defendant or petitioner with a prima facie showing may move for disclosure of all potentially relevant information in the state’s possession or control and the court “shall” order the records released.¹¹⁹ And rather than having to meet the rigorous standards of federal case law to obtain discovery by presenting evidence of discriminatory effect and

¹¹⁰ Statutes 2020, chapter 317, section 2(j).

¹¹¹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁵ Penal Code section 745(h)(2), as added by Statutes 2020, chapter 317; *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 19-25; 23-24 [“At the prima facie stage of a Racial Justice Act motion, by contrast, the trial court must consider whether the motion and its supporting evidence state facts that, “*if true*, establish that there is a substantial likelihood that a violation” occurred (§ 745, subd. (h)(2), italics added), and should not weigh the evidence or make credibility determinations, except in the rare case where the record “irrefutably establishes” that a defendant’s allegations are false.”].

¹¹⁶ Penal Code section 745(h)(2), as added by Statutes 2020, chapter 317.

¹¹⁷ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁸ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

¹¹⁹ Penal Code section 745(d), as added by Statutes 2020, chapter 317.

intent,¹²⁰ the RJA's standard for compelling discovery in section 745(d) is relaxed to "good cause." "Good cause" in section 745(d) means "a plausible case, based on specific facts, that any of the four enumerated violations of section 745, subdivision (a) *could or might have occurred*."¹²¹ The bottom line is that claims of racially biased prosecutions can now be commenced and pursued much more easily in California than under federal law.

Next, the court "shall" hold a hearing.¹²² Evidence may be presented at the hearing, including statistical evidence, aggregate data, expert testimony, sworn testimony of witnesses, and an independent expert the court may appoint.¹²³ The court "shall make findings on the record."¹²⁴ If a violation is found on a motion during trial, the court "shall impose a remedy" from a statutory list.¹²⁵ If a judgment has been entered, the court "shall," under the RJA, vacate the conviction and sentence and find both or either legally invalid, as specified.¹²⁶ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.¹²⁷ No greater sentence may be imposed¹²⁸ and the death penalty may not be imposed.¹²⁹ Also, to ensure that RJA proceedings are distinct, any other constitutional or statutory remedies of the defendant are not foreclosed.¹³⁰

As indicated above, prior to the test claim statute, the RJA "applie[d] only prospectively in cases in which judgment has not been entered prior to January 1, 2021."¹³¹

¹²⁰ *United States v. Armstrong* (1996) 517 U.S. 456.

¹²¹ *Young v. Superior Ct. of Solano County* (2022) 79 Cal.App.5th 138, 144, emphasis added.

¹²² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

¹²³ Penal Code section 745(c)(1), as added by Statutes 2020, chapter 317.

¹²⁴ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹²⁵ Penal Code section 745(e), as added by Statutes 2020, chapter 317.

¹²⁶ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁷ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁸ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁹ Penal Code section 745(e)(3), as added by Statutes 2020, chapter 317; see also *People v. McDaniel* (2021) 12 Cal.5th 97, 141, as modified on denial of rehearing ["Several amici curiae, including Governor Gavin Newsom, advance views of history and social context that link capital punishment with racism."].

¹³⁰ Penal Code section 745(e)(4), as added by Statutes 2020, chapter 317.

¹³¹ Penal Code section 745(j), as added by Statutes 2020, chapter 317.

Accordingly, the RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered on or after January 1, 2021.¹³²

B. The Test Claim Statute, the Racial Justice for All Act of 2022 (AB 256), Made the RJA Retroactive and Applicable to a New Class of Habeas Corpus Petitioners Whose Judgments Were Entered Before January 1, 2021.

In 2022, the Legislature passed the Racial Justice Act for All, effective January 1, 2023, to apply the RJA retroactively.¹³³ The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “commencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 (“regardless of when the judgment or disposition became final”) and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f) (which was later renumbered as section 1473(e)).¹³⁴

Penal Code section 745(j)(3), as amended by the test claim statute, now states the following about the code section’s application:

Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, *regardless of when the judgment or disposition became final*.¹³⁵

Penal Code section 1473(f), as amended by the test claim statute (and later renumbered as section 1473(e))¹³⁶, states the following:

Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, *if that section applies based on the date of judgment as provided in subdivision (j) of Section 745*. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the

¹³² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹³³ Statutes 2022, chapter 739 (AB 256).

¹³⁴ Exhibit A, Test Claim, pages 10-11; Statutes 2023, chapter 381 (SB 97).

¹³⁵ Emphasis added.

¹³⁶ Statutes 2023, chapter 381 (SB 97).

petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. *The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.* Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.¹³⁷

The Assembly Committee on Appropriations citing the Department of Justice, estimates that 100,000 claims could be filed under the RJA as amended by the test claim statute.¹³⁸ According to an article titled "California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa," it is estimated that 90,000 incarcerated persons may have claims under the RJA as amended by the test claim statute:

As of Jan. 1, people who are currently and formerly incarcerated are now able to challenge their convictions using the RJA. Minsker said more than three-quarters of the state's prison population — about 90,000 people — could have viable claims. If implemented, she said, the law could help end mass incarceration in California.¹³⁹

As indicated above, starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, regardless of their judgment date.

An example of the test claim statute's retroactivity application is provided in *Bemore v. Superior Court*, a case brought by Terry Bemore, a prisoner convicted in 1985. Mr. Bemore made an RJA claim, and the court wrote: "Section 1473(e) is clear, and all parties agree that it requires the trial court to appoint counsel to represent Bemore in

¹³⁷ Emphasis added.

¹³⁸ Exhibit X (4), Assembly Committee on Appropriations, April 14, 2021, AB 256 as Amended March 16, 2021, page 1.

¹³⁹ Exhibit X (5), California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa, Annelise Finney, February 13, 2024, page 9.

postconviction RJA habeas proceedings in accordance with the authority cited above.”¹⁴⁰ *Bemore* further explains that “[Penal Code] section 987.2 contains the provisions that govern the selection of appointed counsel to pursue noncapital, postconviction RJA claims in superior court.”¹⁴¹ Penal Code “section 987.2(e) directs trial courts to ‘first utilize’ the services of the public defender to provide criminal defense services for indigent defendants.”¹⁴² If the courts must resort to assigning private counsel for the petitioner, the county must pay reasonable compensation for that service.¹⁴³

In addition to the original procedures for enforcement of section 745(a)’s prohibition of racial discrimination in prosecution, the test claim statute added a few modifications and clarifications. Judges shall disqualify themselves if a 745(a) motion is based on their conduct.¹⁴⁴ Timeliness of a motion at trial is required or the motion may be deemed waived.¹⁴⁵ Regarding evidence on motions, “out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.”¹⁴⁶ It is also further emphasized that “[t]he defendant does not need to prove intentional discrimination.”¹⁴⁷ The prosecution may obtain a protective order against disclosure of certain information if a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or another protective order.¹⁴⁸ The court may also modify the judgment to a lesser included or lesser related offense *if* the only violation found is under section 745(a)(3), which is the finding that a defendant was charged or convicted of a more serious offense than defendants of other races who engaged in similar conduct and were similarly situated.¹⁴⁹ It has also been clarified that the procedures apply to “adjudications to transfer a juvenile case to adult court.”¹⁵⁰ Lastly,

¹⁴⁰ *Bemore v. Superior Ct. of San Diego County* (2025) 108 Cal. App. 5th 1125, 1147.

¹⁴¹ *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

¹⁴² *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1152.

¹⁴³ Penal Code section 987.2(a) [“In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county”].

¹⁴⁴ Penal Code section 745(b), as amended by Statutes 2022, chapter 739.

¹⁴⁵ Penal Code section 745(c), as amended by Statutes 2022, chapter 739.

¹⁴⁶ Penal Code section 745(c)(1), as amended by Statutes 2022, chapter 739.

¹⁴⁷ Penal Code section 745(c)(2), as amended by Statutes 2022, chapter 739.

¹⁴⁸ Penal Code section 745(d), as amended by Statutes 2022, chapter 739.

¹⁴⁹ Penal Code section 745(e)(2)(A), as amended by Statutes 2022, chapter 739.

¹⁵⁰ Penal Code section 745(f), as amended by Statutes 2022, chapter 739.

definitions were clarified as to the phrases “more frequently sought or obtained,” “relevant factors,” and “similarly situated.”¹⁵¹

III. Positions of the Parties

A. County of Los Angeles

The claimant asserts the test claim statute imposes a reimbursable state-mandated program. The claimant states in the Test Claim:

Defendants do not have a constitutional right to court-appointed counsel in post-conviction proceedings, unless a State or federal statute specifies otherwise. AB 256 now requires the Public Defender to represent State prisoners that allege a racially biased prosecution. The petitions contemplated by the Racial Justice Act for All, and specifically PC § 745(j)(3), involve State prisoners who have already been convicted and sentenced.¹⁵²

Attached to the Test Claim is the Declaration of Elizabeth Lashley-Haynes, a Deputy Public Defender for Los Angeles County and senior attorney for the Public Defender’s Racial Justice Act Unit, signed December 9, 2024.¹⁵³ Ms. Haynes declares that Penal Code section 745(j)(3) and section 1473(e) (originally numbered section 1473(f)) newly require legal representation for RJA habeas corpus petitioners with pre-January 1, 2021, judgments.¹⁵⁴

The claimant asserts that before the test claim statute was enacted, individuals serving state prison sentences were not eligible to file RJA petitions.¹⁵⁵ Accordingly, the claimant states, public defenders were not required to represent them.¹⁵⁶

The claimant asserts that the test claim statute imposes new mandated activities upon county public defenders. Specifically, “the courts appoint the Public Defender to provide representation to petitioners claiming that race, ethnicity, or national origin bias occurred

¹⁵¹ Penal Code section 745(h), as amended by Statutes 2022, chapter 739.

¹⁵² Exhibit A, Test Claim, page 10.

¹⁵³ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

¹⁵⁴ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraphs 2, 4, and 5).

¹⁵⁵ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 3).

¹⁵⁶ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 4).

in their case.”¹⁵⁷ This, the claimant states, necessitates conflict checks, investigation of the petitioner’s claims, retrieval and review of records, communication with the petitioner in prison, drafting and filing of writs or motions, court appearances, and documentation of files.¹⁵⁸

The claimant declares it first incurred costs under the test claim statute on January 1, 2024, in the amount of \$155,667 for FY 2023-2024.¹⁵⁹ It estimates costs of \$657,000 for FY 2024-2025¹⁶⁰ and a statewide cost estimate of \$2,190,000 for the same fiscal year.¹⁶¹ The claimant calculated this statewide cost estimate by using a statistic from the Vera Institute of Justice that 30% of the state prison population came from Los Angeles County in 2021.¹⁶² The claimant declares it has received no funds from any state, federal, or other non-local agency for the program, and that its general funds must be used.¹⁶³

The claimant asserts that the test claim statute imposes requirements unique to local government because the services are provided by local agencies.¹⁶⁴ It additionally asserts that the test claim statute carries out state policy through mandated activities.¹⁶⁵

The claimant finally asserts that none of the “seven disclaimers” in Government Code section 17556 apply to excuse the state from reimbursement.¹⁶⁶

¹⁵⁷ Exhibit A, Test Claim, page 10.

¹⁵⁸ Exhibit A, Test Claim, page 10; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 6).

¹⁵⁹ Exhibit A, Test Claim, page 11; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraphs 7-8).

¹⁶⁰ Exhibit A, Test Claim, page 11; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 9).

¹⁶¹ Exhibit A, Test Claim, page 11; page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 10).

¹⁶² Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 10, footnote 1).

¹⁶³ Exhibit A, Test Claim, page 11; page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 11).

¹⁶⁴ Exhibit A, Test Claim, page 12.

¹⁶⁵ Exhibit A, Test Claim, page 13.

¹⁶⁶ Exhibit A, Test Claim, pages 13-14.

The claimant filed rebuttal comments on April 17, 2025.¹⁶⁷ In response to Finance’s comment that Government Code section 17556(g) should apply to deny the Test Claim, the claimant disagrees, stating that “AB 256 amended the Racial Justice Act (RJA) of 2020 to apply the RJA retroactively to ensure equal access to all.”¹⁶⁸ It states:

AB 256 offers a procedural remedy to challenge the existence of racial bias, but it does not change the penalty for crimes. ... Having a sentence changed is only a possible remedy and not a right or guarantee. ...

Additionally, imposing a new or lesser sentence is not an automatic function of an RJA violation.¹⁶⁹

The claimant further distinguishes this claim from the denied Test Claim *Youth Offender Parole Hearings*, 17-TC-29, addressed in *County of San Diego v. Commission on State Mandates*.¹⁷⁰ In *County of San Diego*, the Court of Appeal applied section 17556(g) because “parole flowed directly from the parolee’s underlying crime and was a direct consequence of a criminal conviction.”¹⁷¹ But here, the claimant asserts, “any remedy that a court imposes following an RJA violation is unrelated to the crime perpetrated by the convicted person. Rather, the remedy directly relates to eliminating discriminatory practices in the justice system.”¹⁷²

B. Department of Finance

Finance contends that the test claim statute does not impose a reimbursable state-mandated program under Government Code section 17556(g). Finance characterizes the test claim statute as follows:

AB 256 authorizes a court to vacate an existing sentence and impose a new sentence when it finds that the original sentence had been imposed on discriminatory grounds. This authority to change sentences represents a change in the penalty for a crime or infraction and therefore falls within an established exception to the requirement for state reimbursement. For this reason, Finance believes the Commission should deny this test claim in its entirety.¹⁷³

¹⁶⁷ Exhibit C, Claimant’s Rebuttal Comments.

¹⁶⁸ Exhibit C, Claimant’s Rebuttal Comments.

¹⁶⁹ Exhibit C, Claimant’s Rebuttal Comments.

¹⁷⁰ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

¹⁷¹ Exhibit C, Claimant’s Rebuttal Comments, citing *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

¹⁷² Exhibit C, Claimant’s Rebuttal Comments, citing Statutes 2020, chapter 317, section 2(i) (AB 2542).

¹⁷³ Exhibit B, Finance’s Comments on the Test Claim, page 2.

C. Interested Parties and Persons

1. County of Santa Clara

The county of Santa Clara is an interested party under section 1181.2(i) of the Commission's regulations and filed comments joining the claimant in its arguments and in rebuttal to Finance.¹⁷⁴ The county of Santa Clara makes four separate arguments in rebuttal to Finance: (1) that "the remedies available under AB 256 are intended to cure the results of the State's unlawful bias, not change the penalty for any crime or infraction that was unlawfully imposed in the first instance," (2) that if it is decided that the section 745(e)(3) death penalty provision is a "change in penalty" under Government Code 17556(g), then "only habeas petitions brought in [death penalty cases] should be excluded from reimbursement," (3) that Government Code section 17556(g) is unconstitutional as to the "change in penalty" clause of section 17556(g) on which Finance relies because that clause is not in Article XIII B, section 6(a)(2) and so voters did not authorize it, and (4) that there is no definition of a new crime or change to the definition of an existing crime.¹⁷⁵

2. Solano County Office of the Public Defender, Contra Costa Office of the Public Defender, Ella Baker Center for Human Rights, Monterey County Office of the Public Defender, County of Ventura Office of the Public Defender, University of San Francisco Racial Justice Clinic, and Alameda County Public Defender

Five county public defenders and three non-profit organizations (interested persons under section 1181.2(j) of the Commission's regulations) filed comments in support of the Test Claim.¹⁷⁶ Most of the comments were identical. The identical comments were originally stated by the Solano County Office of the Public Defender as follows:

¹⁷⁴ Exhibit K, County of Santa Clara's Comments on the Test Claim, page 1.

