Hearing Date: December 4, 2026

ITEM 4

PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Penal Code Section 741(b)

Statutes 2022, Chapter 806, Section 2 (AB 2778)

Race-Blind Charging

24-TC-07

Period of reimbursement begins July 1, 2023

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Exhibit A

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

August 18, 2026

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Arthur Palkowitz
Law Offices of Arthur M. Palkowitz
12807 Calle de la Siena
San Diego, CA 92130

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Mr. Hill and Mr. Palkowitz:

On August 14, 2026, the Commission on State Mandates adopted the Decision approving the Test Claim on the above-captioned matter.

Very truly yours,

Juliana F. Gmur
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 741(b) Statutes 2022, Chapter 806, Section 2 (AB 2778) Filed on June 10, 2025 City of Sacramento, County of Santa Clara, and County of Sutter, Claimants	Case No.: 24-TC-07 *Race-Blind Charging* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted August 14, 2026*) (*Served August 18, 2026*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on August 14, 2026.

Juliana F. Gmur, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 741(b) Statutes 2022, Chapter 806, Section 2 (AB 2778) Filed on June 10, 2025 City of Sacramento, County of Santa Clara, and County of Sutter, Claimants	Case No.: 24-TC-07 *Race-Blind Charging* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted August 14, 2026*) (*Served August 18, 2026*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on August 14, 2026. Michael J. Benner appeared on behalf of the City of Sacramento. Tara Fonseca appeared on behalf of the County of Santa Clara. Jennifer Dupré appeared on behalf of the County of Sutter. Arthur M. Palkowitz appeared on behalf of the City of Sacramento, the County of Santa Clara, and the County of Sutter. There were no appearances by the Department of Finance.

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 the Proposed Decision to approve the Test Claim by a vote of 6-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Deborah Gallegos, Representative of the State Controller	Yes
Karen Greene Ross, Public Member	Yes
William Pahland, Representative of the State Treasurer, Vice Chairperson	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes
Alexander Powell, Representative of the Director of the Office of Land Use and Climate Innovation	Yes

Summary of the Findings

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[1]

The Test Claim was timely filed within one year of the claimants incurring increased costs as a result of the test claim statute and has a period of reimbursement beginning July 1, 2023.[2]

The Commission finds that the following activities are new and mandated by the state:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

[1] Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[2] Government Code sections 17551(c), 17557(e); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: "The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University's Computational Policy Lab], as described in Paragraph 17."); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: "Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024."); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: "Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.").

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[3]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[4]

   However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

   1. Collect the data resulting from the race-blind initial charging evaluation process.

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[3] Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[4] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

> Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[5]

The new, state-mandated activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities are required to be performed by "prosecution agencies."[6] "Prosecution agencies" are defined in Penal Code section 741(a) as "agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors," which are county district attorneys and city prosecutors.[7] Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended "to increase community confidence in the charging process, and to reduce the potential for unconscious bias."[8]

Finally, the test claim statute results in increased costs mandated by the state and none of the exceptions in Government Code section 17556 apply to deny the claim. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding $1,000 to comply with the test claim statute.[9] There is no evidence rebutting these costs. The test claim statute does not create a new crime or 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. Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission approves this claim for costs incurred by counties and cities beginning July 1, 2023.

COMMISSION FINDINGS

[5] Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

[6] Penal Code section 741(a).

[7] Government Code sections 26500, 41803.5, 72193.

[8] Statutes 2022, chapter 806, section 1.

[9] Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

I. Chronology

01/01/2023	The test claim statute becomes effective
06/10/2025	The claimants filed the Test Claim.[10]
08/18/2025	The California District Attorneys' Association (CDAA) filed comments on the Test Claim.[11]
08/19/2025	Finance filed comments on the Test Claim.[12]
08/19/2025	League of California Cities filed comments on the Test Claim.[13]
08/25/2025	District Attorneys filed comments on the Test Claim.[14]
08/25/2025	California State Association of Counties (CSAC) filed comments on the Test Claim.[15]
09/18/2025	The claimants filed rebuttal comments.[16]
05/05/2026	Commission staff issued the Draft Proposed Decision.[17] No comments were filed on the Draft Proposed Decision.

II. Background

The test claim statute (Statutes 2022, chapter 806) added section 741 to the Penal Code to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of

[10] Exhibit A, Test Claim.

[11] Exhibit B, California District Attorneys' Association's (CDAA) Comments on the Test Claim.

[12] Exhibit C, Finance's Comments on the Test Claim.

[13] Exhibit D, League of California Cities' Comments on the Test Claim.

[14] Exhibit E, District Attorneys' Comments on the Test Claim. These comments were signed by the District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba.

[15] Exhibit F, CSAC's Comments on the Test Claim.

[16] Exhibit G, Claimants' Rebuttal Comments.

[17] Exhibit H, Draft Proposed Decision.

the suspect, victim, or witness. The relevant background for this Test Claim is summarized below.

A. Existing Law Authorizes County District Attorneys and City Prosecutors to Pursue Criminal Misdemeanor and Felony Charges Following Receipt and Review of Law Enforcement Reports and Documents.

Under existing law, the county district attorney is the public prosecutor, who shall, within his or her discretion, initiate and conduct on behalf of the people all prosecutions for public offenses.[18] The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he or she has information that such offenses have been committed.[19] With the consent of the district attorney of the county, the city attorney of any general law city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law.[20] And whenever a charter of any city creates the office of city prosecutor or provides that a deputy city attorney shall act as city prosecutor, the city prosecutor is required to prosecute misdemeanor offenses arising out of violations of state law.[21]

Under existing law, the prosecuting attorney ordinarily has the sole discretion to determine who to charge and what charges to file and pursue.[22] The prosecuting agency makes these decisions based on a review of the reports, records, and files of the law enforcement agency submitting the case for possible prosecution.

If a defendant is arrested on criminal charges, an arraignment must generally occur within 48 hours of arrest.[23] An arraignment is the initial court hearing where a defendant is formally charged with a crime, advised of their constitutional rights, and asked to enter a plea.

For misdemeanor cases, defendants have a right to have their trial start by a deadline. For a defendant not in custody, the trial must start within 45 days of their arraignment or plea, whichever is later. For a defendant who is in custody, it must start within 30 days of their arraignment or plea, whichever is later.[24]

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[18] Government Code section 26500, as last amended by Statutes 1980, chapter 1094.

[19] Government Code section 26501, as added by Statutes 1947, chapter 424.

[20] Government Code section 41803.5, as last amended by Statutes 2002, chapter 784.

[21] Government Code 72193, as last amended by Statutes 1998, chapter 931.

[22] *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 745 ("The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek."); *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451 ("[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.").

[23] Penal Code section 825, as last amended by Statutes 2003, chapter 149.

[24] Penal Code section 1382, as last amended by Statutes 2009, chapter 424.

For felony offenses, the prosecuting attorney can decide to prosecute through an indictment following a preliminary hearing or by way of a grand jury. In both cases, the preliminary hearing and grand jury proceedings determine if sufficient evidence exists to hold a defendant for trial.[25] While a proceeding before the grand jury typically occurs before the arraignment, a preliminary hearing is required to be conducted within ten court days after the arraignment or plea, whichever is later, unless delayed for good cause.[26]

These procedures did not change with the passage of the test claim statute.

B. The Test Claim Statute Adds a Race-Blind Charging Evaluation to the Charging Process and on January 1, 2024, DOJ Issued Race-Blind Charging Guidelines in Accordance with the Test Claim Statute.

The purpose of the test claim statute is to reduce the potential for unconscious bias in the charging process.[27] Section 1 of the test claim statute states the following:

> (a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or "unconscious" bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.)
>
> (b) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." (id. 71) In other contexts, such as science, employment, or academia, the "blinding" of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)
>
> (c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done "race blind." The Yolo County District Attorney in partnership with the Stanford

[25] Penal Code section 859b, as last amended by Statutes 1996, chapter 122; section 872, as last amended by Statutes 2013, chapter 125; and section 904.6(a), as last amended by Statutes 2005, chapter 25.

[26] Penal Code section 859b, as last amended by Statutes 1996, chapter 122.

[27] Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

> Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.[28]

As indicated above, the test claim statute came about following a pilot program in which the Yolo County District Attorney partnered with the Stanford Computational Policy lab in 2021 to develop a program to find and redact race data from police reports so that the initial charging determination could be performed "race blind." The process used an initial redacted review and a secondary unredacted review process to charge cases, with a few exceptions. "By stripping police reports of all race-related data of the suspect, victim, or witness, it reduces the potential for unconscious bias and increases community confidence in the charging process by having the initial charging assessment done 'race-blind.'"[29] The test claim statute is modeled after this process.

Penal Code section 741(a) first requires the Department of Justice (DOJ), beginning January 1, 2024, to develop, issue, and publish Race-Blind Charging guidelines.[30]

The claimants request reimbursement to comply with the requirements in Penal Code section 741(b).[31] Penal Code section 741(b) requires prosecution agencies, following the DOJ Guidelines, to independently develop and execute versions of the redaction and review process. "Prosecution agencies" are defined in Penal Code section 741(a) as "agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors," which as stated in the previous section are county district attorneys and city prosecutors.

Beginning January 1, 2025, Penal Code section 741(b)(1) states that cases received from law enforcement agencies and suspect criminal history documentation "shall be redacted" by the prosecution agency in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation.[32] Penal Code section 741(b)(1) states further explains,

> This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

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[28] Exhibit A, Test Claim, page 57.

[29] Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[30] See, Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

[31] Exhibit A, Test Claim, pages 22-24; Exhibit G, Claimants' Rebuttal Comments, page 7.

[32] Penal Code section 741(b)(1).

Penal Code section 741(b)(2) states that the initial charging evaluation based on redacted information "shall determine whether the case should be charged or not charged. Individual charges shall not be determined at this initial charging evaluation stage." Subdivision (b)(2) also requires a prosecutor who does not have knowledge of the redacted facts for that case to perform the initial charging evaluation.

Penal Code section 741(b)(3) states that "[a]fter completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury."