¹⁷⁵ Exhibit K, County of Santa Clara's Comments on the Test Claim, pages 3-6.

¹⁷⁶ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim; Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim; Exhibit F, Ella Baker Center for Human Rights' Comments on the Test Claim [The Ella Baker Center for Human Rights "works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color."]; Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim; Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim; Exhibit I, University of San Francisco Racial Justice Clinic's Comments on the Test Claim [The University of San Francisco (USF) Racial Justice Clinic "is dedicated to advocating for those who have suffered discrimination, marginalization, and oppression in the criminal legal system based on their race. Among its several projects, the clinic represents currently incarcerated Californians who are eligible for relief under the RJA."]; Exhibit J, Alameda County Public Defender's Late Comments on the Test Claim; Exhibit K, County of Santa Clara's Comments on the Test Claim; Exhibit L, California State Association of Counties' Comments on the Test Claim.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the new costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had traditionally handled before.

Reimbursement for these new, additional costs is crucial to the effective implementation of RJA and AB 256. The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

The California Court of Appeal's recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[:]" "In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that ". . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender's office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be

rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties' ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court's responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02.¹⁷⁷

These comments also discuss the increased workload as a result of the test claim statute. The Contra Costa Office of the Public Defender has "multiple attorneys representing clients on retroactive RJA claims, in addition to ancillary staff supporting their representation" and has "expended resources on gathering data for expert review of materials."¹⁷⁸ The Monterey County Office of the Public Defender adds that its "office has been appointed in numerous cases wherein the client is seeking 'retroactive relief' under the RJA" and that implementation of the test claim statute "has added significant financial strain on our office, similar to the burden the County of Los Angeles has faced."¹⁷⁹ The County of Ventura Office of the Public Defender is now "identifying and litigating claims involving the Racial Justice Act."¹⁸⁰ It "currently has four attorneys working on Racial Justice Act claims. Two attorneys are senior attorneys and two attorneys are Level III attorneys. One of the attorney's sole duty is to work on retroactive RJA claims."¹⁸¹

3. California State Association of Counties

The California State Association of Counties (CSAC) argues that Government Code section 17556(g) does not apply. It states that "the relevant provision of the Racial Justice Act for All [is] Penal Code section 745, subdivision (j)(3), [which] merely authorizes certain defendants to petition the court to challenge alleged racial, ethnic, or national origin bias in their California state convictions or sentences."¹⁸² CSAC further states:

¹⁷⁷ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim, pages 1-2.

¹⁷⁸ Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁷⁹ Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁸⁰ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁸¹ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 2.

¹⁸² Exhibit L, California State Association of Counties' Comments on the Test Claim, page 1.

[T]he court has a number of options, including: denying the petition as unfounded; vacating the conviction and sentence and ordering new proceedings (which may or may not result in a different sentence); or vacating only the sentence and imposing a new sentence (which the statute states may not be longer than the original sentence but is silent on whether it could be the same).¹⁸³

Thus, vacating a sentence and imposing a new one, as Finance points out, is possible but not certain per CSAC, and therefore Government Code section 17556(g) does not apply. CSAC reasons that “the range of possible sentences for underlying crimes remains unchanged by the test claim statute, and any given defendant’s actual sentence may also remain unchanged after filing the petition authorized by the statute.”¹⁸⁴

CSAC also distinguishes *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625. CSAC asserts that *County of San Diego* “emphasized that the length of the imprisonment prior to parole eligibility [was] itself a substantive aspect of the sentence” and that the “court characterized [the change imposed by the test claim statutes there] as “guaranteeing” parole eligibility, “which altered defendants’ substantive punishments.”¹⁸⁵ Here, CSAC reasons:

[A]ll that is guaranteed to defendants is the ability to petition the court for consideration of their bias claims. Those claims may be rejected or may result in proceedings that impose the same sentence. There is nothing akin to the guarantee of a change to a substantive element of a punishment that was present in the *Franklin* proceedings test claim.¹⁸⁶

CSAC also asserts that Government Code 17556(g) is “constitutionally suspect.”¹⁸⁷ It points out that article XIII B, section 6 of the California Constitution exempts legislation defining a new crime or changing an existing definition of a crime” but not a change in

¹⁸³ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 1.

¹⁸⁴ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁵ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁶ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁷ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

penalty.¹⁸⁸ Considering this difference in language, “CSAC urges the Commission not to adopt an overly broad reading of Section 17556(g).”¹⁸⁹

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁹⁰ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁹¹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁹²
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁹³
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or

¹⁸⁸ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁹ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁹⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁹¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁹² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56.

executive order and it increases the level of service provided to the public.¹⁹⁴

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁹⁵

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁹⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁹⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁹⁸

A. The Test Claim Is Timely Filed with a Potential Period of Reimbursement Beginning July 1, 2023.

A test claim must be filed within 12 months of the effective date of a statute or an executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.¹⁹⁹ The Commission’s regulations clarify that “within 12 months of incurring costs” means “within 12 months (365 days) of *first* incurring costs as a result of a statute or executive order, whichever is later.”²⁰⁰

The effective date of the test claim statute is January 1, 2023.²⁰¹ The claimant filed the Test Claim on December 19, 2024, more than 12 months after the effective date of the statute.²⁰²

The claimant contends that it first incurred costs on January 1, 2024, and submits a declaration signed under penalty of perjury from Elizabeth Lashley-Haynes, Los

¹⁹⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁹⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁹⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹⁹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁹⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

¹⁹⁹ Government Code section 17551(c).

²⁰⁰ California Code of Regulations, title 2, section 1183.1(c), emphasis added.

²⁰¹ California Constitution, article IV, section 8(c)(1); Government Code section 9600.

²⁰² Exhibit A, Test Claim.

Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, stating “[t]he Public Defender first incurred costs related to implementing the mandates in PC § 745(j)(3) on January 1, 2024.”²⁰³

Additionally, the operative date of Penal Code section 745(j)(3), which applies the RJA retroactively is January 1, 2024.²⁰⁴ Consistently, Penal Code section 1473(f) (later renumbered section 1473(e)) “applies based on the date of the judgment as provided in subdivision (j) of Section 745.”²⁰⁵ Given the operative date of January 1, 2024, and as the claimant declares under penalty of perjury that it first incurred costs on January 1, 2024, the Test Claim was timely filed within 12 months of first incurring costs on December 19, 2024.

While costs were first incurred by the claimant on January 1, 2024, the potential period of reimbursement formally begins on July 1, 2023. Government Code section 17557(e) provides that a Test Claim “shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.

B. The Test Claim Statute Imposes a Reimbursable State-Mandated Program on Counties.

1. Penal Code Sections 745(j)(3) and 1473(f), as Amended by the Test Claim Statute, Impose a New Requirement for County Attorneys Appointed by the Court to Represent Indigent Habeas Corpus Petitioners Whose Criminal Judgments Have Been Entered *Before* January 1, 2021, and Are Currently Serving a Sentence in State Prison or County Jail or Committed to the Division of Juvenile Justice, with Their Petition Alleging a Violation of the RJA under Penal Code Section 745(a).

Article XIII B, section 6 was adopted to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government’s annual spending limit. Thus, article XIII B, section 6 requires a showing that a test claim statute or executive order mandates *new* activities and associated costs compared to the prior year.²⁰⁶

²⁰³ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

²⁰⁴ Penal Code section 745(j)(3), as amended by Statutes 2022, chapter 751.

²⁰⁵ Penal Code section 1473(e), as amended by Statutes 2022, chapter 751, and as relocated from 1473(f) to 1473(e) with no change in language by Statutes 2023, chapter 381, section 1.

²⁰⁶ California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v.*

To make the RJA retroactive, Penal Code sections 745(j)(3) and 1473(f) (later renumbered as 1473(e)), as amended by the test claim statute, require, beginning January 1, 2024, the appointment of counsel for indigent habeas corpus petitioners whose judgments were entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, in their petition alleging a violation of the RJA under Penal Code section 745(a), which prohibits the state from obtaining a criminal conviction or imposing a sentence on the basis of race, ethnicity, or national origin.

Penal Code section 745(j)(3), reads, in relevant part:

This section applies as follows:

...

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.²⁰⁷

Before the test claim statute, section 745(j) said: “This section applies only prospectively in cases in which judgment *has not been entered prior to January 1, 2021.*”²⁰⁸ Thus, section 745(j)(3) as amended by the test claim statute newly requires the habeas corpus petition procedure to be made available retroactively to the class of indigent incarcerated petitioners with judgments entered before January 1, 2021.

In addition, Penal Code section 1473(f) requires the appointment of counsel on these petitions for writs of habeas corpus. Section 1473(f), as amended by the test claim statute and later renumbered to section 1473(e), reads:

Notwithstanding any other law, *a writ of habeas corpus may also be prosecuted after judgment has been entered* based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, *if that section applies based on the date of judgment as provided in subdivision (j) of Section 745.* A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been

Honig (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

²⁰⁷ Penal Code section 745(j)(3).

²⁰⁸ Penal Code section 745(j), as added by Statutes 2020, chapter 317, emphasis added.

decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. *The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.* Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.²⁰⁹

Like section 745(j)(3), the predecessor to section 1473(f) was prospective only. The previous version of section 1473(f) stated that an RJA writ of habeas corpus could be filed "if judgment was entered *on or after January 1, 2021*."²¹⁰

Thus, sections 745(j)(3) and 1473(f) (later renumbered as section 1473(e)) newly allow the filing of RJA habeas corpus petitions from incarcerated petitioners whose judgments were entered *before* January 1, 2021, and newly require appointment of counsel to represent indigent petitioners when they allege facts that would establish a violation under section 745. Counties have no pre-existing duty (statutory or constitutional) to provide legal representation to the newly eligible indigent petitioners whose judgments were entered before January 1, 2021. No statute previously required this legal representation because the RJA did not exist until 2020, at which time it only required representation regarding judgments entered on or after January 1, 2021.

In addition, there was no pre-existing constitutional duty of representation because habeas corpus petitions are not criminal actions. Instead, they collaterally attack a prior criminal judgment and are considered civil in nature,²¹¹ and, thus, there is no

²⁰⁹ Emphasis added.

²¹⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317, emphasis added.

²¹¹ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 ["A habeas corpus proceeding is not a criminal action. Rather, as relevant here, it is an independent, collateral challenge to an earlier, completed criminal prosecution."]; *In re Barnett* (2003) 31 Cal.4th 466, 474, citing *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556-557 and *In re Scott* (2003) 28 Cal.4th 783, 815.

constitutional right to the appointment of counsel at the public's expense. The U.S. Supreme Court has described collateral attacks on judgments as distinctly civil, with no right to counsel as in their criminal case:

Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature.²¹²

We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, see *Johnson v. Avery*, 393 U.S. 483, 488, 89 S.Ct. 747, 750, 21 L.Ed.2d 718 (1969), and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.²¹³

States have no obligation to provide this avenue of relief, . . . , and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well.²¹⁴

Just as there is no federal constitutional duty to provide counsel on a postconviction collateral attack to a judgment, there is also no existing state constitutional duty. The California Supreme Court has said: "California likewise confers no constitutional right to counsel for seeking collateral relief from a judgment of conviction via state habeas corpus proceedings."²¹⁵

As one court of appeal recently stated, "[a]lthough there is no state or federal constitutional right to counsel to assist with a collateral attack on a criminal judgment, California confers a statutory right to counsel in postconviction proceedings under some circumstances," which the state has done here.²¹⁶

In addition to not requiring the appointment of counsel, existing federal law requires a petitioner to prove explicit or purposeful discrimination for a cause of action under the equal protection clause and does not allow a cause of action based on implicit discrimination, which is allowed by Penal Code section 745. In *McCleskey v. Kemp*, the U.S. Supreme Court concluded that a statistical showing that race likely influenced the imposition of the death penalty was insufficient to warrant reversal of the sentence because "to prevail under the Equal Protection Clause, [the defendant] must prove that the decisionmakers in *his* case acted with discriminatory purpose."²¹⁷ As seen in the legislative findings listed in the Background, the RJA sets higher civil standards by

²¹² *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556–57.

²¹³ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555.

²¹⁴ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

²¹⁵ *In re Barnett* (2003) 31 Cal.4th 466, 475.

²¹⁶ *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

²¹⁷ *McCleskey v. Kemp* (1987) 481 U.S. 279, 292.

recognizing implicit bias through statistical evidence. By recognizing and giving effect to implicit discrimination, the RJA “is the first of its kind in the country.”²¹⁸

Accordingly, the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement imposed by the state. Representation begins upon appointment by the court after the petition is filed. Pursuant to Penal Code section 1473(f) (later renumbered as section 1473(e)) the petition is filed first, without the help of appointed counsel and counsel is appointed by the court if the petitioner is indigent and the petition alleges facts establishing a violation of section 745(a) or the State Public Defender requests that counsel be appointed.

The test claim statute further describes the scope of the appointed counsel’s duties. The “[n]ewly appointed counsel may amend a petition filed before their appointment.”²¹⁹ The court shall then review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief.²²⁰ A “prima facie showing” means

that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.²²¹

If the petition fails to meet the prima facie standard, the court will summarily deny the petition, stating the factual and legal basis for its conclusion on the record or issue a written order detailing the same.²²² A county public defender’s representation would end at this point because a denial at the prima facie stage is not appealable.²²³

²¹⁸ Exhibit X (5), California’s Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa, Annelise Finney, February 13, 2024, page 2; Exhibit X (2), The California Racial Justice Act of 2020, Explained, Hoang Pham, April 22, 2024, page 1; *Young v. Superior Court* (2022) 79 Cal.App.5th 138, 165 [“By endorsing statistics as an appropriate mode of proof and eliminating any requirement of showing discriminatory purpose, the Racial Justice Act revitalizes the venerable principle, recognized 135 years ago in *Yick Wo [v. Hopkins]* (1886) 118 U.S. 356] that we must offer a remedy where a facially neutral law is applied with discriminatory effect.”].

²¹⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²¹ Penal Code section 745(h)(2).

²²² Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²³ Penal Code section 1473(f) (later renumbered as section 1473(e)); *Maas v. Superior Court* (2016) 1 Cal.5th 962, 974; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1067.

If the petitioner makes a prima facie showing of a Penal Code section 745(a) violation, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause, and the appointed counsel is required to represent the petitioner at this hearing.²²⁴ The petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the petitioner's presence in court is needed.²²⁵

Appointed counsel may also file a motion seeking discovery of evidence relevant to the case and represent the petitioner during the hearing on any discovery motion.²²⁶ A motion filed under this section shall describe the type of records or information sought by the petitioner and upon a showing of good cause, the court shall order the records to be released.²²⁷

Appointed counsel's representation will continue until the end of the evidentiary hearing required under Penal Code section 1473. If the court finds that the conviction was obtained in violation of Penal Code section 745(a), the court shall vacate the conviction and the sentence, find that it is legally invalid, and order new criminal proceedings consistent with section 745(a).²²⁸ If the only violation is of section 745(a)(3) — that the petitioner was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the petitioner's race, ethnicity, or national origin in the county where the convictions were sought or obtained — the court may modify the judgment to a lesser included or lesser related offense, and on resentencing, the court shall not impose a new sentence greater than that previously imposed.²²⁹ If the only violation is that the *sentence* was sought, obtained, or imposed in violation of section 745(a), the court shall vacate the sentence, find it legally invalid, and impose a new sentence not greater than that previously imposed.²³⁰ The petitioner's appointed counsel's representation concludes once one of these remedies for postconviction relief, *if any*, is imposed.

2. The New Requirement Imposed by Penal Code Sections 745(j)(3) and 1473(f), as Amended by the Test Claim Statute, Is Mandated by the State.

A requirement is mandated by the state under article XIII B, section 6 of the California Constitution when the test claim statute legally compels local government to act.

²²⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁶ Penal Code section 745(d).

²²⁷ Penal Code section 745(d).

²²⁸ Penal Code section 745(e)(2)(A).

²²⁹ Penal Code section 745(e)(2)(A).

²³⁰ Penal Code section 745(e)(2)(B).

Legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. (*Kern, supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203; see *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174, 275 Cal.Rptr. 449 [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”].) Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has “a clear, present, and usually ministerial duty to act. ...”²³¹

Penal Code section 1473(f) (later renumbered as section 1473(e)) says that the court “*shall appoint counsel*” if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of section 745 or the State Public Defender requests counsel be appointed. The word “shall” has no express definition in the Penal Code. However, when construed in the context of the language and the legislative intent of the test claim statute, the word “shall” here is mandatory.²³²

The plain language of the test claim statute requires the court to appoint counsel *if* the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of section 745 or the State Public Defender requests counsel be appointed. The court has no discretion with the appointment of counsel when these facts are presented and, thus, the requirement to appoint counsel to represent the indigent petitioner is not imposed at the discretion of the court.²³³

Moreover, the courts have interpreted Penal Code section 1473(f) as “*requiring* the appointment of counsel to pursue an RJA petition.”²³⁴ The courts have further concluded that the “statutory language in section 1473(e) [as renumbered] makes it clear that RJA habeas petitioners are entitled to the appointment of counsel based on an assessment of whether the habeas petition alleges facts that would establish a violation of the RJA.”²³⁵ The courts have also found the word “shall” is mandatory in similar statutes requiring the appointment of counsel for capital defendant habeas

²³¹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

²³² *People v. Lara* (2010) 48 Cal.4th 216, 227.

²³³ Mandates imposed by the courts are not subject to reimbursement under article XIII B, section 6. (California Const., art. XIII B, section 9(b) [“appropriations subject to limitations” do not include “appropriations required to comply with mandates from the courts”].)

²³⁴ *People v. Wilson* (2024) 16 Cal.5th 874, 960, emphasis added.

²³⁵ *McIntosh v. Superior Court of San Diego County* (2025) 110 Cal.App.5th 33, 46.

corpus petitioners for purposes of post-conviction proceedings.²³⁶ When the Legislature uses the same language in a related statute, courts presume the Legislature intended the language to have the same meaning.²³⁷

Finally, if Penal Code section 1473(f) were not to be enforced, the purpose of the test claim statute to eliminate racism in criminal prosecution would be largely defeated.²³⁸ Without characterizing the appointment of counsel as mandatory, indigent inmates may be able to make claims of racial discrimination in the prosecution or sentencing of their crimes, but without the assistance necessary to be effective.

Therefore, the word “shall” in the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

3. The New State-Mandated Requirement Imposed by Penal Code Sections 745(j)(3) and 1473(f) (Later Renumbered as Section 1473(e)) Is Unique to Local Government and Provides an Increased Level of Service to the Public and, Therefore, Constitutes a New Program or Higher Level of Service.

Article XIII B, section 6 requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” A new program or higher level of service has been defined as those “that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”²³⁹ Just one of these conditions need be met.²⁴⁰ In this Test Claim, both are met.

The test claim statute imposes unique requirements on counties that do not apply generally to all residents and entities in the state. Providing court-appointed counsel to indigent litigants is a unique county function.²⁴¹

²³⁶ *Redd v. Guerrero* (9th Cir. 2023) 84 F.4th 874, 893, reviewing Government Code section 68662.

²³⁷ *People v. Wells* (1996) 12 Cal.4th 979, 986.

²³⁸ Statutes 2020, chapter 317, section 2(i) and (j).

²³⁹ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537, citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

²⁴⁰ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

²⁴¹ Penal Code section 987.2.

The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution. In addition to the extensive legislative findings cited in the Background, legislative history summarizes the state policy “to reckon with systemic racism and correct past injustices” and to perform “rooting-out of racism from our systems of justice.”²⁴² It also expresses state policy “to ensure everyone is afforded an equal opportunity to pursue justice” and “equal justice under the law.”²⁴³ In short, as stated in the uncodified portion of AB 256, “[i]t is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.”²⁴⁴

Thus, the Commission finds that the mandated activity required by the test claim statute imposes a new program or higher level of service.

4. The Test Claim Statute Results in Costs Mandated by the State Within the Meaning of Government Code Section 17514 and the Exceptions in Government Code Section 17556 Do Not Apply.

Government Code section 17514 defines “costs mandated by the state” as any increased costs which a local agency or school district is required to incur because of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) specifically requires that no claim or payment shall be made unless the claim exceeds \$1,000.

As indicated above, the new state-mandated activity requires counties to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

The claimant has filed declarations signed under penalty of perjury identifying the following increased costs exceeding \$1,000 to comply with the test claim statute:

	FY 2023-2024	FY 2024-2025
Los Angeles County Public Defender	\$155,667 ²⁴⁵	\$657,000 estimated ²⁴⁶

²⁴² Exhibit X (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

²⁴³ Exhibit X (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

²⁴⁴ Statutes 2022, Chapter 739, section 1.

²⁴⁵ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, paragraph 8).

²⁴⁶ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, paragraph 9).

	FY 2023-2024	FY 2024-2025
		\$2,190,000 estimated statewide ²⁴⁷

These figures represent costs of public defenders only, which are described per the claimant as costs of the following work:

Once the petitioner reaches out to the Public Defender and/or the court appoints the Public Defender to represent petitioners, the Public Defender must run conflict checks to ensure there is no ethical conflict in representing the petitioner.²⁴⁸ Once this process is completed and no conflict is found, the Public Defender must investigate the claims made by the petitioner, retrieve and review records, communicate with the petitioner in prison, draft and file writs or motions where appropriate, make court appearances, and document files.²⁴⁹

There is no evidence rebutting these declarations.

Finance argues, however, that the test claim statute “change[s] the penalty for a crime or infraction” under Government Code section 17556(g) and therefore the Test Claim must be denied entirely.²⁵⁰ The Commission disagrees.

The California Constitution declares that the Legislature need not fund mandates for “[l]egislation defining a new crime or changing an existing definition of a crime.”²⁵¹ Government Code section 17556(g) provides that the “commission shall not find costs mandated by the state, as defined in Section 17514,” if “[t]he statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” County of Santa Clara and CSAC assert that the “changed the penalty” provision of section 17556(g) is unconstitutional.²⁵² In the Commission’s role, it must presume this statute constitutional.²⁵³

²⁴⁷ Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, paragraph 10).

²⁴⁸ Exhibit A, Test Claim, page 10, citing Declaration of Elizabeth Lashley-Haynes.

²⁴⁹ Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, paragraph 10).

²⁵⁰ Exhibit B, Finance’s Comments on the Test Claim.

²⁵¹ California Constitution, article XIII B, section 6(a)(2).

²⁵² Exhibit K, County of Santa Clara’s Comments on the Test Claim; Exhibit L, California State Association of Counties’ Comments on the Test Claim.

²⁵³ California Constitution, article III, section 3.5.

The Commission finds that the test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply.

A habeas corpus proceeding is *not* a criminal action.²⁵⁴ A habeas corpus proceeding collaterally attacks a prior criminal proceeding and is distinctly independent from that criminal proceeding.²⁵⁵ As the U.S. Supreme Court has said, habeas corpus “is not part of the criminal proceeding itself.”²⁵⁶

A habeas corpus proceeding is a civil proceeding serving civil purposes only. California case law links this principle to Penal Code section 1473.²⁵⁷ And further setting it apart in practical consequence, a habeas proceeding does not give the petitioner the panoply of constitutional protections of a criminal trial, even in capital cases.²⁵⁸

²⁵⁴ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 [“A habeas corpus proceeding is not a criminal action.”].

²⁵⁵ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975.

²⁵⁶ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

²⁵⁷ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975; *In re Barnett* (2003) 31 Cal.4th 466, 474-475, citing *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556-557 in context of a Penal Code section 1473 habeas corpus petition and citing *In re Scott* (2003) 29 Cal.4th 783 for same conclusion that such habeas proceedings for postconviction relief are “civil in nature”; *In re Scott* (2003) 29 Cal.4th 783, 815 [“We believe a habeas corpus proceeding like this one is civil in nature for these purposes. [Fn. Omitted.] The Legislature has labeled it a ‘Special Proceeding[] of a Criminal Nature’ (Pen.Code, pt. 2, tit. 12, ch. 1, before §§ 1473-1508), but the label is not dispositive. [citations.] It is not itself a criminal case, and it cannot result in added punishment for the petitioner. Rather, it is an independent action the defendant in the earlier criminal case institutes to challenge the results of that case. [citation.]”]; *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 256 [“Defendant ignores the fundamental difference between trial and post-trial proceedings. The constitutional protections designed to ensure a fair trial do not automatically attach to proceedings involving a collateral attack on the judgment. This point was reaffirmed in *Pennsylvania v. Finley* (1987) 481 U.S. 551, . . . , which held that neither due process nor equal protection required Pennsylvania to appoint counsel for indigent prisoners seeking post-conviction relief. [citation.] Relying upon the fundamental difference between trial and post-trial proceedings, specifically those involving collateral attack, the *Finley* court held: “Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. . . .”].

²⁵⁸ *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 256-258; [“*Finley* made the point that different proceedings implicate different constitutional considerations. Because the trial is the vehicle by which the state overcomes defendant’s presumption of innocence and deprives him of his freedom, the trial is circumscribed by the full panoply of constitutional protections.”].

The test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly as provided in Penal Code section 745(a). That is, "a writ of habeas corpus may also be prosecuted *after* judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745."²⁵⁹ The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself:

The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant's case and to the integrity of the judicial system. It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them.²⁶⁰

In this respect, the test claim statute is distinguishable from the test claim statute at issue in *County of San Diego v. Commission on State Mandates*, which addressed the application of the change in penalty exception in Government Code section 17556(g) to the *Youth Offender Parole Hearings* program.²⁶¹ The purpose of that program was to "establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity."²⁶² The legislation was enacted in response to a series of state and federal decisions collectively standing for the proposition that the cruel and unusual punishment clause of the Eighth Amendment prohibits the imposition of severe penalties on juvenile offenders, without at least some consideration to the distinctive characteristics of youth that render juvenile offenders less culpable than adult offenders.²⁶³ The court held that the Youth Offender Parole Hearing statutes fell within this statutory exception of Government Code section 17556(g) "because they changed the penalties for crimes perpetrated by eligible youth offenders."²⁶⁴

As a direct result of the Test Claim Statutes, most youth offenders are statutorily eligible for parole at a youth offender parole hearing conducted

²⁵⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), emphasis added.

²⁶⁰ Statutes 2020, chapter 317 (AB 2542), section 2(i).

²⁶¹ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

²⁶² *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 633.

²⁶³ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 631.

²⁶⁴ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640.

during the 15th, 20th, or 25th year of incarceration, depending on the term of incarceration included within the youth offender's original sentence. (Pen. Code, §§ 3046, subd. (c), 3051, subds. (b), (d), 4801, subd. (c).) In practice, this parole eligibility ensures that some youth offenders will be released from prison years earlier, and perhaps even decades earlier, than they otherwise would have been but-for the Test Claim Statutes.²⁶⁵

The court explained that “by changing the manner in which the original sentences operate, and guaranteeing youth offenders the chance to obtain release on parole, the Test Claim Statutes — by operation of law — alter the penalties for the crimes perpetrated by eligible youth offenders.”²⁶⁶ The court further explained the “Test Claim Statutes guarantee parole eligibility for qualified youth offenders. Parole is not a mere ‘procedural’ or ‘administrative’ facet of the criminal justice system.”²⁶⁷

This case is different. While a petitioner's original sentence might be vacated and it is possible for the penalty to be changed if the petition alleging racial bias under Penal Code section 745 is successful,²⁶⁸ that is not the purpose of the statute as stated in the legislative findings of the RJA and any change in the penalty is thus not directly related to the enforcement of crime as required by section 17556(g). The test claim statute creates a separate civil proceeding to address allegations of discrimination. Government correcting its own behavior through a civil proceeding is not directly linked to a defendant's conduct, but to the government's conduct, and thus the test claim statute does not relate directly to the enforcement of crime as required by Government Code section 17556(g).

This conclusion is further supported by prior decisions of the Commission. In *Post-Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, the Commission found a reimbursable state-mandated program in the required provision of indigent defense counsel on post-conviction motions for DNA testing under Penal Code section 1405. If DNA evidence could exonerate an inmate, an individual's previously existing penalty could, as here, change. But that potential for changed outcomes did not defeat the Test

²⁶⁵ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640-641.

²⁶⁶ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

²⁶⁷ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 642.

²⁶⁸ For example, Penal Code section 745(e)(2)(B) provides that “After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.”

Claim. As here, the postconviction DNA testing motion was “a separate *civil* action and *not part of the original criminal action*.”²⁶⁹

Similarly, the Commission’s Decision in *Sexually Violent Predators*, CSM-4509 considered Welfare and Institutions Code section 6601, which created a process to evaluate inmates convicted of sexual offenses to determine if they should be civilly committed after release from prison. The inmate was entitled to appointed counsel at the probable cause hearing and at the civil trial, and this provision of counsel was determined reimbursable. Although each civil commitment had a clear connection to a crime, including enforcing against recurring crime, the test claim statutes were not affected by Government Code section 17556(g) because the activity required of counties was civil, not criminal.²⁷⁰

Thus, Government Code section 17556(g) does not apply here and the other exceptions in Government Code section 17556 are not applicable to this Test Claim.

Accordingly, the Commission finds that the test claim statute results in costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Penal Code sections 745(j)(3) and 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2022, chapter 739, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

²⁶⁹ Commission on State Mandates, Statement of Decision, *Post-Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, <https://www.csm.ca.gov/decisions/00tc21,01tc08sod.pdf> (accessed on June 6, 2025), page 2, emphasis added.

²⁷⁰ Commission on State Mandates, Statement of Decision, *Sexually Violent Predators*, CSM-4509, <https://csm.ca.gov/decisions/doc96.pdf> (accessed on June 6, 2025), page 9, fn. 7.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 17, 2025, I served the:

- **Current Mailing List dated May 16, 2025**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued June 17, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections 745 and 1473

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 17, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/16/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Exhibit N

Racial Justice Act Retroactivity **AB 256**

The original California Racial Justice Act (RJA) was created by Assembly Bill 2542. It was signed into law by the Governor in 2020. It applied only to people who were sentenced in the trial court after January 1, 2021.

Assembly Bill 256 – also called “The Racial Justice For All Act” – will make the RJA apply “retroactively.” This means it will apply to people who were sentenced before January 1, 2021. But AB 256 will become retroactive in stages, starting on January 1, 2023. It will not apply to everyone until January 1, 2026.

AB 256 makes the RJA apply retroactively in four stages, from 2023 to 2026:

- **Eligible Jan. 1, 2023:** people sentenced to death or facing possible immigration consequences like deportation;
- **Eligible Jan. 1, 2024:** people in prison, in a county jail serving a sentence for a felony conviction, or in the Division of Juvenile Justice (“DJJ”);
- **Eligible Jan. 1, 2025:** people no longer incarcerated, but with a felony conviction or a juvenile case that resulted in commitment to DJJ entered after 2015;
- **Eligible Jan. 1, 2026:** anyone with a felony conviction or a juvenile case that resulted in commitment

FREQUENTLY ASKED QUESTIONS

The following is general information only. The Office of State Public Defender cannot provide legal advice about your case at this time.