Penal Code section 741(b)(4) and (5) require the following information to be documented and disclosed:

- Each of the following circumstances shall be documented as part of the case record:
    - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
    - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
    - The explanation for the charging decision change.
- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 [which provides that attorney work product or privileged materials is not required to be disclosed] or any other applicable law.
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

Penal Code section 741(b)(6) requires counties to collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

Penal Code section 741(c) allows the prosecution agencies to exclude each of the following crimes from a race-blind initial charging evaluation process:

(1) Homicides.

(2) Hate crimes.

(3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.

(4) Domestic violence and sex crimes.

(5) Gang crimes.

(6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

According to the Senate Appropriations Committee, the test claim statute results in:

> Unknown, potentially reimbursable costs, possibly in the millions of dollars annually [for] additional staff and possible third party IT vendor contracts for county district attorney offices to independently develop and execute a process based on the process created by the DOJ to review and redact certain information about a suspect, witness or victim information reports before charging anyone (Local Funds, General Fund). Costs may also include additional staff and IT infrastructure to collect data from a race-blind charging process and document why a DA office did not use a race-blind charging process in any case.[33]

On January 1, 2024, DOJ issued Race-Blind Charging Guidelines, which will be more fully addressed in the analysis.[34] However, the Guidelines identify the following examples of the redaction process that satisfy the requirements of the test claim statute:

(1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.

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[33] Exhibit A, Test Claim, pages 62-63 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[34] Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

(2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

(3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.

(4) The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.[35]

C. Prior Test Claim Decisions Addressing Racial Disparities in the Criminal Justice System.

The Commission has received and approved several prior test claims addressing racial disparities in the criminal justice system, as follows:

- *Criminal Procedure: Discrimination*, 24-TC-02. This Test Claim addressed the Racial Justice for All Act as amended in 2022, 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.[36] The Act allows the defendant to bring proceedings to obtain a judgment finding a violation of the Act by showing with a preponderance of the evidence that the judge, attorney, 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. One of the ways a defendant can show a violation can be based on statistical evidence; i.e., that the "defendant was charged or convicted

[35] Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

[36] Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

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."[37] If the court finds a violation, then the court is required to vacate the conviction and sentence and find both or either to be legally invalid.[38]

The Commission approved the Test Claim for the following reimbursable 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.[39]

- *Racial Identify and Profiling*, 18-TC-02. This Test Claim addressed the Racial and Identity Profiling Act of 2015 and 2017 (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, Penal Code sections 13012 and 13519.4, and regulations adopted by DOJ, which require each reporting agency that employs peace officers to annually report to the Attorney General data in electronic format on all "stops" conducted by the agency's peace officers, the following additional information: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, and approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. The Commission approved the Test Claim for numerous activities governing the reporting process.[40]
- *Crime Statistics Reports for the Department of Justice*, 07-TC-10. The Commission found that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program on local law enforcement

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[37] Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, https://csm.ca.gov/decisions/24-TC-02-092625.pdf (accessed on April 30, 2026), page 9.

[38] Penal Code section 745(e)(2)(A) - (B); Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, https://csm.ca.gov/decisions/24-TC-02-092625.pdf (accessed on April 30, 2026), page 14.

[39] Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, https://csm.ca.gov/decisions/24-TC-02-092625.pdf (accessed on April 30, 2026).

[40] Commission on State Mandates, Adopted Decision, *Racial Identify and Profiling*, 18-TC-02, https://csm.ca.gov/decisions/18tc02_052220.pdf (accessed on April 30, 2026).

agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:

  - Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of association with a person or group with one or more of the following actual or perceived characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.[41]

- *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11. The Commission found that the following statutes imposed a reimbursable state-mandated program:

  - A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background. (Pen. Code, §13014, Stats. 1992, ch. 1338.)

  - Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin. (Pen. Code, §13023, Stats. 1989, ch. 1172.)

  - For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission found this to be reimbursable from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005.[42]

- *Racial Profiling: Law Enforcement Training*, 01-TC-01. The Commission found that Penal Code section 13519.4, as amended by Statutes 2000 chapter 684, imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution with respect to the initial racial

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[41] Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 07-TC-10, https://csm.ca.gov/matters/02-TC-04/07-tc-10correctedsodtrans041210.pdf (accessed on April 30, 2026).

[42] Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, https://csm.ca.gov/matters/02-TC-04/doc1.pdf (accessed on April 30, 2026).

profiling training for incumbent law enforcement officers, as specified in the Decision. The Commission denied reimbursement for the training in the Basic Training Course and for refresher training every five years on the ground that such costs did not result in costs mandated by the state.[43]

III. Positions of the Parties

A. City of Sacramento, County of Santa Clara, and County of Sutter

The test claimants contend that Penal Code section 741(b), as added by the test claim statute, imposes a reimbursable state-mandated program on counties and cities and seek reimbursement for the following activities:

- Independently develop and execute versions of the redaction and review process. (Pen. Code, § 741(b).)
- Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the 'narrative' portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation. (Pen. Code, § 741(b)(1).)
- The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case. (Pen. Code, § 741(b)(2).)
- After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint or allow the case to be submitted to a grand jury. (Pen. Code, § 741(b)(3).)
- Each of the following circumstances shall be documented as part of the case record: (i) The initial charging evaluation determined that the case not be

[43] Commission on State Mandates, Adopted Decision, *Racial Profiling: Law Enforcement Training*, 01-TC-01, https://csm.ca.gov/decisions/01tc01sod.pdf (accessed on April 30, 2026).

charged and the second review determined that a charge shall be filed. (ii) The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed. (Pen. Code, § 741(b)(4)(A).)

- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. (Pen. Code, § 741(b)(4)(C).)
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. (Pen. Code, § 741(b)(5).)
- The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes. (Pen. Code, § 741(b)(6).)[44]

The claimants also make it clear that they are not seeking reimbursement for the activities listed above in relation to the classes of crimes or factual circumstances identified in Penal Code section 741(c)(1-10).[45] The claimants filed a Declaration from Kevin McCarty, the current Mayor of Sacramento and author of the test claim statute when Mayor McCarty served in the Legislature, explaining that he worked with Yolo District Attorney's Office to identify which crimes to exclude because these crimes required the review of additional evidence outside of the police report including video and audio recordings, interviews with witnesses, victims and suspects, DNA evidence, evidence from sexual assault kits, and digital evidence from cell phones, computers, and other electronic devices in order to make a charging decision.[46]

The claimants have filed declarations explaining how their counties and city have complied with the test claim statute and the costs incurred.

- County of Santa Clara. In County of Santa Clara, redactions are automatically applied to police reports using software provided by Harvard University's Computational Policy Lab (CPL). This software was provided to the County at no cost, but the County incurs usage costs for hosting the software in the Cloud.[47] The County also contracted with HTC Global Services, Inc. to integrate the case management system, Ciberlaw, with the redaction software and develop and implement workflows in its case management system. This enables the district attorney to conduct the initial and second charging evaluations, document any

[44] Exhibit A, Test Claim, pages 22-24.

[45] Exhibit G, Claimants' Rebuttal Comments, page 7.

[46] Exhibit G, Claimants' Rebuttal Comments, page 9.

[47] Exhibit A, Test Claim, pages 36-37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

change in the charging decision, and document the reasons for not being able to puta case through the evaluation.[48] The County identifies several activities to implement the new redaction software and Ciberlaw workflows, including collaboration with vendors; project planning meetings; developing data dashboards and reports; training staff; and conducting regular governance meetings to monitor project status, review statistical reports, and assess the impact on attorney workload.[49]

Since the Redaction Software provided by CPL is able to redact only police reports, the County's district attorney's office worked with the County's IT Department to modify the County's CJIC system, which maintains local suspect criminal history documentation to apply redactions automatically by creating a new program beginning in March and several activities are listed to implement this new program.[50]

In addition, to implement the test claim statute, the County contends it was "reasonably necessary" for the district attorney's office to fully convert to the electronic submission of cases by local policy departments. Prior to the test claim statute, some units in the police department submitted their cases to the district attorney's office in paper. The Redaction Software now requires electronic submission, which required county employees to establish user accounts in the district attorney's custom solution for the end users in the police department.[51]

Beginning February 2025, the County district attorney's office started the process of transitioning from the custom solution to Axon Justice Premier for the electronic submission of cases from local police departments, including integrating Axon Justice Premier with Ciberlaw, with several activities listed to accomplish this task.[52]

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[48] Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

[49] Exhibit A, Test Claim, pages 37-39 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

[50] Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

[51] Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

[52] Exhibit A, Test Claim, pages 41-42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

For fiscal year 2024-2025, the County estimates increased costs of $2,016,723 in labor and vendor costs.[53] For fiscal year 2025-2026, the County estimates costs of $4,281,029 for labor and vendor costs.

- Sutter County - The County of Sutter hired a consultant, Sicuro Analytics, which has a Race Blind Charging Solution that is programmed to use artificial intelligence ("AI") to redact all race-based descriptions. This web-based application uses AI to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and the application redacts the data. The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. Costs include Sicuro implementation costs and Sicuro subscription, user portal, and overhead costs.[54]

  Sutter County has not yet had an opportunity to fully track attorney time and compare the additional staff burden as a result of fully implementing case review under Sicuro's Race Blind Charging Solution.[55]

  Sutter County identifies actual and estimated costs in fiscal year 2024-2025 of $39,160.[56] Sutter County estimates costs in fiscal year 2025-2026 at $21,120.[57]

- City of Sacramento - The City of Sacramento had their secretaries draft a procedure showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference when needed. Secretaries and district attorneys were trained on the new procedures.

  Secretaries also electronically upload police reports, manually redact them, send them to a filing attorney, record the initial decision, and document the decision from the second review. Implementation of Penal Code section 741(b)(6) requires regular updates in the form of meetings and emails to gauge the success of the implemented procedures.[58]

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[53] Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

[54] Exhibit A, Test Claim, pages 29-31.