Q: What is the Racial Justice Act?

The RJA is a law that lets people charged with (or convicted of) a crime raise issues of bias or discrimination based on race, ethnicity, or national origin in their cases. It was created by Assembly Bill 2542 (AB 2542).

Before the RJA was signed into law, courts often only recognized bias and discrimination that was extreme and intentional. But this kind of bias has been almost impossible to prove in court. In passing AB 2542, the Legislature recognized that both explicit (intentional) bias and implicit (unintentional) bias creates harm in the criminal justice system. AB 2542 enacts new approaches to combat racial discrimination and disparities. The goal is not to blame or punish people who may have unintentionally acted with bias, but rather to make sure that everyone is treated fairly, no matter their race, ethnicity, or country of birth.

Q: Where can I find the RJA in the California Penal Code?

The RJA added a new section 745 to the Penal Code. That is where you will find the language of the RJA. AB 2542 also added language to sections of the Penal Code that govern habeas corpus petitions (Pen. Code, §§ 1473 & 1473.7).

Under the original RJA, only people who were sentenced on or after January 1, 2021 could raise Racial Justice Act claims in habeas corpus petitions. AB 256 will change that. It will allow people sentenced before January 1, 2021 to file habeas corpus petitions raising retroactive racial justice claims.

Q: What kind of bias or discrimination claims does the RJA cover?

The RJA prohibits bias or discrimination in charging, conviction, and sentencing based on a defendant's race, ethnicity, or national origin. Sentencing violations can also be based on the victim's race, ethnicity, or national origin.

Section 745 (a) includes four "pathways" to proving an RJA violation. These pathways may work separately or together to prove an RJA violation. (See *Young v. Superior Court of Solano* (2022) 79 Cal.App.5th 138.) The four pathways, which are described below, are set out in Penal Code section 745 (a)(1)-(a)(4).

Q: What are the four pathways to a RJA violation?

Two of the pathways apply when someone important to your case, like a district attorney, defense attorney, expert witness, juror, or judge said biased or racist things or acted in a way that was biased or racist, either inside or outside the courtroom.

Two of the pathways apply when there are disparities, or differences, between racial groups in charging, conviction, or sentencing. For this kind of RJA violation, you would need to show that two groups of people of different races allegedly committed similar conduct, but one racial group was either charged with more serious crimes, convicted more often, or sentenced to longer terms.

You do not need to show all of these things happened; one is enough to prove an RJA violation.

Pathway 1: Subdivision (a)(1) of Penal Code § 745.

The first pathway applies when a person important to your case used biased or racist words or conduct outside of the courtroom. General racist language or conduct is not enough; it must be toward you. But the RJA does not require that you heard the words or saw the conduct. It is a violation if one of the people listed in PC 745 (a)(1) – which includes the judge, an attorney, police officer, expert witness, or juror – says something biased about you, even if it is not said directly to you. For example, if a police officer used a racial slur about you when talking to a witness that could raise an RJA claim, even if you were not there to hear it.

Pathway 2: Subdivision (a)(2) of Penal Code § 745.

The second pathway applies when the judge, an attorney, police officer, expert witness, or juror involved in your case used biased or racist words in the courtroom. The words do not have to be spoken towards you; it is enough if they show bias towards your race, ethnicity, or national origin. It is also an RJA violation if one of these people engaged in conduct that shows bias or racism while in court proceedings.

Pathway 3: Subdivision (a)(3) of Penal Code § 745.

The third pathway applies when people in one racial group are charged with (or convicted of) more serious crimes than similar people in another racial group. These differences – or disparities – between racial groups must exist in the same county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Pathway 4: Subdivision (a)(4) of Penal Code § 745.

The fourth pathway applies when people in one racial group are sentenced more harshly than similar people in another racial group who have the same types of charges. It also applies if people are given longer sentences because of the race of their victim. These disparities must be in the county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Q: What should I do if I think there was an RJA violation in my case?

You will need to wait until 2024 to file a habeas corpus petition, unless you are sentenced to death or facing immigration consequences.

In the meantime, you can reach out to your trial and/or appellate attorney. Explain to them why you think there was an RJA violation in your case and ask if they will be able to represent you in a habeas corpus proceeding.

Q: What are the remedies for a RJA violation? What happens if I “win”?

If you prove an RJA claim, the remedy may depend on which of the four pathways were violated. If the RJA violation relates to your conviction, the court can find your conviction to be invalid and order a new trial or change your conviction to a less serious offense. If the RJA violation relates only to your sentence, you may be resentenced.

Q: Do I have to show that the RJA violation affected the outcome of my case?

Under the original RJA, a person does not need to show prejudice to get relief in the trial court. For retroactive claims under the new law (AB 256), the court must grant relief under Pathway 1 or 2 discussed above (section 745 (a)(1) and (a)(2)) unless the prosecution can show beyond a reasonable doubt that the violation did not contribute to the conviction or sentence. For Pathway 3 and 4 (section 745 (a)(3) and (a)(4) disparity claims), there is no need to show prejudice.

Q: What should I do if I have a death sentence and think there was an RJA violation in my case?

Please speak to your appointed attorney if you have one. If you don't have a lawyer, please contact the CAP attorney assigned to help you. We strongly recommend you do **NOT** file a pro per petition. If you do, a court may prevent you from raising other errors in your case later in another habeas corpus petition.

Q: What if I am facing possible immigration consequences like deportation and I think there was an RJA violation in my case?

Contact an immigration attorney or the attorney who represented you at trial. Tell him or her why you think there was an RJA violation in your case and see if they have any advice for you. You can also consider filing a habeas petition if you cannot get an attorney to help you and you are about to be deported or face other serious immigration consequences.

Q: What if a lawyer contacts me and asks for money to file an RJA claim in my case?

Keep in mind that no attorney, paid or not, can make you eligible for RJA relief earlier than the dates above. In fact, filing too early may get your case rejected simply because the law does not yet apply to you. Any time you hire an attorney you should ask how often they have handled similar cases and ask to see examples of their work. Beware of anything that seems too good to be true.

You might become eligible for a public defender or other free lawyer to make a claim under the RJA. Lawmakers and policymakers are still working out how people who need lawyers in 2024 will get them.

Assembly Bill No. 256

CHAPTER 739

An act to amend Sections 745 and 1473 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2022. Filed with
Secretary of State September 29, 2022.]

legislative counsel's digest

AB 256, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, vacating the conviction or sentence and ordering new proceedings.

This bill would additionally authorize that petition to be filed for cases in which a judgment was entered as final prior to January 1, 2021, as specified, and in cases in which a juvenile disposition resulted in a commitment to the Division of Juvenile Justice, as specified. The bill would, if a motion under these provisions is based on the conduct or statements by the judge, require the judge to disqualify themselves from those proceedings. The bill would additionally make other technical changes.

Existing law allows a defendant to file a motion requesting disclosure of all evidence related to a potential violation of the prohibition on seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, and requires the court to order the records to be released upon a showing of good cause. If the records are not privileged, existing law allows the court to permit the prosecution to redact information prior to disclosure.

This bill would require the court, upon a showing of good cause, to order disclosure unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order.

Under existing law, a conviction or sentence is unlawfully imposed on the basis of race, ethnicity, or national origin if the defendant proves, among other things, that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, or received a longer or more severe sentence, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin, as specified, or if a longer or more severe sentence was more frequently imposed on defendants of a particular race, ethnicity, or

national origin, as specified. Existing law requires this determination to be made pursuant to statistical evidence or aggregate data, as specified.

This bill would allow that evidence to include nonstatistical evidence and would require the court to consider the totality of the evidence in determining whether a significant difference in seeking or obtaining convictions or in imposing sentences has been established. The bill would require the court to consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall.

This bill would incorporate additional changes to Section 1473 of the Penal Code proposed by SB 467 to be operative only if this bill and SB 467 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.

SEC. 2. Section 745 of the Penal Code is amended to read:

745. (a) The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.

(2) During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently

imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(b) A defendant may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under Section 1473.7 in a court of competent jurisdiction, alleging a violation of subdivision (a). If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(c) If a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of subdivision (a), the trial court shall hold a hearing. A motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed waived, in the discretion of the court.

(l) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.

(2) The defendant shall have the burden of proving a violation of subdivision (a) by a preponderance of the evidence. The defendant does not need to prove intentional discrimination.

(3) At the conclusion of the hearing, the court shall make findings on the record.

(d) A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (l), or for an initiative approved by the voters, if the court finds, by a

preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(1) Before a judgment has been entered, the court may impose any of the following remedies:

(A) Declare a mistrial, if requested by the defendant.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(2) (A) After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph

(3) of subdivision (a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) When the court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.

(4) The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) As used in this section, the following definitions apply:

(1) “More frequently sought or obtained” or “more frequently imposed” means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions,

and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

(2) “Prima facie showing” means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.

(3) “Relevant factors,” as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions.

(4) “Racially discriminatory language” means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant’s physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

(5) “State” includes the Attorney General, a district attorney, or a city prosecutor.

(6) “Similarly situated” means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant’s conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

SEC. 3. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at

a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 3.5. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, “new evidence” means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) A significant dispute has emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert’s conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner’s conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant’s presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Senate Bill 467. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends

Section 1473 of the Penal Code, and (3) this bill is enacted after Senate Bill 467, in which case Section 3 of this bill shall not become operative.

The California Racial Justice Act of 2020, Explained

April 22, 2024

By

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Related Organization(s):

Stanford Center for Racial Justice [\(https://law.stanford.edu/stanford-center-for-racial-justice/\)](https://law.stanford.edu/stanford-center-for-racial-justice/)

A Contra Costa County Superior Court judge recently dismissed all gang enhancements [\(https://www.kqed.org/news/11975584/californias-groundbreaking-racial-justice-act-cuts-its-teeth-in-contra-costa\)](https://www.kqed.org/news/11975584/californias-groundbreaking-racial-justice-act-cuts-its-teeth-in-contra-costa) in a murder case against four young Black men under provisions of California’s recently enacted Racial Justice Act (RJA). The court ruled that data showing racial bias in prosecutorial charging decisions and the racist text messages police officers sent about the defendants violated the California law, a first of its kind in the state. The RJA expands a defendant’s ability to gather evidence of racial bias and allows for the reversal or modification of a conviction or sentence even without the racial bias being shown to have altered the trial outcome. The ruling in the Contra Costa case generated optimism from supporters [\(https://www.kqed.org/news/11977602/how-the-racial-justice-act-could-shake-up-californias-criminal-court-system\)](https://www.kqed.org/news/11977602/how-the-racial-justice-act-could-shake-up-californias-criminal-court-system) of reform, who expect the law to help reduce the impact of racism in the state’s justice system. But the RJA has also been criticized harshly [\(https://www.wsj.com/articles/california-finds-a-new-way-to-be-soft-on-crime-systemic-racism-defense-frees-felons-f5282810\)](https://www.wsj.com/articles/california-finds-a-new-way-to-be-soft-on-crime-systemic-racism-defense-frees-felons-f5282810) by those who believe it will clog the court system, produce unjust outcomes for victims, and treat defendants differently based on their race.

What is the California Racial Justice Act of 2020?



Challenging criminal convictions or sentences as racially discriminatory is very difficult, due in part to the seemingly impossible standard set in 1987 by the U.S. Supreme Court in *McCleskey v. Kemp* [\(https://www.oyez.org/cases/1986/84-6811\)](https://www.oyez.org/cases/1986/84-6811). That decision established that a defendant must “prove that the decisionmakers in *his* case acted with discriminatory purpose” and cannot rely solely on statistical studies showing discrimination broadly. The defendant must offer evidence “specific to his own case that would support an inference that racial considerations played a part in his sentence.” Defendants are rarely successful in meeting that standard. However, because Supreme Court decisions establish a “constitutional floor”, states have the power to legislate and provide greater protections—which California did in 2020 with the RJA.

The RJA, or AB 2542 [\(https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2542\)](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2542), states that the “state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin.” Specifically, a violation under the RJA can be established when:

- a judge, attorney, law enforcement officer, expert witness, or juror in the case “exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin”;
- racially discriminatory language about the defendant’s race, ethnicity, or national origin was used in the criminal legal process, “or [a judge, attorney, law enforcement officer, expert witness, or juror] otherwise exhibited bias or animus towards the defendant . . . whether or not purposeful”;
- race was a factor in the usage of peremptory challenges (the exclusion of a potential juror without justification), but specifically and in contrast to a *Batson* challenge [\(https://www.oyez.org/cases/1985/84-6263\)](https://www.oyez.org/cases/1985/84-6263), the defendant does not need to show “purposeful discrimination occurred in the exercise of peremptory challenges to demonstrate a violation”;
- the defendant was charged or convicted of more serious offenses than defendants of other races who commit similar offenses, and the evidence establishes “that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant’s race”; or

when a longer or more severe sentence was imposed on the defendant when compared to other individuals convicted of the same offense, and “longer or more severe sentences were more frequently imposed for that offense on people that share the defendant’s race.”

Under the RJA, if a court finds a violation they are required to impose a remedy specific to the violation from a set list of remedies:

If a judgment has not yet been entered, the court may: reseal a juror removed by use of a peremptory challenge; declare a mistrial; empanel a new jury; and in the interest of justice, “dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.”

If a judgment has been entered and the court finds the conviction was “sought or obtained in violation of” the RJA, the court “shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent” with the RJA.

Once a violation has been established, a prosecutor can no longer seek the death penalty.

Originally, the RJA only applied to judgements rendered after January 1, 2021. However, AB 256 (https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20210220AB256) in 2022 amended the law to apply to cases decided prior to 2021.

What happened in *McCleskey v. Kemp*?



In 1978, Warren McCleskey, a Black man, was convicted of armed robbery and murder in the Superior Court of Fulton County, Georgia. Following the jury’s recommendation, the court sentenced McCleskey to death. His appeal eventually reached the U.S. Supreme Court. His primary claim was that “the Georgia capital sentencing process is administered in a racially discriminatory manner in violation of the Eighth and Fourteenth Amendments.” To support his claim, McCleskey offered a statistical study that showed racial disparities in death penalty sentencing in Georgia. The study found that “the death penalty was assessed in 22% of the cases involving Black defendants and White victims; 8% of the cases involving White defendants and White victims; 1% of the cases involving Black defendants and Black victims; and 3% of the cases involving White defendants and Black victims.”

The Supreme Court affirmed the lower courts and rejected his claim, holding that a criminal defendant alleging an equal protection violation must not only prove there was purposeful discrimination, but that the purposeful discrimination had a discriminatory effect *on him*. The Court found that McCleskey offered “no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence.” This decision effectively denied a defendant’s ability to use statistical evidence of racial disparities related to but not directly involving their case to establish an equal protection violation.

The “purposeful discrimination” standard has made it nearly impossible to challenge racial discrimination in the criminal legal process. According to Professor Mario Barnes and Dean Erwin Chemerinsky, the standard essentially requires (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3192549) “proof that the government desired to discriminate; it is not enough to prove that the government took an action with knowledge that it would have discriminatory consequences.” That is, even if statistics may “reflect the (often unconscious) biases of prosecutors, [such] as to when to seek the death penalty,” the defendant must prove that the government *intended* to discriminate. For example, while racial disparities in cocaine-related sentencing in California have been well-documented (<https://www.aclunc.org/news/governor-signs-historic-california-fair-sentencing-act>), Barnes and Chemerinsky point out that “efforts to challenge this disparity as violating equal protection failed because the courts said that there was not proof of a discriminatory intent for the sentencing disparity.”

The Racial Justice Act expands the ways a defendant can show discrimination in the criminal legal process.

In contrast to the *McCleskey* holding, the provisions in the RJA dramatically expand the ways a defendant can show discrimination. Under the RJA, defendants in California no longer need to prove intentional discrimination in *their* case to bring a claim of racial bias, as *McCleskey* required. Instead, defendants can now establish racial bias by relying on statistical data showing racial disparities in the charging, conviction, or sentencing process of other defendants who share their race.



Additionally, a violation of the RJA can be established “whether or not [bias was] purposeful.” This language changes the “discriminatory purpose” requirement set out in *McCleskey* to allow for a showing of implicit bias to be sufficient grounds for a challenge based on discrimination. As stated in the bill, the Legislature does not seek “to punish this type of bias, but rather to remedy the harm to the defendant’s case . . .” and “to reject the conclusion that racial disparities within our criminal justice [system] are inevitable (as articulated in *McCleskey*), and to actively work to eradicate them.”

Furthermore, the RJA made discovery of relevant evidence significantly easier than under the 1996 Supreme Court decision in *United States v. Armstrong* (<https://www.oyez.org/cases/1995/95-157>). In *Armstrong*, the Court held that in order to be entitled to discovery, “a defendant must produce *credible evidence* (emphasis added) that similarly situated defendants of other races could have been prosecuted, but were not.” The RJA stipulates instead that a defendant may request disclosure of “all evidence relevant to a potential violation of [the RJA] in the possession or control of the state.” So long as the records are not privileged and the defense has shown “good cause” for its disclosure, the “court shall order the records to be released.”

But what constitutes good cause? In 2022, the First District Court of Appeal addressed this question (<https://casetext.com/case/young-v-the-superior-court>), holding that in order to “establish good cause for discovery under the Racial Justice Act, a defendant is required only to advance a *plausible factual foundation* (emphasis added), based on specific facts, that a violation of the Racial Justice Act ‘could or might have occurred’ in his case.” The court admits that this is a “minimal standard” that “should not be difficult to meet.” Importantly, the court noted that the application of this more relaxed standard to the RJA is “designed to provide a defendant access to information that is uniquely in the possession of government officials.”

The Racial Justice Act creates a remedy for racial bias even if the bias was “harmless.”

RJA claims are also not subject to the “harmless error” doctrine. Harmless errors (https://www.law.cornell.edu/wex/harmless_error) are errors made by the trial court “that an appellate court finds was not damaging enough to the appealing party’s right to a fair trial to justify reversing the judgment, or to warrant a new trial.” Under the doctrine (<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4803&context=uclev>), even clear errors, such as improper jury instructions, might not result in overturning a conviction so long as the government can show the error was “harmless”—meaning that it didn’t affect the outcome of the trial. Research has suggested that appellate courts frequently find trial errors to be harmless. For example, Professor William Landes and Judge Richard Posner found that errors were deemed harmless in 87% of 963 federal appellate criminal cases (https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1225&context=law_and_economics) between 1996-1998. In another study, Professors Heather Scheuerman, Elizabeth Griffiths, and Daniel Medwed found that prosecutorial misconduct was deemed harmless in 68% of 150 state and federal appellate criminal cases (<https://journals.sagepub.com/doi/10.1177/0011287221084288>) between 2010-2015.

Nonetheless, in 2023, the Second District Court of Appeal held that (<https://caselaw.findlaw.com/court/ca-court-of-appeal/115281388.html>) the RJA “forecloses any traditional case-specific harmless error analysis” because the plain language of the statute states that “once a violation of the RJA has been established, the trial court ‘shall impose’ one of the enumerated remedies” without requiring a showing as to whether the error was harmless—that is, regardless of whether the error would have changed the outcome of the case. This is a major departure from the harmless error doctrine. Essentially, if a court finds that a defendant experienced racial bias during their trial, the RJA allows for reversal of their conviction even if the bias did not affect the trial outcome. Avoiding a harmless error analysis should allow for many more claims of racial bias in the trial process to be remedied under the RJA.

Essentially, if a court finds that a defendant experienced racial bias during their trial, the Racial Justice Act allows for reversal of their conviction even if the bias did not affect the trial outcome.

How has the Racial Justice Act been used and what have been the outcomes?

The RJA has been used throughout California, with differing levels of success. As mentioned above, the recent Contra Costa County murder case included one of the most successful challenges, resulting in the dismissal of all gang enhancements against four young Black men. There, Keyshawn McGee, Trent Allen, Eric Windom, and Terryonn Pugh were charged with murder (<https://www.kqed.org/news/11975584/californias-groundbreaking-racial-justice-act-cuts-its-teeth-in-contra-costa>) and attempted murder following an alleged gang-related shooting that killed one person and wounded

another. Prosecutors added gang enhancements that would lengthen prison terms if they were convicted, but a Superior Court judge found that the enhancements were biased based on Contra Costa County charging records from 2015–2022. This data showed that “Black men accused of gang-related murders were 44% more likely to be charged with enhancements than defendants of other races accused of similar gang-related murders”—that is, enhancements were more frequently used for Black gang members but not for other races of gang members who committed similar murders. Moreover, the defendants contended the police department was biased in its investigation, pointing to racist text messages exchanged between officers tasked with surveilling them. Based on the RJA, these discoveries led the judge to dismiss all gang enhancements.

Several other cases involving the RJA are pending. For example, in 2022, a San Diego police officer stopped Tommy Bonds III (<https://www.sandiegouniontribune.com/news/courts/story/2024-02-22/racial-justice-act-traffic-stop-appeal-ruling>), a Black man, and cited him for misdemeanor possession of a concealed weapon. In San Diego Superior Court, Bonds invoked the RJA, believing he was pulled over because of his race. However, the judge ruled that the officer did not show bias in his interaction with Bonds. Bonds appealed, and the Fourth District Court of Appeal found that the Superior Court judge “fail(ed) to address the abundant evidence suggesting that the traffic stop may have been the product of unintended racial bias.” Although the officer had previously testified that he did not see the driver’s race before deciding to stop him, he did say that “the person was wearing a hooded sweatshirt with the hood up.” The appeals court said “it was not necessary that [the officer] had verified the occupants were Black before he stopped their vehicle, because he may well have subconsciously assumed they were based on their clothing, their presence in the neighborhood, or other subtle factors.”



The appeals court also pointed to the factual circumstances of the stop, including the officer’s decision to immediately make a U-turn and pull Bonds over after seeing his car. In the ensuing conversation captured on the officer’s body-worn camera, Bonds said to the officer, “[Y]ou turn around like you saw two guys, like two Black guys in the car obviously.” The officer responded, “Well, part of it the hoodies up and stuff, just . . .” After a brief exchange, Bonds asked, “Do you all pull over White people like that?” To which the officer responded that he often gets pulled over for his tattoos and backwards hat. Furthermore, the appeals court noted that although the officer said he stopped Bonds for a rear license plate violation, the officer “did not say how he noticed the violation of the plate on the back of the car when he had approached from the front, or what prompted him to make the U-turn.” Based on this evidence, the appeals court ordered the lower court to rehear Bonds’ case.

Some racial bias claims under the RJA have been outright unsuccessful. Last month, the Fourth District Court of Appeal upheld the conviction of a Black man (<https://www.latimes.com/socal/daily-pilot/news/story/2024-02-23/appellate-court-rejects-racial-justice-act-appeal-in-newport-beach-double-murder-case>), Jamon Buggs, who killed a couple in Newport Beach in 2019. Before sentencing, an Orange County Superior Court judge found that the prosecutor, Todd Spitzer, violated the RJA when during a sentencing meeting with other prosecutors Spitzer said (<https://casetext.com/case/people-v-buggs-39>) he “knew many Black people who get themselves out of their bad circumstances and bad situations by only dating ‘White women.’” However, Spitzer’s office ultimately did not seek the death penalty, a new prosecutor was assigned to the case, and Spitzer “walled off” the case from everyone involved in the meeting, including himself. Buggs argued that the Superior Court judge could have granted a new trial, dismissed the case, or imposed concurrent sentences. However, the appeals court ruled that such actions were not necessary because Spitzer had already remedied and removed any bias against Buggs.

What do supporters say about the Racial Justice Act?

Assemblymember Ash Kalra (D-San Jose), the RJA’s primary author, suggested that (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB2542#) the law serves as a “countermeasure” to *McCleskey*, arguing that the decision “established an unreasonably high standard for victims of racism in the criminal legal system that is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted.” The RJA would therefore help the state of California “take an important step in prohibiting the use of race and ethnicity as a factor in the state’s justice system across the board.”



Kalra and other supporters believe the RJA will reduce racial disparities (<https://a25.asmdc.org/press-releases/20200930-governor-signs-landmark-legislation-advancing-racial-justice-california>) in California’s criminal justice system—disparities which are well documented. For example, according to a 2021 report (<https://calbudgetcenter.org/resources/despite-reforms-racial-disparities-in-californias-prisons-remain-large/>), by the California Budget & Policy Center, people of color continue to be overrepresented in state prisons. The report notes that despite reforms to California’s criminal laws, such as Proposition 47 which reclassified certain drug and property crimes as misdemeanors, disparities have actually widened for Black men, who were incarcerated at a rate 9.6 times that of White men in 2019 as compared to 9.1 in 2010.

Furthermore, research (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4392014) by Professors Colleen Chien, W. David Ball, and William Sundstrom reported that “Black Californians are nearly three times as likely to have an arrest record as White Californians, four times as likely to have at least one felony conviction, and six times as likely to have received at least one incarceration sentence.” The authors said the RJA “gives by state statute what the *McCleskey* decision foreclosed constitutionally—a pathway to relief based solely on evidence of unexplained racial disparity.”

What do critics say about the Racial Justice Act?

While the RJA has been considered a win for advocates, there remains much criticism. Heather Mac Donald, a fellow at the Manhattan Institute, has argued (<https://www.wsj.com/articles/california-finds-a-new-way-to-be-soft-on-crime-systemic-racism-defense-frees-felons-f5282810>) that the RJA “will produce unequal justice for victims as well as offenders.” She posits that racial disparities in incarceration reflect disparities in who is more likely to commit criminal offenses. Citing police department data, Mac Donald said, “In Los Angeles, Blacks are 21 times as likely as Whites to commit a violent crime, 36 times as likely to commit a robbery, and 57 times as likely to commit a homicide.” She further argued that the RJA will have a disproportionate impact on Black victims, stating that the victims and witnesses who contribute to police department data are “themselves disproportionately Black . . . [and] are 17 times as likely to be homicide victims as Whites.”

Some have also claimed that the RJA perpetuates reverse discrimination towards White defendants. According to Chuck DeVore, the Chief National Initiatives Officer at the Texas Public Policy Foundation, the RJA gives preferential treatment to individuals of certain races (<https://www.texaspolicy.com/california-is-about-to-let-race-shockingly-tip-the-scales-of-justice/>) and “extending preferential treatment to a criminal based on their race wrongly punishes individuals not benefiting from that leniency.” Black and Latino defendants, because their groups are disproportionately prosecuted and incarcerated, may be able to bring claims under the RJA that would be unavailable to White defendants. Consider a Black and White person who together commit the same crime, and are charged exactly the same—both with more serious offenses than others who commit a similar crime. Under the RJA, the Black defendant may be able to use statistical data to argue that the prosecution more frequently sought these types of convictions against other Black defendants, while that argument might be foreclosed for the White defendant if the same disparity doesn’t exist for other White defendants. In this scenario, although the Black defendant would be entitled to remedies under the RJA, the White defendant would not—even though they were both charged with the same crime.

As the bill made its way through the California legislature, the California District Attorneys Association (CDA) and California State Sheriffs’ Association stood in opposition to the RJA (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB2542#). Specifically, the CDA argued that the bill would require “lengthy and costly evidentiary hearings involving the testimony of attorneys, law enforcement officers, jurors, experts, or other members of the criminal justice system,” which would “grind the system to a halt.” These practical concerns are why they were particularly opposed to the bill not requiring a showing of intentional discrimination.

Criticism didn’t just come from prosecutors. At the recent California Racial Justice Act Symposium (<https://www.law.berkeley.edu/article/implementing-equality-packed-conference-addresses-california-racial-justice-act/>), hosted by Berkeley Law, Lisa Romo, an attorney at the Office of the State Public Defender, noted, “There’s not enough money; we have defenders who are overwhelmed and not enough staff to process all the requests coming in. We desperately need more resources. The legislature just appropriated \$2 million just for retroactive RJA claims, which is appreciated, but that’s just a drop in the bucket because so many people need assistance.” Additionally, UC Berkeley Goldman School of Public Policy Professor Mia Bird suggested that because data is so heavily decentralized, “It’s not assembled in a way that can be used for research purposes, and may fail to account for differences at earlier stages of the criminal legal process.”

It is still to be determined what type of impact the RJA will have on criminal justice in California, particularly for communities most impacted by racial disparities. The results have so far been mixed, with ongoing questions about efficacy, practicality, and fairness. Nonetheless, the RJA has raised several important issues regarding the criminal legal process worth further examination and provoked the kind of dialogue that will hopefully challenge the thinking around and approach to racial justice in America.

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Follow the Stanford Center for Racial Justice on LinkedIn (<https://www.linkedin.com/company/stanford-center-for-racial-justice/>) and Instagram (<https://www.instagram.com/stanfordracialjustice/>). Subscribe to the Racial Justice Weekly (<https://law.stanford.edu/stanford-center-for-racial-justice/scrj-racial-justice-weekly/>) digest and our monthly newsletter (<https://law.stanford.edu/stanford-center-for-racial-justice/scrj-newsletter/>).

Category:

constitutional law,
Uncategorized

Tags:

Criminal Justice (https://law.stanford.edu/blog/?tax_and_terms=2024&page=1),
criminal law (https://law.stanford.edu/blog/?tax_and_terms=2490&page=1),
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Date of Hearing: March 23, 2021
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 256 (Kara) – As Amended March 16, 2021

SUMMARY: Makes the California Racial Justice Act of 2020 (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, applicable to cases in which judgment was entered prior to January 1, 2021, and makes other technical changes. Specifically, **this bill**:

- 1) Deletes provisions making the CRJA applicable only prospectively to cases in which judgment had not been entered prior to January 1, 2021, and makes the CRJA applicable to all cases regardless of when judgment was entered.
- 2) Deletes the requirement that the court vacate the conviction and sentence and find that the conviction is legally invalid before modifying a judgment to impose an appropriate remedy where the violation of the prohibition is based on seeking or obtaining more serious charges or convictions based on race, ethnicity, or national origin.
- 3) Modifies the provision regarding disclosure to the defense of records relevant to a CRJA violation to apply to records that are not privileged. Upon a showing of good cause, the court may permit the prosecution to redact information prior to disclosure.

EXISTING LAW:

- 1) Establishes the CRJA which prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining or imposing a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:
 - a) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;
 - b) During the trial, in a court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful, except as specified;
 - c) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's

race, ethnicity, or national origin in the county where the convictions were sought or obtained;

- d) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,
 - e) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed. (Pen. Code, § 745, subd. (a).)
- 2) States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the CRJA. (Pen. Code, § 745, subd. (b).)
 - 3) States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of the CRJA, the court shall hold a hearing. (Pen. Code, § 745, subd. (c).)
 - 4) Provides that at the hearing, either party may present evidence, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent investigator. (Pen. Code, § 745, subd. (c)(1).)
 - 5) States the defendant must prove the violation by a preponderance of the evidence. (Pen. Code, § 745, subd. (c)(2).)
 - 6) Requires the court to make findings on the record at the conclusion of the hearing. (Pen. Code, § 745, subd. (c)(3).)
 - 7) Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the CRJA that is in the possession or control of the state. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure. (Pen. Code, § 745, subd. (d).)
 - 8) States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the CRJA, the court shall impose a remedy specific to the violation found from a specified list of remedies. (Pen. Code, § 745, subd. (e).)
 - 9) Provides that before a judgment has been entered, the court may declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the

interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges. (Pen. Code, § 745, subd. (e)(1).)