[55] Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

[56] Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

[57] Exhibit A, Test Claim, pages 31, 50 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

[58] Exhibit A, Test Claim, pages 52-54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

The City estimates that the total increase for two deputy city attorneys making charging decisions due to the mandate has increased an additional 20 hours per week.[59]

The additional time spent by secretarial staff is an average of 38 hours per month.[60]

The City identifies costs of $122,277.60 for fiscal year 2024-2025.[61] The City also estimates costs in fiscal year 2025-2026 at $244,555.20.[62]

The claimants estimate the statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate at $50,000,000.00.[63]

The claimants did not file comments on the Draft Proposed Decision.

B. Department of Finance

The Department of Finance (Finance) states that if the Commission determines the test claim statute imposes state-mandated, reimbursable costs on local agencies, the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation. "Given that application of a race-blind initial charging evaluation process in these instances is not statutorily mandated, the associated costs are not state-reimbursable."[64]

Finance did not file comments on the Draft Proposed Decision.

C. Interested Parties and Persons

The District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba;[65] the California

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[59] Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[60] Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[61] Exhibit A, Test Claim, page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[62] Exhibit A, Test Claim, pages 32-33, 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[63] Exhibit A, Test Claim, page 33.

[64] Exhibit C, Finance's Comments on the Test Claim, page 2.

[65] Exhibit E, District Attorneys' Comments on the Test Claim.

District Attorneys Association;[66] the League of Cities,[67] and the CSAC[68] all support the Test Claim and urge the Commission to find the test claim statute imposes a reimbursable state-mandated program on local prosecuting agencies.

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."[69] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[70]

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.[71]
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.[72]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or

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[66] Exhibit B, California District Attorneys' Association (CDAA) Comments on the Test Claim.

[67] Exhibit D, League of California Cities' Comments on the Test Claim.

[68] Exhibit F, CSAC's Comments on the Test Claim.

[69] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

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

[71] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[72] *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.[73]

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.[74]

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.[75] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[76] 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."[77]

A. The Test Claim Was Timely Filed with the 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.[78] 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."[79]

The effective date of the test claim statute is January 1, 2023.[80] The claimants filed the Test Claim on June 10, 2025, more than 12 months after the effective date of the statute.[81] The claimants contend the Test Claim was filed within one year of first

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[73] *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.

[74] *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.

[75] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[76] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[77] *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.

[78] Government Code section 17551(c).

[79] California Code of Regulations, title 2, section 1183.1(c).

[80] Exhibit A, Test Claim, page 56.

[81] Exhibit A, Test Claim, page 1.

incurring costs in fiscal year 2024-2025.[82] This is supported by declarations filed with the Test Claim.[83] In addition, the delay in incurring costs is consistent with the test claim statute, Penal Code section 741(b), which requires local agencies to develop their own process following the issuance of the DOJ Race-Blind Charging Guidelines on January 1, 2024, and before implementation is required to begin on January 1, 2025.[84] Thus, the Commission finds that the Test Claim was timely filed.

While costs were first incurred by the claimants in the 2024-2025 fiscal year, 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 June 10, 2025 (during FY 2024-2025), the period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.

B. Penal Code Section 741(b) Imposes Some New State-Mandated Requirements on Counties and Cities.

The test claim statute requires counties and cities that prosecute felonies and misdemeanors to perform the activities listed below, some of which impose a new state-mandated program.

1. Performing the Activities Required in Section 741(b) Is Not Mandated by the State for the Crimes and Circumstances Listed in Section 741(c).

Penal Code section 741(c) allows prosecuting agencies to exclude the following classes of crimes or factual circumstances from the race-blind charging evaluation requirements imposed by section 741(b) due to "the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision:"

(1) Homicides.

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[82] Exhibit A, Test Claim, page 26.

[83] Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: "The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University's Computational Policy Lab], as described in Paragraph 17."); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: "Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024."); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: "Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.").

[84] Penal Code section 741(b)(1).

(2) Hate crimes.

(3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.

(4) Domestic violence and sex crimes.

(5) Gang crimes.

(6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

Reimbursement under article XIII B, section 6 of the California Constitution is only required when an activity is mandated by the state. A mandate can be found when the local agency has a legally enforceable duty to comply and is not found when the requirement is triggered by a local discretionary decision.[85]

The Commission finds that reimbursement is not mandated by the state to comply with the activities required by Penal Code section 741(b) for the crimes and factual circumstances identified in Penal Code section 741(c) since compliance is at the discretion of the local prosecuting agency and is not mandated by the state.

2. The Requirement to Independently Develop Versions of the Redaction and Review Process Following the Issuance of the DOJ Guidelines Is a New State-Mandated Activity. (Pen. Code, § 741(b).)

The introductory language in Penal Code section 741(b) states that following the DOJ guidelines, local "prosecuting agencies shall independently *develop* and execute versions of this redaction and review process."

[85] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (Kern High School Dist.) (2003) 30 Cal.4th 727, 731, 742-745; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

The DOJ Guidelines explain that this requirement means that

> Each prosecution agency must create a redaction process for the materials used for the initial charging evaluation to ensure that the "direct means" of identifying the race of the suspect(s), victim(s), and/or witness(es) have been removed or redacted, as required by Penal Code section 741, subdivision (a). Personnel not associated with evaluating or charging the case shall perform the redaction, either manually or through automation, so long as the method used reasonably ensures correct redaction. (§ 741, subd. (b)(1).)[86]

The Guidelines state: "For purposes of this section, the "direct means" for identifying the race of the suspect(s), victim(s) and witness(es) are (1) the stated race or ethnicity, (2) the first or last name, and (3) the skin color or complexion."[87]

DOJ's interpretation of section 741(b) is entitled to great weight and is consistent with the plain language in section 741(a).[88] Section 741(a) says "the Department of Justice shall develop, issue, and publish 'Race-Blind Charging' guidelines for a process whereby *all prosecution agencies*, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted." While the initial requirement to develop guidelines is imposed on DOJ, section 741(a) explains what the Legislature is requiring of local agencies in section 741(b); i.e. that local agencies are required to develop a process to redact information from which a direct means of identifying the race of the suspect, victim, or witness have been removed for the initial review of the case.

The requirement to develop a redaction and review process as required by Penal Code section 741(b) is new and imposes a state-mandated activity on counties and cities. The plain language of Penal Code section 741(b) states that local "prosecuting agencies *shall* independently develop and execute versions of this redaction and review process." Under well-settled rules of statutory construction, the courts ordinarily construe the word "may" as permissive and the word "shall" as mandatory, particularly when the Legislature uses both words in a single statute.[89] In this case, the Legislature

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[86] Exhibit A, Test Claim, page 67.

[87] Exhibit A, Test Claim, page 68.

[88] *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8 (An administrative interpretation of a statute [while subject to judicial review] is accorded great respect by the courts and will be followed if not clearly erroneous.).

[89] *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542; *Independent Office of Law Enforcement Review v. Sonoma County Sheriff's Office* (2026) 119 Cal.App.5th 668.

is using the word “shall” in subdivision (b) for the requirement to develop a local process to redact, whereas in subdivision (c), the Legislature uses the word “may” to allow city and county prosecuting agencies to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. Thus, the plain language indicates that the word “shall” in subdivision (b) is mandatory.

This finding is consistent with the legislative intent of the test claim statute to establish a process to reduce the potential for unconscious bias in the charging process, which as stated in the Background, above, can lead to violations under the Racial Justice for All Act[90] when it is shown that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses.[91]

Accordingly, the requirement in Penal Code section 741(b) to independently develop versions of a redaction and review process following the DOJ Race-Blind Charging Guidelines imposes a new state-mandated requirement on counties and cities.

3. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(1) Imposes a New State-Mandated Activity to Redact the Narrative Portion of the Police Report by Hand or by Automation with the Use of Computer Programming to Ensure Correct Redaction for the Initial Race-Blind Charging Evaluation.

Penal Code section 741(b)(1) states:

> Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

Redaction means removing the “direct means” of identifying the race of the suspect(s), victim(s), and/or witness(es).[92] According to DOJ Guidelines,

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[90] Penal Code section 745.

[91] Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, https://csm.ca.gov/decisions/24-TC-02-092625.pdf (access on April 30, 2026), page 9.

[92] Penal Code section 741(a); Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

> . . . "redaction" does not require the "black box" style for concealing information. Rather, it encompasses any means of removal or obliteration of the direct means for identifying race, such that the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation.[93]

However, as explained by the plain language in section 741(b)(1), "[t]he redaction may be applied to the entire report or to only the 'narrative' portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation." DOJ Guidelines state:

> At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency *may, at its option*, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent "supplemental" reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.[94]

Thus, the minimum requirement imposed by section 741(b)(1) is to redact the *narrative portion of the police report* by hand or by automation with the use of computer programming to ensure correct redaction. Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not legally compelled by state law.[95]

Moreover, there is no evidence in the law or the record that prosecuting agencies are practically compelled to redact the entire report.[96] As explained below, the initial review

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[93] Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

[94] Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

[95] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745.

[96] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 (practical compulsion "arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply."); see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754 (where no "legal" compulsion exists, "practical" compulsion may be found if the local agency faces "certain and

of the redacted race-blind narrative of the report is only needed to determine whether charges should be brought or not and is not used to determine the individual charges against a suspect.[97]

This requirement is new. Local prosecuting agencies were not required to redact or remove the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report under prior law.

Therefore, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(1) imposes a new state-mandated activity to redact the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report by hand or by automation with the use of computer programming to ensure correct redaction for the initial race-blind charging evaluation.

4. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(2) Imposes a New State-Mandated Activity for a Prosecutor to Perform the Initial Race-Blind Charging Evaluation Based on Redacted Information in the Narrative of the Police Report to Determine Whether the Case Should Be Charged or Not Be Charged. However, Penal Code Section 741(b)(3) Does Not Impose a New State-Mandated Requirement to Conduct the Second, "Ordinary" Evaluation.