10) Provides that when judgement has been entered, the following remedies apply:

- a) If the court finds that the conviction was sought or obtained in violation of the CRJA, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with the CRJA;
- b) If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that occurred, except that the court shall not impose a sentence greater than that previously imposed; and,
- c) If the court finds that only the sentence was sought or obtained in violation of the CRJA, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed. (Pen. Code, § 745, subd. (e)(2).)

11) Prohibits imposition of the death penalty where the court finds a violation of the CRJA. (Pen. Code, § 745, subd. (e)(3).)

12) Provides that a court is not foreclosed from imposing any other remedies available under the United States Constitution, the California Constitution, or any other law. (Pen. Code, § 745, subd. (e)(4).)

13) Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system. (Pen. Code, § 745, subd. (f).)

14) Specifies that these provisions do not prevent the prosecution of hate crimes. (Pen. Code, § 745, subd. (g).)

15) Defines “more frequently sought or obtained” or “more frequently imposed” as statistical evidence or aggregate data that demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated and the prosecution cannot establish race-neutral reasons for the disparity. (Pen. Code, § 745, subd. (h)(1).)

16) Defines “prima facie showing” as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the CRJA occurred, as specified. (Pen. Code, § 745, subd. (h)(2).)

17) Defines “racially discriminatory language” as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant’s physical appearance, culture, ethnicity or national

origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory. (Pen. Code, § 745, subd. (h)(3).)

- 18) Defines “state” as including the Attorney General, a district attorney, or a city prosecutor. (Pen. Code, § 745, subd. (h)(4).)
- 19) States that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition. (Pen. Code, § 745, subd. (i).)
- 20) Applies the CRJA prospectively to cases in which a judgment has not been entered prior to January 1, 2021. (Pen. Code, § 745, subd. (j).)
- 21) States that a writ of habeas corpus may be prosecuted following a judgment entered on or after January 1, 2021, based on evidence of a violation of the CRJA. (Pen. Code, § 1473, subd. (f).)
- 22) Provides that a petition raising such a claim, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed successive. (Pen. Code, § 1473, subd. (f).)
- 23) States that if the petitioner already has a habeas corpus petition on file in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner’s conviction or sentence was sought, obtained or imposed in violation of the CRJA. (Pen. Code, § 1473, subd. (f).)
- 24) Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the CRJA or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. (Pen. Code, § 1473, subd. (f).)
- 25) Requires the court to review the petition and if the court determines that the petitioner makes a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant shall appear at the hearing by video unless counsel indicates that their presence in court is needed. (Pen. Code, § 1473, subd. (f).)
- 26) Provides that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion. (Pen. Code, § 1473, subd. (f).)
- 27) Allows a person who is no longer in custody to vacate a conviction or sentence based on a violation of the CRJA, as specified. (Pen. Code, § 1473.7, subd. (a)(3).)

- 28) Allows a person who is unlawfully imprisoned or restrained of his or her liberty, under any pretense, to prosecute a writ of habeas corpus to inquire into the cause of their imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)
- 29) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:
- a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to the person's incarceration;
 - b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; or,
 - c) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. Defines "new evidence" as evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching. (Pen. Code, § 1473, subd. (b).)
- 30) Provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus based on false evidence. (Pen. Code, § 1473 subd. (c).)
- 31)
- 32) States that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Pen. Code, § 1473 subd. (d).)
- 33) Specifies "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances. (Pen. Code, § 1473, subd. (e)(1).)
- 34) Provides that a writ of habeas corpus may also be prosecuted on the basis that evidence relating to intimate partner battering and its effects, as defined, was not introduced at the trial relating to the prisoner's incarceration for a conviction of a violent felony, as defined, and was of such substance that had the substantial and competent expert evidence been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different. (Pen. Code, § 1473.5, subds. (a) & (b).)
- 35) Specifies that habeas corpus is the exclusive procedure for collateral attack on a judgment of death. (Pen. Code, § 1509, subd. (a).)
- 36) Creates an explicit right for a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence based on a prejudicial error damaging to the moving party's

ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere, or based on newly discovered evidence of actual innocence, as specified. (Pen. Code, § 1473.7.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "While California's leadership in passing the Racial Justice Act (AB 2542, Chapter 317, Statutes of 2020) was a major step in addressing institutionalized and implicit racial bias in our criminal courts, those with prior, racially biased convictions and sentences are barred from their right to challenge those judgements and seek justice. Controlling for conviction history and current offense, Black men convicted of a felony were still 42 percent more likely to be sentenced to prison than a white man convicted of a felony. Similarly, Latino men convicted of a felony were 32.5 percent more likely to be sent to prison. Given our state's troubled history of prosecuting and incarcerating people of color at much higher rates than the general population, it is imperative that we afford a mechanism for retroactive relief so our criminal justice system can begin to reckon with systemic racism and correct past injustices.

"The California Racial Justice Act is a countermeasure to a widely condemned 1987 legal precedent established in the case of *McCleskey v. Kemp*. Known as the *McCleskey* decision, the U.S. Supreme Court had for too long required California criminal defendants in criminal cases to prove intentional discrimination when challenging racial bias in their legal process. AB 256 recognizes how unreasonably difficult it was for victims of racism in the criminal legal system and provides an effective framework for addressing past racial bias in our criminal courts. This will ensure everyone is afforded an equal opportunity to pursue justice.

"Calls for racial justice and the fight against COVID-19 has only exposed how pervasive racially biased judgements were to people of color, and we have an opportunity to root out any miscarriage of justice and apply appropriate convictions and sentences with what we know today. Additionally, providing a mechanism for retroactive relief will allow the state to realize significant court and correctional savings."

- 2) **The California Racial Justice Act:** In its landmark *McCleskey* decision, the United States Supreme Court rejected the defendant's claim that the Georgia capital punishment statute violates the equal protection clause of the 14 Amendment. The defendant argued "that race has infected the administration of Georgia's statute in two ways: persons who murder whites are more likely to be sentenced to death than persons who murder blacks, and black murderers are more likely to be sentenced to death than white murderers." (*McCleskey v. Kemp* (1987) 481 U.S. 279, 291-292.) In rejecting the claim, the Court concluded the defendant had failed to demonstrate that the statute was enacted for or that decisionmakers in defendant's case acted with a discriminatory purpose. (*Id.* at pp. 297-299.)

The Court acknowledged that biased decision making may affect sentencing. (*McCleskey v. Kemp, supra*, 481 U.S. at p. 309.) However, the Court suggested that the legislature, not the judiciary, was the proper branch to engineer remedies to these systemic problems. (*Id.* at p. 319.)

In response, the Legislature passed AB 2542 (Katra), Statutes of 2020, the California Racial Justice Act. This Act allows racial bias to be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities or national origin in the county where the convictions were sought or obtained; or longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. Racial bias may also be shown by evidence that a judge or attorney, among other listed persons associated with the defendant's case, exhibited bias towards the defendant, or, in court and during the trial proceedings, used racially discriminatory language or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The Act does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case.

The CRJA applies only to judgments of conviction occurring on or before January 1, 2021. This bill would make the Act applicable to all cases regardless of when the judgment was entered.

- 3) **Racial Inequity in California's Criminal Justice System:** The California Committee on the Revision of the Penal Code has published its first annual report and concluded: "The current system has deep racial inequity at its core. New data published for the first time in this report reveals that racial disparities may be even worse than many imagined. Data obtained by the Committee for this report confirms people of color are disproportionately punished under state laws — from traffic infractions to serious and violent felonies." (http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf at p. 6 [as of March 13, 2021].)

The committee further concluded: "Despite [recent] reforms, and California's sustained decrease in crime rates, people of color — Black men in particular — and people with mental health issues continue to be incarcerated disproportionately. There is no reason California cannot maintain historically low crime rates while correcting glaring racial inequities in our criminal justice system."

(http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf at p. 10.)

- 4) **Writ of Habeas Corpus Generally:** Habeas corpus, also known as "the Great Writ", is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ is set forth in Penal Code section 1473, subdivision (a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Penal Code section 1473, subdivision (d) specifies that "nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted."

A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: false evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration; or false physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person. (Pen. Code, § 1473, subd.

(b)(1) & (2).) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus based on false evidence. (Pen. Code, § 1473, subd. (c).)

A habeas corpus claim of false testimony requires proof that false evidence was introduced against petitioner at his or her trial and that such evidence was material or probative on the issue of his or her guilt. (*In re Bell* (2007) 42 Cal.4th 630, 637.) False evidence introduced at trial against a defendant is substantially material or probative if there is a reasonable probability that, had the false evidence not been introduced, the result would have been different. (*In re Roberts* (2003) 29 Cal.4th 726, 741-742.) A reasonable probability that the result would have been different if false evidence had not been introduced against defendant is a chance great enough, under the totality of circumstances, to undermine the court's confidence in the outcome. (*Id.* at p. 742.)

A writ of habeas corpus may also be prosecuted based on newly discovered evidence. The new evidence must be “credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.” (Pen. Code, § 1473, subd. (b)(3).)

The Legislature has also codified the right to prosecute a petition for writ of habeas corpus when evidence of intimate partner battering was not presented at trial. (Pen. Code, § 1473.5.) Again, the evidence must be of such substance that had it been presented there is a “reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different.” (Pen. Code, § 1473.5, subd. (a).)

The CRJA provides that for judgments of conviction occurring on or after January 1, 2021, a writ of habeas corpus may be prosecuted where the state violates the Act by seeking or obtaining a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Unlike habeas provisions generally, the Act’s habeas provision does not expressly require a showing that the bias was prejudicial to the criminal proceedings. If the petitioner is successful in their habeas claim, the court must vacate the conviction and sentence, find that it is legally invalid, and order new proceedings that are consistent with the Act’s prohibitions against racial bias.

This bill would authorize a petition to be filed for cases in which a judgment was entered prior to January 1, 2021.

- 5) **Motion to Vacate:** Penal Code section 1473.7, subdivision (a), provides, “A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for either of the following reasons: [¶] (1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere. . . . [¶] (2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.”

The CRJA provides that for judgments of conviction occurring on or after January 1, 2021, a motion to vacate may be prosecuted where the state violates the Act by seeking or obtaining

a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Unlike motions to vacate based on immigration consequences and newly discovered evidence, the Act's motion to vacate provision requires no showing of prejudicial error or actual innocence.

This bill would authorize a motion to be filed for cases in which a judgment was entered prior to January 1, 2021.

- 6) **Lack of Prejudice Standard:** Generally, an error of California law is not subject to reversal unless an examination of the entire record establishes a reasonable probability that the error affected the outcome. (*People v. Watson* (1956) 46 Cal. 2d 818, 836.) This emanates from Article VI, section 13 of the California Constitution:

No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

Because the CRJA lacks a prejudicial error standard, the Act may result in litigation on whether such a standard is required under section 13 of Article VI of the California Constitution.

While section 13 of Article VI of the California Constitution does not apply to state habeas proceedings (*In re Clark* (1993) 5 Cal.4th 750, 795), the California Supreme court has nonetheless applied a similar standard to habeas petitions grounded on some violations of fundamental constitutional rights. (See *In re Richards* (2016) 63 Cal.4th 291, 312-313 [habeas corpus petition based on false evidence]; *In re Clark, supra*, 5 Cal.4th at p. 795, citing *In re Martin* (1987) 44 Cal.3d 1, 50-51 [habeas corpus petition based on prosecutorial witness intimidation in violation of a criminal defendant's right to present a defense]; *Strickland v. Washington* (1984) 466 U.S. 668, 688, 691-692 [habeas corpus petition based on claim of ineffective assistance of counsel in violation of the constitutional right to counsel].)

- 7) **Proposition 7:** Proposition 7 was approved by the voters in 1978 and does not permit legislative amendment without voter approval. (*People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 278.) The initiative changed the law in two primary respects. First, it increased the punishment for the crime of murder in both the first and the second degree. And, it strengthened the death penalty by expanding the special circumstances under which a person convicted of first degree murder may be put to death. (*Ibid.*)

Because the CRJA prohibits the death penalty where there has been a violation of the Act's prohibitions against racial bias, there may be litigation regarding Proposition 7.

- 8) **Finality of Judgment:** California Constitution Article I, § 28 (a)(6), provides that "[v]ictims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences

of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end.”

The California Supreme Court has recognized “society’s legitimate interest in the finality of its criminal judgments.” (*In re Reno* (2012) 55 Cal.4th 428, 451.) “One of the law’s very objects is the finality of its judgments. Neither innocence nor just punishment can be vindicated until the final judgment is known. ‘Without finality, the criminal law is deprived of much of its deterrent effect.’ [Citation.] And when a habeas petitioner succeeds in obtaining a new trial, the “erosion of memory” and “dispersion of witnesses” that occur with the passage of time,’ [citation], prejudice the government and diminish the chances of a reliable criminal adjudication. ...” (Quoting *McCleskey v. Zant* (1991) 499 U.S. 467, 491 [113 L. Ed. 2d 517, 111 S. Ct. 1454].)” (*In re Reno*, *supra*, 55 Cal.4th at p. 451.)

This bill makes the CRJA fully retroactive, applying it to all cases regardless of the date of the judgment of conviction.

- 9) **Practical Considerations:** Several areas of the CRJA could be clarified, as the meaning is unclear.¹ For example, the CRJA can be violated if a “juror” in the case exhibits bias. The Act can also be violated if during the defendant’s trial, in court and during the proceedings, a “juror” uses racially discriminatory language. (Pen. Code, § 745, subd. (a)(1) & (2).) The term juror is not further defined. Does either type of violation include alternate and/or prospective jurors?

The CRJA can be violated where a defendant is charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are “similarly situated.” (Pen. Code, § 745, subd. (a)(3).) What does the phrase “similarly situated” mean?

To establish a violation based on more serious charges or convictions, the evidence must also establish that the prosecution “more frequently sought or obtained” convictions for more serious offenses against people who share the defendant’s race, ethnicity, or national origin in a county where the convictions were sought or obtained? (Pen. Code, § 745, subd. (a)(3).) The CRJA does not state what the convictions must be more frequently sought or obtained than.

Under the CRJA, “more frequently sought or obtained” means “that statistical evidence or aggregate data demonstrate a significant difference is seeking or obtaining convictions ... comparing individuals who have committed similar offense and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity.” (Pen. Code, § 745, subd. (h)(1).) The Act does not further define “significant difference.”

The CRJA can also be violated based on longer or more severe sentences being “more frequently imposed” based on race, ethnicity, or national origin than those imposed on

¹ See generally, Couzens, *Assembly Bill 2542: “California Racial Justice Act of 2020”* (Jan. 2021), raising many of these points.

“similarly situated” individuals. (Pen. Code, § 745, subd. (a)(4)(A) & (B).) Again, “similarly situated” is not further defined.

Under the CRJA, “more frequently imposed” means “that statistical evidence or aggregate data demonstrate a significant difference is seeking or obtaining convictions ... comparing individuals who have committed similar offense and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity.” (Pen. Code, § 745, subd. (h)(1).) Again, the Act does not further define “significant difference.” Nor is there a stated timeframe of comparison.