Penal Code section 741(b)(2) requires that a prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation:

> The initial charging evaluation is intended to perform a gate-keeping and recording function prior to the actual charging process, rather than the more thorough second review to determine individual charges or decide charges with certainty. Accordingly, the initial charging evaluation shall determine only whether a case should be charged or not be charged against a particular defendant and shall not determine individual charges.
>
> . . . A case "should be charged" for purposes of this section if the reviewing prosecutor determines, based on redacted material, that a charge, of any type, should be alleged in the case. A case "should not be charged" for the purposes of this section if the reviewing prosecutor determines that no charge, of any type, should be alleged in the case.[98]

Penal Code section 741(b)(3) requires that after completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging

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severe…penalties" such as "double…taxation" or other "draconian" consequences if they fail to comply with the statute).

[97] Penal Code section 741(b)(2).

[98] Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

The DOJ Guidelines state that the "second review is intended to be the *ordinary* charging process for the prosecution agency without limitation on the information or evidence that a charging prosecutor may consider" and that "[t]his review mimics the ordinary criminal charging process that *preexisted* the race-blind process, and is used to determine the most applicable individual charges and enhancements.[99]

The DOJ Guidelines further state that "[t]he prosecutor performing the second review for charging must be the same prosecutor who performed the initial charging review. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging."[100] This interpretation is consistent with the test claim statute, which attempts to eliminate unconscious bias in charging by the prosecutor of the case. Under the statute, the prosecutor who does not have knowledge of the redacted facts for that case initially reviews the redacted report to determine if the case should be charged, then conducts his or her evaluation of the case based on all information, as was done under prior law. As explained in the next section below, any change in the prosecutor's determination of the case between the initial and secondary evaluation must be documented by that prosecutor. Thus, the same prosecutor is required to conduct both evaluations for the process to work.

The Commission finds that the initial evaluation is a new state-mandated activity, which was not required by prior law. State law did not previously require a race-blind evaluation to determine whether charges should be brought.

However, the second review of all materials to determine the exact charges to bring is does *not* impose a new state-mandated activity; it is "intended to be the ordinary charging process" for the prosecution agency to determine, based on the evidence, the applicable charges to include in a criminal complaint or a case submitted to the grand jury. This is true even if the prosecuting agency now has less time to bring charges because of the additional initial evaluation.

Thus, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(2) imposes a new state-mandated activity for a prosecutor who does not have knowledge of the redacted facts to perform the initial race-blind charging evaluation based on redacted information in the narrative of the police report to determine whether the case should be charged or not be charged. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also

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[99] Exhibit A, Test Claim, pages 70, 73 (DOJ Race-Blind Charging Guidelines), emphasis added.

[100] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

ultimately perform the second review for charging.[101] However, the second, complete review for charging using unredacted reports and all available evidence pursuant to Penal Code section 741(b)(3) is not new and does *not* impose a new state-mandated activity.

5. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(4) and (5) Impose New State-Mandated Requirements to Document Specified Information. However, the Costs To Make the Information Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).

Penal Code section 741(b)(4) requires prosecuting agencies to document as part of the case record, the following information:

- The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
- The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
- The explanation for the charging decision change.

Penal Code section 741(b)(4) further states that this information shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. The DOJ Guidelines clarify that this information must be disclosed upon request *after* sentencing in the case or dismissal of all charges, and that any response shall be governed by the California Records Act.[102]

Penal Code section 741(b)(5) also states if a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. The DOJ Guidelines clarify that any response shall be governed by the California Records Act.[103]

These activities were not required by prior law and are new. The Commission finds that except for the crimes and circumstances listed in Penal Code section 741(c), the requirement to document the information above imposes a new state-mandated requirement.

However, any costs incurred to disclose the information under the California Public Records Act are not eligible for reimbursement. As adopted by Proposition 42 (June 3, 2014), the voters amended article I, section 3(b)(7) of the California Constitution to state "each local agency is hereby required to comply with the California

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[101] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

[102] Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

[103] Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section." Article XIII B, section 6(a)(4) was also amended to provide that reimbursement is *not* required for any legislative mandates contained in statutes within the scope of article I, section 3(b)(7) as follows:

> (a) 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 that local government for the costs of the program or increased level of service, *except that the Legislature may, but need not, provide a subvention of funds for the following mandates*:
>
> (4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.[104]

The analysis of Proposition 42 by the Legislative Analyst's Office concludes that the amendment "Eliminates the state's responsibility to pay local governments for their costs related to these laws."[105]

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), the following activities are new and mandated by the state:

1. Document as part of the case record, the following information:
    - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
    - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
    - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)
2. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

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[104] Emphasis added.

[105] Exhibit I (1), Legislative Analyst's Office Report on Proposition 42, page 3. Reports by the Legislative Analyst are relevant for determining voter intent. *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 445.

6. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(6) Imposes a New State-Mandated Requirement To Collect the Raw Data Resulting from the Race-Blind Initial Charging Evaluation Process. However, the Costs to Make the Data Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).

Penal Code section 741(b)(6) requires that counties "shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes." The DOJ Guidelines state that responses to requests for research data shall be governed by the California Public Records Act.[106]

The Guidelines further clarify that

> Only the raw data generated by the process, rendered anonymous for privacy, shall be provided for research; the underlying materials, reports, or criminal history information are not required to be produced by these Guidelines. The raw data would include crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures.[107]

The requirement to collect this data is new. Counties were not previously required to perform this activity. And based on the plain language, the requirement to collect the data is mandated by the state.

However, the requirement to disclose the data collected under Penal Code section 741(b)(6) pursuant to a public records request is not eligible for reimbursement pursuant to article XIIIB, section 6(a)(4) of the California Constitution.

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(6) imposes a new state-mandated requirement to collect the raw data resulting from the race-blind initial charging evaluation process.

7. The Other Costs Requested in the Test Claim Are Not Mandated by the Plain Language of the Test Claim Statute.

As explained in Section III. of this Decision under the claimants' position, the claimants have also identified activities and costs they allege to be reasonably necessary to comply with the test claim statute, including costs for training, meetings, and modifying

[106] Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

[107] Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

a county's CJIC system that maintains local suspect criminal history documentation.[108] These activities are not required by the plain language of the test claim statute and, thus, they are not mandated by the state.

However, these activities and costs may be considered for reimbursement at the parameters and guidelines phase if they are supported by evidence in the record showing they are "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

C. The New State-Mandated Activities Constitute a New Program or Higher Level of Service.

As indicated above, the following requirements are new state-mandated requirements for county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state):

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report. (Pen. Code, § 741(b)(1).)
3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[109]
4. Document as part of the case record, the following information:
   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

[108] Exhibit A, Test Claim, pages 36 et seq. (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara; Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter; and Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[109] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

- The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

In addition, the following activity is new and mandated by the state for counties only:

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[110]

Article XIIIB, section 6 of the California Constitution requires reimbursement when "the Legislature or any state agency mandates a new program or higher level of service on any local government." New programs or higher levels of service have 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."[111] Just one of these conditions need be met.[112] In this Test Claim, both are met.

The new activities listed above are required to be performed by "prosecution agencies."[113] "Prosecution agencies" are defined in Penal Code section 741(a) as "agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors," which as stated in the Background, are county district attorneys and city prosecutors.[114] Thus, the test claim statute imposes unique requirements on local government to carry out the policy of reducing the potential for unconscious bias in charging crimes.

The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended

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[110] Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

[111] *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.

[112] *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.

[113] Penal Code section 741(a).

[114] Government Code sections 26500, 41803.5, 72193.

"to increase community confidence in the charging process, and to reduce the potential for unconscious bias."[115]

Accordingly, the Commission finds that the new state-mandated activities constitute a new program or higher level of service.

D. The New State-Mandated Requirements Result 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.

Finally, 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 as a result 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. A finding of such costs mandated by the state also means that no exception in Government Code section 17556 applies.

The claimant has filed declarations signed under penalty of perjury identifying increased costs exceeding $1,000 to comply with the test claim statute.[116] There is no evidence rebutting these costs.

The Commission further finds that none of the exceptions to costs mandated by the state in Government Code section 17556 apply to deny the claim. The test claim statute does not create a new crime or 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. As explained above, the purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal justice system.[117] Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission finds the new state-mandated requirements result in costs mandated by the state within the meaning of Government Code section 17514 and the exceptions to reimbursement in Government Code section 17556 do not apply.

V. Conclusion

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Penal Code section 741(b), as added by Statutes 2022, chapter 806, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties and cities, beginning July 1, 2023, for the following activities only:

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[115] Statutes 2022, chapter 806, section 1.

[116] Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

[117] Statutes 2022, chapter 806, section 1.

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

   Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[118]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[119]

   However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

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[118] Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[119] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[120]

All other provisions of the test claim statute and claims for reimbursement are denied.

[120] Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

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 August 18, 2026, I served the:

- **Current Mailing List dated July 30, 2026**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued August 18, 2026**
- **Decision adopted August 14, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 18, 2026 at Sacramento, California.

Jill Magee

Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/30/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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August 18, 2026

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Mr. Arthur Palkowitz
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Ms. Kato and Mr. Palkowitz:

On August 14, 2026, the Commission on State Mandates (Commission) adopted the Decision approving the Test Claim on the above-entitled matter.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the reimbursement claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

Draft Expedited Parameters and Guidelines

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

Review of Draft Expedited Parameters and Guidelines
Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines no later than **September 8, 2026**. (Cal. Code Regs., tit. 2, §1183.9(b).) 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]

Rebuttals
Written rebuttals may be filed within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Draft Proposed Decision and Parameters and Guidelines

If there are no substantive comments filed by the comment deadline, then no Draft Proposed Decision will be prepared or issued for comment and the matter will be set for the next regularly scheduled hearing, pursuant to section 1183.9(d) of the Commission's regulations. If substantive comments are filed, Commission staff will review the Draft Expedited Parameters and Guidelines, comments, and any rebuttals and will prepare a Draft Proposed Decision and Parameters and Guidelines, which will be issued for comment.

Alternative Process: Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Test Claimant and Department of Finance Submission of Letter of Intent
Within 30 days of the Commission's adoption of a decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.11 of the Commission's regulations to develop a j*oint reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs
Pursuant to the plan, the test claimant and the Department of Finance shall submit the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs
Upon receipt of the jointly developed proposals, Commission staff shall notify all

[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.

recipients that they shall have the opportunity to review and provide written comments concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within 15 days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs
At least 10 days prior to the next hearing, Commission staff shall review comments and rebuttals and issue a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

Alternative Process: Reasonable Reimbursement Methodology Proposed for Inclusion in Parameters and Guidelines

Government Code section 17518.5 provides a process for a reasonable reimbursement methodology to be proposed by the Department of Finance, the State Controller, an affected state agency, the claimant, or an interested party for inclusion in the parameters and guidelines of an amendment to parameters and guidelines. In this context, Government Code section 17518.5 defines "reasonable reimbursement methodology" as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514 which shall:

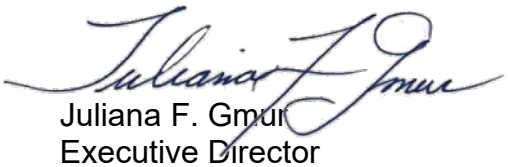
- Be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- Consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and
- Whenever possible, be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

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.) 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 prior approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(j).)

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.

Hearing: The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, October 9, 2026**, at 10:00 a.m., and will be issued on or about September 25, 2026, but may be heard on **Friday, December 4, 2026**, at 10:00 a.m., and will be issued on or about November 20, 2026, if substantive comments are filed by the comment deadline.

Very truly yours,



Juliana F. Gmur
Executive Director

Hearing Date: October 9, 2026[1]

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Penal Code Section 741(b)

Statutes 2022, Chapter 806, Section 2 (AB 2778)

Race-Blind Charging

24-TC-07

Period of reimbursement begins July 1, 2023

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[2]

On August 14, 2026, the Commission on State Mandates (Commission) adopted a Decision finding 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 for counties and cities, beginning July 1, 2023, for the following reimbursable activities:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)',

[1] Tentative. If substantive comments are received on the Draft Expedited Parameters and Guidelines, a Draft Proposed Decision and Parameters and Guidelines will be prepared and issued for comment and this matter will instead be set for the December 4, 2026, hearing.

[2] Exhibit A, Test Claim Decision, page 2, citing to Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[3]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[4]

   However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

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[3] Exhibit A, Test Claim Decision, page 3, citing to Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[4] Exhibit A, Test Claim Decision, page 3, citing to Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[5]

All other provisions of the test claim statute and claims for reimbursement are denied.

II. ELIGIBLE CLAIMANTS

Any city, county, or city and county, subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes and incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on June 10, 2025, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)

[5] Exhibit A, Test Claim Decision, page 4, citing to Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:
    1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
    2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[6]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[7]

   However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

   1. Collect the data resulting from the race-blind initial charging evaluation process.

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[6] Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[7] Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[8]

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

[8] Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

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

B. Indirect Cost Rates

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

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using the federal de minimis indirect cost rate percentage of direct labor identified in the Office of Management and Budget Circular, at Code of Federal Regulations, title 2, section 200.414(f), excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds the de minimis rate.[9]

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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

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

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or

[9] Effective October 1, 2024, the federal de minimis rate was raised from 10 percent to 15 percent. (Code of Federal Regulations, title 2, § 200.414(f) (89 FR 30046, 30092.)

2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter[10] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file

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

reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 August 18, 2026, I served the:

- **Current Mailing List dated July 30, 2026**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued August 18, 2026**
- **Decision adopted August 14, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 18, 2026 at Sacramento, California.

Jill Magee

_____

Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/30/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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 C

Commission on State Mandates
Filed Date
09/08/2026

MALIA M. COHEN
CALIFORNIA STATE CONTROLLER

September 8, 2026

Juliana F. Gmur, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA, 95814

SUBJECT: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date

Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Juliana F. Gmur:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for Race-Blind Charging and we have no comment.

If you have any questions, please contact John Saephan, Local Reimbursements Section, Local Government Programs and Services Division, by email at JSaephan@sco.ca.gov, or by telephone at 916-324-2664.

Sincerely,

Darryl Mar

Darryl Mar
Manager, Local Reimbursements Section

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 September 8, 2026, I served the:

- **Current Mailing List dated September 8, 2026**
- **Claimant's Comments on the Draft Expedited Parameters and Guidelines filed September 8, 2026**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed September 8, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 September 8, 2026 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/8/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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Filed Date
09/08/2026

September 8, 2026

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980 Ninth Street, Suite 300
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Comment on Draft Expedited Parameters and Guidelines
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741
City of Sacramento, County of Sutter, County of Santa Clara, Claimants

Dear Director Gmur:

The County of Santa Clara ("Claimant") files this Comment on the Draft Expedited Parameters and Guidelines ("Parameters and Guidelines") issued by the Commission on State Mandates ("Commission") for test claim 24-TC-07 ("Test Claim"). With this Comment, Claimant respectfully requests that the Commission amend the Parameters and Guidelines to require the State to reimburse counties and cities for the costs of conducting activities related to (1) the ongoing execution of a redaction and review process; (2) providing training and other forms of instruction to staff; and (3) receiving electronic police reports by prosecution agencies.

DISCUSSION

A. Claimant Requests that the Parameters and Guidelines Be Amended to Reflect the Test Claim Statute Mandate that Prosecuting Agencies Not Only Develop but Also Execute a Redaction and Review Process.

Claimant requests that the Commission amend the Parameters and Guidelines to reflect all state-mandated activities required by Penal Code section 741(b) (the "Test Claim Statute"). Specifically, whereas the Test Claim Statute requires that "prosecution agencies shall independently *develop and execute* versions of [a] redaction and review process" (Pen. Code, § 741(b), italics added)), the corresponding language in the Parameters and Guidelines requires the State to reimburse prosecution agencies only for activities associated with "[i]ndependently *develop[ing]* versions of a redaction and review process" (Parameters and Guidelines at p. 4, italics added).

This omission overlooks a new obligation imposed by the Legislature on counties and cities. By employing the term "shall," the Legislature intended to mandate the execution of a redaction and review process, as recognized by the Commission in its decision:

> The plain language of Penal Code section 741(b) states that local "prosecuting agencies *shall* independently develop and *execute* versions of this redaction and review process." Under well-settled rules of statutory construction, the courts ordinarily construe the word "may" as permissive and the word "shall" as mandatory, particularly when the Legislature uses both words in a single statute. In this case, the Legislature is using the word "shall" in subdivision (b) for the requirement to develop a local process to redact, whereas in subdivision (c), the Legislature uses the word "may" to allow city and county prosecuting agencies to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. Thus, the plain language indicates that the word "shall" in subdivision (b) is mandatory.

(*Race-Blind Charging*, Decision, No. 24-TC-07, pp. 23–24 (adopted Aug. 14, 2026), first italics in original, second italics added.)

While the omission of the words "and execution" from the Parameters and Guidelines may have been inadvertent, its effect is significant, as the new activities mandated by the Test Claim Statute are not limited to the one-time activities associated solely with the development of a redaction and review process. Amending the Parameters and Guidelines will capture the ongoing costs imposed on counties and cities by the statutory mandate to continuously *execute* the redaction and review process going forward. For these reasons, Claimant requests that the Commission amend Section IV(A)(1) of the Parameters and Guidelines to read as follows: "Independently develop *and execute* versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (Issued January 1, 2024). (Pen. Code § 741(b).)."

B. Claimant Requests that the Parameters and Guidelines Be Amended to Recognize that Training and Other Forms of Instructing Staff Are Reasonably Necessary to Comply with the Test Claim Statute.

The Commission's regulations require that parameters and guidelines describe the reimbursable costs associated with implementation of a State mandate, including "one-time costs and on-going costs, and reasonably necessary activities required to comply" with the law. (Cal. Code Regs., tit. 2, 1183.7(d).) "Reasonably necessary activities" are "those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program." (*Ibid*.)

Claimant respectfully requests that the Commission amend the Parameters and Guidelines to provide for reimbursement of the costs incurred for the reasonably necessary activities of providing training and other forms of instruction to staff. As described in the declaration of Assistant District Attorney James Gibons-Shapiro submitted by Claimant in support of the Test Claim (see Test Claim at pp. 20–32) ("Declaration"), the County of Santa Clara District Attorney's Office (DAO) conducted a two-hour user training session for attorneys that included an overview of the Test Claim Statute and specific instructions on how to navigate the new user interface for conducting the initial charging evaluation in its case management system. (Declaration at ¶ 19(a).) The DAO also provided instructions to support staff on how to identify which documents require redaction and how to flag them for redaction in its case management system. (*Id.* at ¶ 19(b).) Lastly, the DAO has provided individualized guidance to users in response to service requests, for example, by explaining how to navigate the new interface and the steps for conducting the new initial charging evaluation process. (*Id.* at ¶ 19(c).)

These activities are reasonably necessary to comply with the Test Claim Statute. Under the Test Claim Statute, individual prosecutors conduct the initial charging evaluation. (See Pen. Code, § 741(b)(2).) In order to carry out that obligation, they must be familiar not only with the new statutory mandate but also with how the DAO operationalized that mandate in its case management system. In addition, because the Test Claim Statute mandates the redaction of only certain documents for certain crimes, instructions must be provided to support staff to ensure that they identify and flag the appropriate documents for redaction in the case management system. (See *id.*, § 741(b)(1) & (c); see also Parameters and Guidelines at pp. 1–2.)

The Commission has regularly found that training employees on how to perform the reimbursable activities is reasonably necessary. (See, e.g., *Racial and Identity Profiling*, Decision and Parameters and Guidelines Amendment, No. 21-PGA-01, p. 20 (adopted Mar. 24, 2023) [including among reimbursable direct costs "the cost of training an employee to perform the reimbursable activities, as specified in . . . this document"]; accord *Photographic Record of Evidence*, Parameters and Guidelines Amendment, No.