The CRJA does not state who is to hear a motion in the trial court based on a violation of the Act. (Pen. Code, § 745, subd. (a).) What if the allegation of bias is against the judge hearing the case? Does this judge also hear the motion raising their alleged bias? Though this would raise ethical issues, the Act provides no direction on this.

The CRJA specifies no remedy/sanction for a violation of its discovery provision. (Pen. Code, § 745, subd. (d).)

The CRJA does not state that the discharge of the jury panel, as a remedy for a specified violation, requires a defendant’s consent. (Pen. Code, § 745, subd. (e)(1)(B).) “Consent is implied under some circumstances, as, for instance, where a defendant moves in arrest of judgment, asks to have the judgment vacated or seeks a new trial.” (*People v. Kelly* (1933) 132 Cal.App.118, 122.) Is the defendant’s consent an implied requirement of the Act? Failure to obtain consent implicates double jeopardy principles. (U.S. Const., 5th Amend.; Cal. Const., art I, § 15.)

Where the CRJA requires the court to vacate the judgment and conviction and order “new proceedings consistent with subdivision (a),” what does this mean? (Pen. Code, § 745, subd. (e)(2)(A).) Subdivision (a) lists the various CRJA prohibitions – i.e., lists the possible ways the CRJA can be violated. Is this in reference to when the new criminal proceedings should begin – i.e., from the point at which one of these prohibitions of the CRJA was violated?

What is meant by the phrase “the ability to rectify the violation by modifying the judgment?” (Pen. Code, § 745, subd. (e)(2)(A).) Does it mean the court must have the legal authority or jurisdiction, which it may be lacking under other provisions of law, to correct the violation? Or does it mean the court must modify the judgment only if one of the available remedies is suitable to effect a remedy? The Act does not provide guidance on what a court is to do if, under either definition, it doesn’t have the ability to correct the violation.

Does the remedy depend on when the violation occurred or when the court imposes the remedy? (Pen. Code, § 745, subd. (e)(1) & (2).)

On resentencing, based on only a sentence having been sought, obtained, or imposed, in violation of the CRJA, can the court impose the same sentence? (Pen. Code, § 745, subd. (e)(2)(B).)

What point of reference is used to determine what constitutes racially discriminatory language, especially in light of the fact that this bill would make the CRJA fully retroactive? (Pen. Code, § 745, subd. (a)(2).)

Is the test for “bias” on the basis of race, ethnicity or national origin objective or subjective? (Pen. Code, § 745, subd. (a)(1).)

- 10) **Argument in Support:** According to the Ella Baker Center for Human Rights, a co-sponsor of this bill: “With the Racial Justice Act, California took a profound step forward in addressing institutionalized and implicit racial bias in our criminal courts by empowering defendants to object to charges, convictions, or punishment if they can show that anyone involved in their case — a judge, attorney, officer, expert witness or juror — demonstrated bias during the process, or if they can show statistical evidence of demographic inequities in charges, convictions, or sentences for the same crime. However, this legislation was made prospective; to excluded those who had been harmed prior to January 1, 2021 by the racial bias and discrimination that has long permeated our criminal legal system.

“Based in Oakland, the Ella Baker Center for Human Rights works to advance racial and economic justice to ensure dignity and opportunity for people with low income and people of color. Last year’s cry for racial justice in the wake of the state-sanctioned killings of Black Americans, Breonna Taylor, and George Floyd made obvious the need to address racism across America and the globe. We hope California’s Legislature continues to respond to the urgent calls for healing our institutions, and the necessary rooting-out of racism from our systems of justice.

“California took a bold step to address our nation’s legacy of anti-Black, anti-brown, and foreign-based bias in enacting the original Racial Justice Act. However, amendments relegating it to apply prospectively only – to only apply to future Californians – leave the many currently within the court system without the civil rights protections provided in the RJA. Those with prior, racially biased convictions and sentences deserve equal justice under the law and should not serve time imprisoned because of race and the biases of others.

“Additionally, providing a mechanism for retroactive relief will allow the state to realize significant court and correctional savings from correcting the missteps of the past. For these reasons, the Ella Baker Center for Human Rights supports the Racial Justice Act for All, Assembly Bill 256 (Kara), to allow the Racial Justice Act apply to previous cases... to ensure that everyone is afforded an opportunity to pursue more equal justice. We urge the legislature to pass this important bill....”

- 11) **Argument in Opposition:** According to the California District Attorneys Association: “First, while AB 2542 purported to create laws designed to eliminate discrimination in the criminal justice system (an unquestionably important goal shared by CDAA), it did so in a way that created a great risk of depriving society and victims of every race, ethnicity, and national origin of justice notwithstanding indisputable and overwhelming evidence of an offender’s guilt. That risk remains because under the laws enacted by AB 2542 (i.e., Penal Code section 745), a case can be reversed even if there was no showing that the defendant was deprived of a fair trial. For example, if there is a mass shooting and a law enforcement officer involved in the case (who merely took an undisputed videotaped statement from a witness) or an expert (who testified to undisputed conclusions) turns out to be biased against the defendant, there will have to be a reversal regardless of whether 50 people observed the defendant doing the shooting, the bias was revealed to the jury, the law enforcement officer

did not even testify, and all the people murdered belonged to the same racial and ethnic group as the defendant.

“Second, Penal Code section 745 is riddled with ambiguous language and unanswered questions that have yet to be resolved by any appellate court. For example, the bill would overturn a conviction if a ‘defendant was charged or convicted of a *more serious* offense than defendants of other races, ethnicities, or national origins who commit *similar* offenses and are *similarly situated*, and the evidence establishes that the prosecution more *frequently sought* or obtained convictions for more serious offenses against people who share the defendant’s race, ethnicity, or national origin . . .’ Other than ‘frequently sought’ none of the terms highlighted are defined and even the term ‘frequently sought’ is given a vague definition.

“The definition of more ‘frequently sought or obtained’ or more ‘frequently imposed’ means statistical data demonstrates a ‘significant’ difference in the comparative groups. But no definition of ‘significant’ is provided? Is a 5%, 10%, or 50%, or 80% differential significant? The statute leaves it entirely up to the individual judge to decide without any guidance.

“In addition, it is yet unknown how to assess the relevant time period for comparison purposes. If there is a disproportion based on statistics going back 25 years but no disproportion going back 10 years, which is the relevant statistic?

“What qualifies as an ethnicity or national origin? What if there are no statistics kept on the percentage of individuals committing each kind of crime who are of Armenian, Guatemalan, Swedish, or other national origin? Or of sub-groups of broadly defined ethnic or racial categories? Two defendants charged with the same crime can be of same ethnicity but of different national origin or race or be of the same race but of different ethnicity or national origin. What is the relevant group for comparison? Is there a violation if the defendant belongs to an ethnic group for which convictions are disproportionately over-sought but a racial group for which convictions are disproportionately under-sought? The law allows for aggregation of statistics if the defendant belongs to more than one class but since aggregation can both distort and cancel out any actual disproportionate effect, how can such an aggregate statistic have any meaning?

“AB 256 would dramatically expand the scope of AB 2542 *without seeing how any of these issues created by AB 2542 have been resolved.*

“Third, the current law imposes heavy costs on local counties without any reimbursement. Setting aside the costs of appeals, delays and interruptions of trials, and the costs of evidentiary hearings that necessarily will involve untold witnesses and expert testimony on both sides, the costs of having to review thousands of files is astronomical. To illustrate: Let’s say a defendant brings a simple motion challenging a prosecution on grounds defendant is allegedly charged with a “more serious” offense (i.e., assault with a deadly weapon or great bodily injury) than similarly situated defendants from different groups based on “similar” conduct. The number of files relevant to such a motion in Santa Clara County would be close to 1,500 files - each would have to be identified, located, reviewed, and redacted (to comply with state constitutional requirements and protect privileges) just to provide relevant discovery. Even if each file could be identified, located, reviewed, and redacted in an hour’s total time, that would require a prosecutor working approximately 8

months (at a cost of over \$100,000) to handle a single discovery request. And that assumes that the only files used for comparison are from a single year. AB 256 would, based on a relatively low threshold showing, require pulling, reviewing, and redacting files potentially going back 100 years since the bill sets out no time frames or limits on the relevant comparison groups.

“These cost concerns prompted this Legislature to limit the scope of AB 2542 so that it did not apply retroactively. *AB 256 overturns this critical limitation.* Since every defendant belongs to at least two or more racial, ethnic, or national origin groups, practically every single conviction that has ever occurred in California can now be re-opened and potentially reversed. The defendant can mandate lengthy and costly evidentiary hearings involving the testimony of attorneys, law enforcement officers, jurors, experts, or other members of the criminal justice system without even having to show that a claimed violation of section 745 is more likely than not. Indeed, such hearings can be mandated based simply on defendant showing more than mere possibility that a violation has occurred.

“And the difficulties in trying to defend against the allegation and the ramifications of dismissal are compounded because relevant statistics are more likely to be absent, relevant witnesses (i.e., judges, attorneys, prosecutors, officers, etc.) may be dead or unavailable. Retrying the cases after years or decades will often be impossible.

“We do not oppose the change in language proposed by AB 256 to section 745(d) clarifying that privileged materials are not discoverable. (And would support the bill if that were the only change proposed.) But this change is only one of the dozens of other problems arising from the current structure of section 745, none of which AB 256 corrects (and which we do not detail in the interests of brevity).

“We strongly urge a reconsideration of this attempt to vastly expand the scope of section 745 and dramatically increase the costs that would be imposed by applying section 745 retroactively without even being able to assess the impact of section 745 as it currently exists. And, once again, we respectfully offer to sit down with you and other proponents of both AB 2542 and AB 256 to identify existing issues and propose possible solutions that would help serve justice and further the goal of eliminating discrimination in a more effective and fair manner.”

12) Related Legislation: ACA 2 (Levine) would amend the California Constitution and prohibit the death penalty from being imposed as a punishment for any violation of law. ACA 2 has been referred to this committee.

13) Prior Legislation:

- a) AB 2542 (Kala), Chapter 317, Statutes of 2020, created the CRJA which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, applicable to all cases regardless of the date of conviction.
- b) AB 3070 (Weber), Chapter 318, Statutes of 2020, prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of race, ethnicity, gender, and other specified characteristics, and outlines a court procedure for objecting to, evaluating, and resolving improper bias in peremptory challenges.

- c) AB 1798 (Levine), of the 2019-2020 Legislative Session, would have prohibited a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race – i.e., where race was a significant factor in the decision to either seek or impose the death penalty. AB 1798 was held in the Assembly Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union (Co-Sponsor)
American Friends Service Committee (Co-Sponsor)
California United for a Responsible Budget (CURB) (Co-Sponsor)
Coalition for Humane Immigrant Rights (CHIRLA) (Co-Sponsor)
Ella Baker Center for Human Rights (Co-Sponsor)
Initiate Justice (Co-Sponsor)
League of Women Voters of California (Co-Sponsor)
Silicon Valley De-bug (Co-Sponsor)
8th Amendment Project
A New Path
Afro Upris
Alliance for Boys and Men of Color
Alliance San Diego
Amnesty International USA Group 30 San Francisco
Anti-defamation League
Asian Law Alliance
Asian Solidarity Collective
Bend the Arc: Jewish Action
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Immigrant Policy Center
California Innocence Coalition: Northern California Innocence Project, California Innocence Project, Loyola Project for the Innocent
California Latinas for Reproductive Justice
California League of United Latin American Citizens
California Public Defenders Association
California State Council of Service Employees International Union (seiu California)
California Teachers Association
Californians for Safety and Justice
Clergy and Laity United for Economic Justice
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice
Community Advocates for Just and Moral Governance
Community Bridge Housing Corp
Community Legal Services in East Palo Alto
Consumer Attorneys of California

Courage California
Dignity and Power Now
Drug Policy Alliance
Empowering Pacific Islander Communities
Equal Justice USA
Fair Chance Project
Families United to End Lwop - Fuel
Felony Murder Elimination Project
Friends Committee on Legislation of California
Human Impact Partners
Immigrant Legal Resource Center
Indivisible Marin
Kern County Participatory Defense
LA Voice
La.voice/pico
Legal Aid at Work
Legal Services for Prisoners with Children
Long Beach Immigrant Rights Coalition
Los Angeles Urban League
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Center for Youth Law
National Institute for Criminal Justice Reform
Nextgen California
Oakland Privacy
Pillars of the Community
Project Rebound Consortium
Racial Justice Allies of Sonoma County
Re:store Justice
Resilience Orange County
San Francisco Public Defender
San Jose State University Human Rights Institute
San Jose/silicon Valley Branch of The NAACP
San Mateo County Participatory Defense
Santa Barbara Women's Political Committee
Secure Justice
Showing Up for Racial Justice - Bay Area
Showing Up for Racial Justice - Marin
Showing Up for Racial Justice - San Diego
Showing Up for Racial Justice - San Francisco
Showing Up for Racial Justice North County
Smart Justice of California
Southeast Asia Resource Action Center
Team Justice
The American Constitution Society Chapter for Santa Clara University School of Law
The W. Haywood Burns Institute
The Women's Foundation of California
Think Dignity
Time for Change Foundation

UC Berkeley's Underground Scholars Initiative
Udwr/afscme Local 3930
Unchained Scholars USC Student Caucus
Uncommon Law
Unitarian Universalist Justice Ministry of California (formerly Unitarian Universalist Legislative Ministry of California)
Voices for Progress
We the People - San Diego
White People 4 Black Lives
Young Women's Freedom Center
Youth Hype
Ywca Berkeley/Oakland

Opposition

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 256 (Kara) – As Amended March 16, 2021

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill makes the California Racial Justice Act of 2020 (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity or national origin, retroactive to cases where judgment was entered prior to January 1, 2021.

FISCAL EFFECT:

- 1) Costs (General Fund (GF)/Trial Court Trust Fund) of approximately \$21 million dollars in increased workload costs for fiscal years (FY) 2021-22 and 2022-23 and possibly ongoing to the trial courts to hear and adjudicate post-conviction petitions filed in accordance with the CRJA. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for staff and infrastructure. This is particularly true given that trial courts are still struggling to resolve hundreds of cases that were delayed during the COVID-19 pandemic. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing General Fund revenue for trial courts to continue addressing the backlog of cases and allow for timely access to justice.
- 2) Possible costs in excess of \$150,000 annually to the California Department of Corrections and Rehabilitation (CDCR) to supervise and transport petitioners housed at CDCR for hearings on CRJA petitions. Actual costs would be dependent on the number of individuals the department is required to transport and how many individuals CDCR could transport and supervise.
- 3) Costs (GF) of between \$8.9 million dollars and in FY 2021-22, \$42 million dollars in FY 2022-23, \$41 million dollars in 2023-24 and \$15 million dollars in 2024-25 to the Department of Justice (DOJ) in additional staff and infrastructure to litigate retroactive petitions for relief pursuant to the CRJA. DOJ estimates, based on Judicial Council's estimate, that approximately 100,000 petitions from past convictions may be filed in superior court pursuant to the CRJA. If petitioners are denied, they will then file petitions in the California Court of Appeal and California Supreme Court, where the DOJ's Appeals, Writ and Trials (AWT) Division will be required to respond. DOJ estimates the AWT Division will be required to respond to approximately 10% of the possible 100,000 petitions.

- 4) Possible savings (GF) to CDCR to the extent CRJA petitions are granted and inmates are re-sentenced to shorter terms or released from custody. The cost to CDCR to house an inmate per year is approximately \$84,000, so savings would depend on the number of inmates released early.