04-PGA-09, p. 5 (adopted Dec. 9, 2005).) Similarly here, Claimant requests that the Commission amend the Parameters and Guidelines to provide for the reimbursement of the costs of providing training and other forms of instruction to employees on performing the reimbursable activities on the grounds that such training is reasonably necessary to ensure compliance with the Test Claim Statute. Accordingly, Claimant asks that the Commission add the following to the list of reimbursable activities in Section IV(A) of the Parameters and Guidelines: "Training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document." It also asks the Commission to add the following to the list of direct costs in Section V(A) of the Parameters and Guidelines: "Report the cost of training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document."

C. Claimant Requests that the Parameters and Guidelines Be Amended to Recognize that Activities Associated with Receiving Electronic Police Reports Are Reasonably Necessary to Comply with the Test Claim Statute.

Lastly, Claimant requests that the Commission amend the Parameters and Guidelines to provide for reimbursement of the costs incurred for the activities required for prosecuting agencies to receive electronic police reports. Because redaction software can be used to redact only electronic police reports, these activities are reasonably necessary to comply with the Test Claim Statute's mandate that prosecution agencies redact the narrative portion of police reports, including by "mechanically" redacting the reports. (See Pen. Code, § 741(b)(1).)

The Test Claim Statute requires that prosecuting agencies independently develop and execute a redaction process—including redacting "by automation with the use of computer programming"—following the California Department of Justice's (DOJ) Race-Blind Charging Guidelines ("Guidelines"). (Pen. Code, § 741(b) & (b)(1).) The Guidelines, in turn, describe various examples of redaction processes that satisfy this statutory mandate. (See Test Claim at p. 53; Cal. Dept. of J., Race-Blind Charging Guidelines: Penal Code Section 741, § III(d) (Jan. 1, 2024).) Notably, in providing an example of how redactions are applied automatically to police narratives using a software application, the Guidelines describe how the prosecuting agency receives police reports from the investigating agency in electronic form as scanned files. (Test Claim at p. 53; Guidelines, § III(d)(3).) The declarations submitted in support of the Test Claim describe how the two claimants that automated redactions using software obtain electronic police reports. (Decision at p. 16; Declaration at ¶¶ 21–25; Test Claim at p. 33, Declaration of Jeff C. Greeson, at ¶ 4.).

For these reasons, the Commission should recognize the activity of receiving police reports in electronic form as reasonably necessary to comply with the statutory mandate of redacting police report narratives using software. Accordingly, the

Commission should amend the Parameters and Guidelines in Section IV(A) to add a new reimbursable activity that reads as follows: "Develop and implement procedures and practices to ensure police reports are received in electronic form to enable the automated redaction of police narratives using software."

CONCLUSION

In sum, the Claimant respectfully requests that the Commission amend the Parameters and Guidelines to require the State to reimburse counties and cities for the costs of conducting activities related to (1) the ongoing execution of a redaction and review process; (2) providing training and other forms of instruction to staff; and (3) receiving electronic police reports by prosecuting agencies.

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 personal knowledge, information, or belief.

September 8, 2026

Sincerely,
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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 September 8, 2026, I served the:

- **Current Mailing List dated September 8, 2026**
- **Claimant's Comments on the Draft Expedited Parameters and Guidelines filed September 8, 2026**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed September 8, 2026**

Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 September 8, 2026 at Sacramento, California.



David Chavez
Commission on State Mandates
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Mailing List

Last Updated: 9/8/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
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County of Sutter

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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 E

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

September 29, 2026

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Mr. Arthur Palkowitz
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Ms. Kato and Mr. Palkowitz:

The Draft Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

Written Comments: Written comments may be filed on the Draft Proposed Decision and Parameters and Guidelines **by October 20, 2026**. 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(f).) 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 request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(j).)

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.

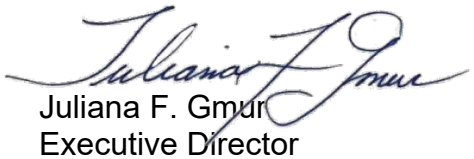
[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Hearing: This matter is set for hearing on **Friday, December 4, 2026** at 10:00 a.m. The Proposed Decision will be issued on or about November 20, 2026.

If you plan to address the Commission on this item, please notify the Commission Office **not later than noon on December 1, 2026.** 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

Hearing Date: December 4, 2026

ITEM ___

DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Penal Code Section 741(b)

Statutes 2022, Chapter 806, Section 2 (AB 2778)

Race-Blind Charging

24-TC-07

Period of reimbursement begins July 1, 2023

EXECUTIVE SUMMARY

I. Summary of the Mandate

These Parameters and Guidelines address Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice (DOJ) issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[1]

On August 14, 2026, the Commission on State Mandates (Commission) adopted a Decision finding 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 for counties and cities, beginning July 1, 2023.

On August 18, 2026, Commission staff issued the Draft Expedited Parameters and Guidelines.[2] The Controller filed comments indicating it has no comments.[3] The County of Santa Clara, co-claimant on the Test Claim, filed comments requesting reimbursement for the costs of conducting activities related to (1) the ongoing execution of a redaction and review process; (2) providing training and other forms of instruction to staff; and (3) receiving electronic police reports by prosecution agencies.[4]

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[1] Exhibit A, Test Claim Decision, page 2; Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[2] Exhibit B, Draft Expedited Parameters and Guidelines.

[3] Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines.

[4] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

II. Proposed Parameters and Guidelines

A. Eligible Claimants (Section II. of the Parameters and Guidelines)

Any city, county, or city and county, subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes and incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

B. Period of Reimbursement (Section III. of the Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on June 10, 2025, establishing eligibility for reimbursement for the 2023-2024 fiscal year.[5] Therefore, costs incurred are reimbursable on or after July 1, 2023.

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

The Proposed Parameters and Guidelines include the reimbursable activities approved by the Commission in the Test Claim Decision.

As explained below, the claimant also requests clarifying language be added and reimbursement for additional activities that are reasonably necessary to comply with the mandate.[6]

1. The Claimant's Request to Add the Word "Execute" in Section IV.A.1. Is Duplicative of Sections IV.A.2. and 3., and Potentially Inconsistent with the Commission's Test Claim Decision, and Staff Recommends the Commission Deny this Request.

Sections IV.A.1.-3. of the Parameters and Guidelines identify the state-mandated requirements to independently develop a redaction and review process, to redact the narrative portion of the police report, and to then evaluate the redacted information to determine whether the case should be charged.

The claimant alleges that activity A.1. (developing a redaction and review process) should also include the activity to "*execute"* versions of the redaction and review process developed by the local agency in accordance with Penal Code section 741(b). The claimant requests that the Section IV.A.1., of the Parameters and Guidelines include the following italicized language: "Independently develop *and execute* versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (Issued January 1, 2024). (Pen. Code § 741(b).)."[7]

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[5] Exhibit X (1), Test Claim, page 1.

[6] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

[7] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

Staff recommends the Commission deny this request. First, execution of the redaction and review process is already identified in Sections IV.A.2. and 3., which separately address the reimbursable activities to redact and review the narrative portion of the police report and, thus, adding the verb to "execute" the redaction and review process in Section IV.A.1. is duplicative.

Moreover, the additional language could conflict with the Commission's Test Claim Decision. As explained in the Test Claim Decision, regardless of how a claimant develops its redaction and review process, the Commission found that reimbursement for the execution of that process was limited. Specifically, except for the crimes and circumstances identified in Penal Code section 741(c),[8] the activity mandated by the state is to redact and review *only* the narrative portion of the police report, and not the entire report, to determine only whether charges should be brought.[9]

Thus, if the language in Section IV.A.1. of the Parameters and Guidelines were to also include the verb to "execute" a city or county's redaction and review process, and that process broadly was developed to include redacting and reviewing the *entire* police report or redacting and reviewing the crimes and circumstances listed in Penal Code section 741(c) (activities that were expressly denied by the Commission), the Parameters and Guidelines would conflict with the Commission's Test Claim Decision.[10]

Thus, staff recommends that the Commission deny the claimant's request to add the word "execute" in Section IV.A.1. of the Parameters and Guidelines.

2. Staff Recommends the Commission Approve, as a Reasonably Necessary Activity, One-Time Training for Each Employee Performing the Mandate.

The claimant contends that the costs for training attorney and support staff and ongoing individualized instruction in response to service requests are reasonably necessary to comply with the mandate and should be reimbursable and refers to a declaration filed with the Test Claim from a county district attorney.[11]

The Commission has regularly approved reimbursement for *one-time training per employee* assigned to perform the reimbursable activities for new programs and processes, when supported by declarations and to ensure the program is performed

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[8] Exhibit A, Test Claim Decision, pages 23-24, 36.

[9] Exhibit A, Test Claim Decision, pages 27-28.

[10] See for example, Exhibit X (1), Test Claim, page 35 (Declaration of James Gibbons-Shapiro, Assistant District Attorney for the County of Santa Clara, paragraph 8: "To comply with Section 741(b), the DAO must redact all indicia of race from cases received from law enforcement agencies, *such as police reports, and from suspect criminal history documentation*." Emphasis added.).

[11] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 3-4; Exhibit X (1), Test Claim, page 39 (Declaration of Declaration of James Gibbons-Shapiro, Assistant District Attorney for the County of Santa Clara).

correctly and in line with legislative intent.[12] In this case, the purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[13] The test claim statute established a new process for redaction and an initial race blind review of the narrative portion of the police report, modeled after a pilot program in Yolo County District Attorney and partnered with the Stanford Computational Policy lab in 2021 to find and redact race data from police reports so that the initial charging determination could be performed "race blind."[14] The process allows for both manual redaction and electronic redaction, and specifically allows either method "so long as the method used reasonably ensures correct redaction.[15]

Thus, based on the declaration filed by the claimant and the legislative history of the test claim statute, Section IV.C. of the Proposed Parameters and Guidelines identifies the following one-time activity for reimbursement:

> One-time training for each county and city employee performing the activities in Sections IV.A. and IV.B. of these Parameters and Guidelines.

In addition, standard boilerplate language for training is added to Section V., Claim Preparation and Submission, to state the following:

> 5. Training
>
> Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV.C. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the

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[12] See for example, Exhibit X (2), Commission on State Mandates, Decision and Parameters and Guidelines on *Racial and Identify Profiling,* 18-TC-02, adopted September 25, 2020, https://csm.ca.gov/matters/18-TC-02/doc20.pdf (accessed September 11, 2026), pages 9-10; Exhibit X (3), Commission on State Mandates, Amendment to Parameters and Guidelines on *Sexually Violent Predators*, 05-PGA-43 (CSM 4509), adopted October 30, 2009, https://csm.ca.gov/decisions/022715.pdf (accessed September 11, 2026), page 4; Exhibit X (4), Commission on State Mandates, Parameters and Guidelines on *Post Conviction: DNA Court Proceedings*, 00-TC-21, 01-TC-08, adopted May 31, 2007, https://csm.ca.gov/decisions/doc51.pdf (accessed September 11, 2026), page 6.

[13] Exhibit A, Test Claim Decision, page 2; Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[14] Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[15] Penal Code section 741(b)(1), emphasis added.

rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

The claimant also requests reimbursement for ongoing training to provide "individualized guidance to users in response to service requests, for example, by explaining how to navigate the new interface and the steps for conducting the new initial charging evaluation process." Staff recommends that the Commission deny this request. The Commission has approved ongoing training only when the program has been subject to numerous lawsuits seeking to determine and clarify the responsibilities of local government.[16] In this case, there has not been significant litigation over this program and there is not substantial evidence supporting the ongoing request for reimbursement.

3. Staff Recommends the Commission Approve, as a Reasonably Necessary Activity, the Receipt of Scanned Police Reports to Comply with the Mandate to Redact the Narrative Portion of the Police Report by Automation with the Use of Computer Programming.

The claimant requests reimbursement for county and city prosecuting agencies to receive electronic police reports since redaction software requires that the reports be electronic.[17]

The claimant is correct that the mandate allows cities and counties to redact either manually or by automation with the use of computer programming, and this is identified in Section VI.A.2. of the Parameters and Guidelines.[18] DOJ's Guidelines for this program identify examples of redaction processes, including the receipt of scanned police reports (either through PDF or Optical Character Recognition (OCR)), to satisfy the program's requirements.[19]

The claimant also submitted declarations with the Test Claim indicating the redaction process by automation with the use of computer programming.[20]

Based on DOJ's Guidelines, staff recommends the Commission find receiving scanned police reports to comply with the redaction process is reasonably necessary to comply with the mandate and the following underlined language directly from the DOJ

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[16] See, for example, Exhibit X (6), Commission on State Mandates, Final Staff Analysis for Parameters and Guidelines on *Peace Officer Procedural Bill of Rights*, CSM 4499, adopted July 27, 2000, page 5; Exhibit X (7), Commission on State Mandates, Parameters and Guidelines on *Peace Officer Procedural Bill of Rights*, CSM 4499, adopted, July 27, 2000, pages 4-5.

[17] Exhibit D, Claimant's Comments on Draft Expedited Parameters and Guidelines, page 4.

[18] Penal Code section 741(b)(1).

[19] Exhibit X (1), Test Claim, pages 68-69 (DOJ's Race-Blind Charging Guidelines).

[20] Exhibit A, Test Claim Decision, pages 17-20 (summary of the Declarations).

Guidelines discussing examples of redaction processes to comply with the mandate is added to Section IV.A.2. of the Proposed Parameters and Guidelines:

2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

   Reimbursement for this activity includes the following redaction processes outlined in DOJ's Race Blind Charging Guidelines, including the receipt of scanned police reports (either through PDF or Optical Character Recognition (OCR)), to satisfy the program's requirements:

   a. The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.

   b. The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

   c. The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.

   d. The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the

steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.[21]

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[22]

D. The Remaining Sections of the Parameters and Guidelines

Section V., Claim Preparation and Submission; Section VI. Record Retention; Section VII. Offsetting Revenues and Reimbursements; Section VIII. State Controller's Claiming Instructions; Section IX. Remedies Before the Commission; and Section X. Legal and Factual Basis for the Parameters and Guidelines contain standard boilerplate language.

III. Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines and authorize staff to make any technical, non-substantive changes to the Proposed Decision and Parameters and Guidelines following the hearing.

[21] Exhibit X (1), Test Claim, pages 68-69 (DOJ's Race-Blind Charging Guidelines).

[22] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES Penal Code Section 741(b) Statutes 2022, Chapter 806, Section 2 (AB 2778) Period of reimbursement begins July 1, 2023	Case No.: 24-TC-07 *Race-Blind Charging* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 4, 2026*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on December 4, 2026. [Witness list will be included in the adopted Decision and Parameters and Guidelines.]

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/rejected] the Proposed Decision and Parameters and Guidelines by a vote of [vote will be included in the adopted Decision and Parameters and Guidelines], as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller	
Karen Greene Ross, Public Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
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	

I. Summary of the Mandate

These Parameters and Guidelines address Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice (DOJ) issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[23]

On August 14, 2026, the Commission on State Mandates (Commission) adopted a Decision finding 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 for counties and cities, beginning July 1, 2023, for the following reimbursable activities:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

      Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[24]

   3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

      If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a

[23] Exhibit A, Test Claim Decision, page 2; Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[24] Exhibit A, Test Claim Decision, page 3; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[25]

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[26]

[25] Exhibit A, Test Claim Decision, page 3; Exhibit X (1), Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

[26] Exhibit A, Test Claim Decision, page 4; Exhibit X (1), Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

II. Procedural History

On August 14, 2026, the Commission on State Mandates (Commission) adopted a Decision approving the Test Claim.[27] On August 18, 2026, Commission staff issued the Draft Expedited Parameters and Guidelines.[28] The Controller filed comments indicating it has no comments.[29] The County of Santa Clara, co-claimant on the Test Claim, filed comments requesting clarification and reimbursement for activities alleged to be reasonably necessary for the performance of the state-mandated program.[30] Commission staff issued the Draft Proposed Decision and Parameters and Guidelines for comment on September 26, 2026.[31]

III. Position of the Parties

A. County of Santa Clara, Claimant

In addition to the state-mandated activities, the claimant requests reimbursement for the costs of conducting activities related to (1) the ongoing execution of a redaction and review process; (2) providing training and other forms of instruction to staff; and (3) receiving electronic police reports by prosecution agencies.[32]

With respect to the ongoing execution of a redaction and review process, the claimant states the following:

> Specifically, whereas the Test Claim Statute requires that "prosecution agencies shall independently *develop and execute* versions of [a] redaction and review process" (Pen. Code, § 741(b), italics added)), the corresponding language in the Parameters and Guidelines requires the State to reimburse prosecution agencies only for activities associated with "[i]ndependently *develop[ing]* versions of a redaction and review process" (Parameters and Guidelines at p. 4, italics added).
>
> [¶]
>
> While the omission of the words "and execution" from the Parameters and Guidelines may have been inadvertent, its effect is significant, as the new activities mandated by the Test Claim Statute are not limited to the one-time activities associated solely with the development of a redaction and review process. Amending the Parameters and Guidelines will capture the ongoing costs imposed on counties and cities by the statutory mandate to continuously *execute* the redaction and review process going forward. For

[27] Exhibit A, Test Claim Decision.

[28] Exhibit B, Draft Expedited Parameters and Guidelines.

[29] Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines.

[30] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

[31] Exhibit E, Draft Proposed Decision and Parameters and Guidelines.

[32] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

these reasons, Claimant requests that the Commission amend Section IV(A)(1) of the Parameters and Guidelines to read as follows: "Independently develop *and execute* versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (Issued January 1, 2024). (Pen. Code § 741(b).)."[33]

In addition, the claimant contends that the costs for training of attorney and support staff and individualized instruction in response to service requests are reasonably necessary to comply with the mandate and should be reimbursable as follows:

> As described in the declaration of Assistant District Attorney James Gibons-Shapiro submitted by Claimant in support of the Test Claim (see Test Claim at pp. 20–32) ("Declaration"), the County of Santa Clara District Attorney's Office (DAO) conducted a two-hour user training session for attorneys that included an overview of the Test Claim Statute and specific instructions on how to navigate the new user interface for conducting the initial charging evaluation in its case management system. (Declaration at ¶ 19(a).) The DAO also provided instructions to support staff on how to identify which documents require redaction and how to flag them for redaction in its case management system. (*Id.* at ¶ 19(b).) Lastly, the DAO has provided individualized guidance to users in response to service requests, for example, by explaining how to navigate the new interface and the steps for conducting the new initial charging evaluation process. (*Id.* at ¶ 19(c).)
>
> These activities are reasonably necessary to comply with the Test Claim Statute. Under the Test Claim Statute, individual prosecutors conduct the initial charging evaluation. (See Pen. Code, § 741(b)(2).) In order to carry out that obligation, they must be familiar not only with the new statutory mandate but also with how the DAO operationalized that mandate in its case management system. In addition, because the Test Claim Statute mandates the redaction of only certain documents for certain crimes, instructions must be provided to support staff to ensure that they identify and flag the appropriate documents for redaction in the case management system. (See *id.*, § 741(b)(1) & (c); see also Parameters and Guidelines at pp. 1–2.)
>
> [§§]
>
> Claimant asks that the Commission add the following to the list of reimbursable activities in Section IV(A) of the Parameters and Guidelines: "Training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document." It also asks the Commission to add the following to the list of direct costs in Section V(A) of the Parameters and Guidelines: "Report the

[33] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

cost of training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document."[34]

Finally, the claimant requests reimbursement for prosecuting agencies to receive electronic police reports since redaction software requires that the reports be electronic. The claimant states the following:

> Claimant requests that the Commission amend the Parameters and Guidelines to provide for reimbursement of the costs incurred for the activities required for prosecuting agencies to receive electronic police reports. Because redaction software can be used to redact only electronic police reports, these activities are reasonably necessary to comply with the Test Claim Statute's mandate that prosecution agencies redact the narrative portion of police reports, including by "mechanically" redacting the reports.
>
> The Test Claim Statute requires that prosecuting agencies independently develop and execute a redaction process—including redacting "by automation with the use of computer programming"—following the California Department of Justice's (DOJ) Race-Blind Charging Guidelines ("Guidelines"). (Pen. Code, § 741(b) & (b)(1).) The Guidelines, in turn, describe various examples of redaction processes that satisfy this statutory mandate. (See Test Claim at p. 53; Cal. Dept. of J., Race-Blind Charging Guidelines: Penal Code Section 741, § III(d) (Jan. 1, 2024).) Notably, in providing an example of how redactions are applied automatically to police narratives using a software application, the Guidelines describe how the prosecuting agency receives police reports from the investigating agency in electronic form as scanned files. (Test Claim at p. 53; Guidelines, § III(d)(3).) The declarations submitted in support of the Test Claim describe how the two claimants that automated redactions using software obtain electronic police reports. (Decision at p. 16; Declaration at ¶¶ 21–25; Test Claim at p. 33, Declaration of Jeff C. Greeson, at ¶ 4.).[35]

B. State Controller

The Controller filed comments on the Draft Expedited Parameters and Guidelines indicating it has no comments.[36]

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[34] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 3-4.