COMMENTS:

- 1) **Purpose.** According to the author:

While California's leadership in passing the CRJA (AB 2542, Chapter 317, Statutes of 2020) was a major step in addressing institutionalized and implicit racial bias in our criminal courts, those with prior, racially biased convictions and sentences are barred from their right to challenge those judgements and seek justice.

- 2) **The CRJA.** Last year, the Legislature passed AB 2542 (Kara), Chapter 317, Statutes of 2020, known as the CRJA which allows a person convicted of a crime to file a motion alleging racial bias in the charging, conviction or sentencing of a conviction. Racial bias may be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races; or that longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. Racial bias may also be shown by evidence that a judge or attorney, among others listed, associated with the defendant's case, exhibited bias towards the defendant, or, in court, used racially discriminatory language or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The CRJA does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case. The CRJA applies only to judgments of conviction occurring on or before January 1, 2021. This bill would make the CRJA applicable to all cases regardless of when judgment was entered.
- 3) **Impact on Trial Courts.** Judicial Council of the California (JCC) expressed several concerns about AB 2542 and the impact the CRJA would have on the trial courts. JCC estimated a cost of between \$9 million dollars and \$41 million dollars in increased workload to review and adjudicate petitions in accordance with the CRJA. AB 2542 was amended in the Senate Committee on Appropriations to be prospective only. For this bill, JCC estimates that, based on the historical number of criminal cases handled by the trial courts over the past 10 years, and assuming 1% of all criminal convictions are eligible for relief and 5% require additional hearings, the fiscal impact to the trial courts would be \$20.8 million in workload costs for the first two years. However, costs will likely be higher given that this bill allows a person to file a motion for relief on any conviction regardless of the date of conviction. JCC's estimate is based only on criminal convictions over the past ten years.

4) **Arguments in Support.** According to the 8th Amendment Project:

If prohibiting racism in our courts and providing a person a means to remedy racial bias in their case is the right thing to do, it is the right thing to do for everyone. Those with prior, racially biased convictions and sentences deserve equal justice under the law and have waited long enough. Additionally, providing a mechanism for retroactive relief will allow the state to realize significant court and correctional savings.

5) **Arguments in Opposition.** According to the California District Attorneys' Association:

AB 256 would dramatically expand the scope of AB 2542 without seeing how any of these issues created by AB 2542 have been resolved. [The CRJA already] imposes [a] heavy costs on local counties without any reimbursement. Setting aside the costs of appeals, delays and interruptions of trials, and the costs of evidentiary hearings that necessarily will involve untold witnesses and expert testimony on both sides, the costs of having to review thousands of files is astronomical.

6) **Prior Legislation.**

- a) AB 2542 (Kara), Chapter 317, Statutes of 2020, prohibits the state from seeking or upholding a conviction or sentence, occurring on or after January 1, 2021, that is discriminatory based on race, ethnicity or national origin.
- b) AB 2200 (Kara) of the 2019-2020 Legislature, is largely identical to this bill and was never heard in the Assembly Committee on Public Safety.

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Brandi Griffin (center), mother of Arnold Marcel Hawkins, expresses outrage over some of the charges being dropped against her son's alleged killers at a rally in front of the AF Bray Courthouse in Martinez on Aug. 25, 2023. *(Martin do Nascimento/KQED)*

REPARATIONS

California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa

By [Annelise Finney](#) Feb 13, 2024 [Save Article](#)



The effort to change the fundamental way race is considered in the California justice system received a jolt last week when a Contra Costa Superior Court judge **ruled that racism within the Antioch Police Department tainted a murder investigation.**

On Feb. 5, Judge David Goldstein, a former public defender, removed all gang enhancements that could have resulted in life without parole sentences for the four men charged with the murder. Defense attorneys used the California Racial Justice Act to argue that racism tainted the handling of the case, from the murder investigation to the charges given to the four defendants, all of whom are Black and in their early 20s.

It was the second time Goldstein ruled that anti-Black bias had shaped elements of the case.

Race has been a mostly silent character in criminal courtrooms because race couldn't be raised explicitly in court proceedings to defend someone accused of a crime until the RJA. The law, enacted in 2020, is the first of its kind in the country. Over several months, a KQED reporter attended the RJA hearings in the case. KQED also spoke with defense attorneys, prosecutors and community members about how the law is changing the way race is recognized in courtrooms.

‘People think that just because slavery ended, racism was pulled out at the root. But it wasn’t.’

—Vienna Peterson Joiner, Eric Windom's mother

At the end of July, four young men in yellow jumpsuits were spread across the courtroom as the afternoon sun streamed through windows behind Goldstein's bench. Keyshawn McGee and Trent Allen sat in the jury box. Eric Windom and Terryonn Pugh were tucked in around the far end of the attorney's table.

Behind them, the gallery was packed. The hallway outside the courtroom was filled with an overflow of family members, reporters and curious attorneys taking advantage of breaks between court appearances to get a glimpse of the historic hearing.

The four men were charged with an alleged gang-related murder and attempted murder. The murder charge included five enhancements.

Here's what happened: On March 9, 2021, police allege that the four men shot a car 40 times in a drive-by shooting on a residential street in Antioch. Arnold Marcel Hawkins, 22, was killed and another man was wounded. The shooting was allegedly part of a long-running feud between two East Bay gangs. The arrests of the men **were heralded by East Bay law enforcement** as a meaningful step toward reducing gun violence.

Updated last year, the RJA made two major changes to existing state law. First, it created a way for defense attorneys to raise racism in court to defend someone accused of a crime. Second, it broadened what kind of evidence the court can consider to include indications of implicit bias, usually an analysis of the outcomes of similar cases that reveal the preferential or discriminatory treatment of one demographic group or another.

In Contra Costa County, a growing number of RJA claims have recently gained traction. The ruling in the case against McGee, Allen, Pugh and Windom was the third time a Contra Costa judge has sided with the RJA, which allows judges to exclude witness testimony and drop charges, among other options.

“It will hopefully be a model for defendants across the state,” said Evan Kuluk, Windom’s attorney. “If the police who investigated their case were racially biased, used excessive force or spoke about them in racially discriminatory ways, there truly is a remedy available.”

The California Reparations Task Force submitted a **1,000-page report** to the state Legislature last summer, which included provisions to strengthen the RJA.

“The heart of implicit bias is when racism becomes so endemic, so pervasive, so enduring, so intractable, that it’s normal course,” Donald Tamaki, an attorney and task force member, told KQED. “So how do you disrupt that?”

Last month, **members of California’s legislative Black Caucus introduced a package of bills**, including four proposed changes to the state’s justice system. The proposed legislation does not include cash payments, but

Tamaki and fellow task member Lisa Holder said policies like the RJA are just as important to reducing racial disparities as cutting a check.



Evan Kuluk, a public defender who used the California Racial Justice Act to argue that racism in the Antioch Police Department tainted a murder investigation, in front of the Wakefield Taylor Courthouse in Martinez on Aug. 25, 2023. *(Martin do Nascimento/KQED)*

The district attorney

Last spring, Kuluk was focused on how Contra Contra County district attorneys choose to add gang enhancements to murder charges.

“I’ve handled a lot of cases with gang allegations in this county and saw what I believe to be a disproportionate number of Black young men, especially from Richmond and Antioch, being charged with gang allegations,” said Kuluk, a public defender for 15 years.

‘If the police who investigated their case were racially biased, used excessive force or spoke about them in racially discriminatory ways, there truly is a remedy available.’

—Evan Kuluk, attorney

As a member of the county’s Alternate Defender Office, Kuluk was assigned to represent Windom, now 24, who was pursuing a music career at the time of his arrest.

Kuluk and Windom requested charging records from Contra Costa County District Attorney Diana Becton. With the help of a UC Irvine statistician, they found that from 2015–2022, Black men accused of gang-related murders were 44% more likely to be charged with enhancements than defendants of other races accused of similar gang-related murders.

“Because they carry mandatory LWOP, the filing of special circumstances is an assertion that an individual is irredeemable,” Kuluk told KQED, referring to a life without the possibility of parole sentence. “It is beyond unfair and unacceptable for the government to more frequently deem Black people unworthy to ever get the opportunity to prove their redemption to a parole board.”

Becton’s office disputed Kuluk’s findings, but in May, Windom and his co-defendants convinced the court that the district attorney had applied the enhancement in a biased way. The gang enhancement was dismissed. It was the first time in the United States, a country where Black residents are **five times more likely to be incarcerated in state prison than white residents**, that an argument of implicit bias in the justice system resulted in a charge being dropped from a criminal case.

Contra Costa Chief Assistant District Attorney Simon O’Connell said he doubted anyone in the office was knowingly targeting Black defendants for harsher punishment. But he said the RJA challenge gave the DA a reason to look more closely at their charging data.

“We don’t know what we don’t know,” he said. “It was important for us to start looking at historical data to see if, in fact, there were implicit biases and trends in our data, which would be surprising to us.”

The police

Windom and his three co-defendants had a second RJA hearing related to racist text messages uncovered by an FBI probe into alleged criminal activity by the Antioch and Pittsburg police departments.

Some of the messages were sent during the murder investigation. Here’s one exchange sent over the course of 22 minutes while officers were surveilling McGee, Allen, Pugh and Windom eating at a barbecue restaurant in Concord in March 2021:

Antioch police officer Eric Rombough: *“Sooo many black peolpe (sic).”*

Antioch police officer Jonathan Adams: *“Bro. They all look the same.”*

Rombough: *“Tell me about it. I feel like I’m at the zoo.”*

Rombough: *“They’re getting ice cream. Swarming to it like Hennessy. I bet its chicken.”*

Adams: *“Could be ribs.”*

Rombough: *“For sure watermelon and kool aid. I hate these idiots.”*

Other messages suggest Black people don’t like pools and can’t be seen in the dark, employing tropes used to demean Black people. Still, other messages use the N-word and include photos of Pugh and Allen in hospital beds after being injured by officers during their arrests. In the messages, the officers joke about kicking Allen’s head like a football.

Shirelle Cobbs, Allen’s mother, shook with rage outside of the courtroom after the texts were read during a hearing. “If it was the other way around, my son would be under the courthouse or dead,” she said.

Becton has recommended at least 30 criminal cases for dismissal that involve police work by officers involved in the text messaging exchanges. But not in this case.

In the second RJA claim, the men asked Goldstein to dismiss all the enhancements and to downgrade a number of the top charges. They argued that the racist text messages made it impossible for the investigating officers to have done their jobs free of bias. They argued that not only were the officers who sent the messages compromised but so was the entire police department.

In August, Claire Jean Kim, a UC Irvine political science professor and expert in racial bias, testified for the defense. The text messages included department supervisors. She said only in a department with an entrenched culture of racism would no one report the violations of department policy. And that, she said, is exactly what happened in the Antioch Police Department.

“The law can and must repudiate the decisions made by such decision-makers, both for the sake of the defendant and for the community that rests its trust in the justice system,” she told the court.



Vienna Peterson Joiner (right) and Mariah Thomas drove up from Los Angeles to be in the courtroom during Eric Windom's Racial Justice Act hearing in Martinez on Sept. 8, 2023. (*Annelise Finney/KQED*)

Vienna Peterson Joiner was frequently in the gallery watching Windom, her son, closely. She told KQED she was trying to decipher how he was feeling and whether he'd eaten by the way he sat in his chair. Peterson Joiner and Windom are not allowed to speak at his court appearances.

"I want to run up there and hug him," she said. "I want to tell [the court] what we know about Eric."

She drove to Martinez from Los Angeles for court dates, sometimes stopping to pick up her son's fiancée, Mariah Thomas, and their 1-year-old daughter. When Windom was a toddler, his father was incarcerated.

“His own experience with his father and his current situation and lack of ability to be fully there for his child now is weighing on him,” Kuluk told KQED.

For Thomas, the disruption to building a family with Windom is painful.

“He's being held by people who don't like the color of his skin,” she said. “That's really what it boils down to because if these people were white, they would've been home. They would've been with their family.”

Peterson Joiner said it was a relief when the judge dropped the gang enhancement.

“I was glad that the judge did see that and paid attention to what was actually really going on,” she said. “People think that just because slavery ended, racism was pulled out at the root. But it wasn't.”

Data is the mechanism

Natasha Minsker, a criminal justice reform policy consultant, said Becton's willingness to provide data on charging practices has made the county a hot spot for attorneys testing the limits of the RJA using statistical evidence of discriminatory treatment. She, like Kuluk, is a member of the Racial Justice Act Implementation Working Group, a collection of advocates, attorneys and policymakers moving to bring claims.

As of Jan. 1, people who are currently and formerly incarcerated are now able to challenge their convictions using the RJA. Minsker said more than three-quarters of the state's prison population — about 90,000 people — could have viable claims. If implemented, she said, the law could help end mass incarceration in California.

But to get there, defense attorneys need more funding and more data.

“They were incredibly cooperative,” Kuluk said of Becton's office. “That's not what has been happening in many other counties in California where DA's offices have been hostile to public records requests that they interpret as

potentially leading to Racial Justice Act claims.”

Cities and counties aren’t currently required to collect data on the race of defendants or to make that data public. According to a statewide survey conducted by the reparations task force, 12 out of 57 responding county DA offices, including Sacramento, do not collect data on an accused person’s race, making RJA claims extremely challenging, if not impossible.

Solano County, home to the Vallejo Police Department, did not respond to the survey. In October, [the state Department of Justice expanded oversight of the Vallejo police](#) after the department failed to comply with the vast majority of court-mandated reforms.

“Without access to data, the promise of the [Racial Justice] Act has the potential to ring hollow to many,” the task force wrote in its report.

Among the 115 policy proposals suggested by the task force are [a series meant to strengthen and expand the Racial Justice Act \(PDF\)](#), including additional funding to help defense attorneys hire data analysts, penalties for district attorneys who fail to provide complete data and calls to fund the Justice Data Accountability and Transparency Act fully. The law, passed in 2022 and set to go into effect in 2027, will require district attorneys to report case data, including the race of the defendant and the victim, to the state DOJ.

“If you can bring irrefutable evidence of anti-Black bias within the criminal justice system to a court, then they will have no choice but to respond and to right the wrongs,” said Holder, who is also the president of the Equal Justice Society, an Oakland-based racial justice nonprofit.

Recently, Becton hired an analyst to guide the office’s data collection and preservation practices. In response to Windom’s claim, the office also established a committee review system for evaluating all special circumstances

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charges on articulable, race-neutral grounds before they are filed.

“This is the power of the Racial Justice Act,” Minsker said. “It makes all actors in the justice system responsible for pushing forward racial justice.”

Last month, the California DOJ published the state’s first-ever race-blind charging guidelines for prosecutors. A state law passed in 2022 will require county prosecutors to institute race-blind charging practices starting next year.



Kathryn Wade (left) and Carolyn Simmons speak out against the police violence that Wade says her son, Malad Baldwin, experienced at the hands of the Antioch Police Department at a rally in front of the Alameda County Courthouse in Martinez on Aug. 25, 2023. (Martin do

For some, the recent RJA successes in Contra Costa come with a sting. At each court date for Windom's RJA hearing, Hawkins' family members were there, including his mother, Brandi Griffin. For six months after he was shot outside of their Antioch home, she kept him on life support, hoping her son, who she described as free-spirited, would recover.

"Our family has been sacrificed based on what the Antioch Police Department has done," said Griffin, who told KQED that the case has stripped her faith in the justice system.

In front of the courthouse in July, she shouted at a scrum of reporters, her voice strained with grief and rage.

"I don't give a shit about no racist shit!" she said. "What about my son?"

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