[35] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 4.

[36] Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines, page 1.

IV. Discussion

A. Eligible Claimants (Section II. of the Parameters and Guidelines)

Any city, county, or city and county, subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes and incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

B. Period of Reimbursement (Section III. of the Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on June 10, 2025, establishing eligibility for reimbursement for the 2023-2024 fiscal year.[37] Therefore, costs incurred are reimbursable on or after July 1, 2023.

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

1. Reimbursable Activities Approved in the Test Claim Decision

The Parameters and Guidelines identify the following state-mandated activities approved in the Test Claim Decision:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

      Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[38]

   3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

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[37] Exhibit X (1), Test Claim, page 1.

[38] Exhibit A, Test Claim Decision, page 37; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[39]

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:
   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).
5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:
   1. Collect the data resulting from the race-blind initial charging evaluation process.

      Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[40]

[39] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

[40] Exhibit A, Test Claim Decision, page 37; Exhibit X (1), Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

2. Additional Requests by the Claimant, County of Santa Clara.

The claimant requests that additional clarifying language be added and requests reimbursement for additional activities that are reasonably necessary to comply with the mandate.[41]

Government Code section 17557(a) states that the parameters and guidelines "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." Section 1183.7(d) of the Commission's regulations defines "reasonably necessary activities" as follows:

> "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence in accordance with section 1187.5 of these regulations.

Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in accordance with Government Code sections 17557(a), 17559, and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

Each request is analyzed below.

a. <u>The claimant's request to add the word "execute" in Section IV.A.1. is denied as duplicative of Sections IV.A.2. and 3., and potentially inconsistent with the Commission's Test Claim Decision.</u>

Sections IV.A.1. -3. of the Parameters and Guidelines identify the state-mandated requirements to independently develop a redaction and review process, to redact the narrative portion of the police report, and to then evaluate the redacted information to determine whether the case should be charged as follows:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

[41] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

   Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[42]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[43]

The claimant alleges that activity A.1. should also include the activity to "*execute"* versions of the redaction and review process developed by the local agency in accordance with Penal Code section 741(b). The claimant requests that the Section IV.A.1. of the Parameters and Guidelines include the following italicized language: "Independently develop *and execute* versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (Issued January 1, 2024). (Pen. Code § 741(b).)."[44]

This request is denied. First, execution of the redaction and review process is already identified in Sections IV.A.2. and 3., which separately address the reimbursable activities to redact and review the narrative portion of the police report and, thus, adding the verb to "execute" the redaction and review process in Section IV.A.1. is duplicative.

Moreover, the additional language could conflict with the Commission's Test Claim Decision. As indicated below, regardless of how a claimant develops its redaction and review process, the Commission found that reimbursement for the execution of that process was limited. Specifically, except for the crimes and circumstances identified in Penal Code section 741(c),[45] the activity mandated by the state is to redact and review

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[42] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[43] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

[44] Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

[45] Exhibit A, Test Claim Decision, pages 23-24, 36.

only the narrative portion of the police report, and not the entire report, to determine only whether charges should be brought:

> [A]s explained by the plain language in section 741(b)(1), "[t]he redaction may be applied to the entire report or to only the 'narrative' portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation." DOJ Guidelines state:
>
> > At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency *may, at its option*, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent "supplemental" reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.[Fn. omitted.]Thus, the minimum requirement imposed by section 741(b)(1) is to redact the *narrative portion of the police report* by hand or by automation with the use of computer programming to ensure correct redaction. Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not legally compelled by state law.[46]
>
> Moreover, there is no evidence in the law or the record that prosecuting agencies are practically compelled to redact the entire report.[47] As explained below, the initial review of the redacted race-blind narrative of the report is only needed to determine whether charges should be brought

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[46] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745.

[47] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 (practical compulsion "arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply."); see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754 (where no "legal" compulsion exists, "practical" compulsion may be found if the local agency faces "certain and severe…penalties" such as "double…taxation" or other "draconian" consequences if they fail to comply with the statute).

or not and is not used to determine the individual charges against a suspect.[48, 49]

Thus, if the language in Section IV.A.1. of the Parameters and Guidelines were to also include the verb to "execute" a city or county's redaction and review process, and that process broadly was developed to include redacting and reviewing the *entire* police report or redacting and reviewing the crimes and circumstances listed in Penal Code section 741(c) (activities that were expressly denied by the Commission), the Parameters and Guidelines would conflict with the Commission's Test Claim Decision.[50]

Thus, the claimant's request to add the word "execute" in Section IV.A.1. of the Parameters and Guidelines is denied.

b. <u>One-time training for each employee performing the mandate is reasonably necessary to comply with the mandate.</u>

The claimant contends that the costs for training attorney and support staff and individualized instruction in response to service requests are reasonably necessary to comply with the mandate and should be reimbursable as follows:

> As described in the declaration of Assistant District Attorney James Gib[b]ons-Shapiro submitted by Claimant in support of the Test Claim (see Test Claim at pp. 20–32) ("Declaration"), the County of Santa Clara District Attorney's Office (DAO) conducted a two-hour user training session for attorneys that included an overview of the Test Claim Statute and specific instructions on how to navigate the new user interface for conducting the initial charging evaluation in its case management system. (Declaration at ¶ 19(a).) The DAO also provided instructions to support staff on how to identify which documents require redaction and how to flag them for redaction in its case management system. (*Id.* at ¶ 19(b).) Lastly, the DAO has provided individualized guidance to users in response to service requests, for example, by explaining how to navigate the new interface and the steps for conducting the new initial charging evaluation process. (*Id.* at ¶ 19(c).)
>
> These activities are reasonably necessary to comply with the Test Claim Statute. Under the Test Claim Statute, individual prosecutors conduct the initial charging evaluation. (See Pen. Code, § 741(b)(2).) In order to carry out that obligation, they must be familiar not only with the new statutory mandate but also with how the DAO operationalized that mandate in its

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[48] Penal Code section 741(b)(2).

[49] Exhibit A, Test Claim Decision, pages 27-28.

[50] See for example, Exhibit X (1), Test Claim, page 35 (Declaration of James Gibbons-Shapiro, Assistant District Attorney for the County of Santa Clara, paragraph 8: "To comply with Section 741(b), the DAO must redact all indicia of race from cases received from law enforcement agencies, *such as police reports, and from suspect criminal history documentation*." Emphasis added.).

case management system. In addition, because the Test Claim Statute mandates the redaction of only certain documents for certain crimes, instructions must be provided to support staff to ensure that they identify and flag the appropriate documents for redaction in the case management system. (See *id.*, § 741(b)(1) & (c); see also Parameters and Guidelines at pp. 1–2.)

The Commission has regularly found that training employees on how to perform the reimbursable activities is reasonably necessary. (See, e.g., *Racial and Identity Profiling*, Decision and Parameters and Guidelines Amendment, No. 21-PGA-01, p. 20 (adopted Mar. 24, 2023) [including among reimbursable direct costs "the cost of training an employee to perform the reimbursable activities, as specified in . . . this document"]; accord *Photographic Record of Evidence*, Parameters and Guidelines Amendment, No. 04-PGA-09, p. 5 (adopted Dec. 9, 2005).) Similarly here, Claimant requests that the Commission amend the Parameters and Guidelines to provide for the reimbursement of the costs of providing training and other forms of instruction to employees on performing the reimbursable activities on the grounds that such training is reasonably necessary to ensure compliance with the Test Claim Statute. Accordingly, Claimant asks that the Commission add the following to the list of reimbursable activities in Section IV(A) of the Parameters and Guidelines: "Training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document." It also asks the Commission to add the following to the list of direct costs in Section V(A) of the Parameters and Guidelines: "Report the cost of training and providing other forms of instruction to an employee to perform the reimbursable activities as specified in Section IV of this document."[51]

The quoted language refers to the Declaration of Declaration of James Gibbons-Shapiro, Assistant District Attorney for the County of Santa Clara, paragraph 19, which says the following:

19. To implement Section 741(b), it was reasonably necessary for the DAO to educate staff on Section 741(b)'s requirements and how to implement it, including how to use the new tools [to] conduct an initial charging evaluation. The training included all DAO attorneys because attorneys regularly rotate onto assignments where they are responsible for conducting charging evaluations. These activities included the following:

[51] Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 3-4.

a. Conducting a two-hour user training session for 98 attorneys, including background on the law and instructions on navigating the new user interface. (See Ex. 1, Task 8.)

b. Instructing support staff on how to identify which documents require redaction and how to flag them for redaction in CiberLaw. (See Ex. 1, Task 5.)

c. Assisting end users in response to service requests, for example, by explaining how to navigate the new workflows and the steps for conducting the initial charging evaluation and the second review. (See Ex.1, Task 5.)[52]

The Commission has regularly approved reimbursement for *one-time training per employee* assigned to perform the reimbursable activities for new programs and processes, when supported by declarations and to ensure the program is performed correctly and in line with legislative intent.[53] In this case, the purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[54] The test claim statute established a new process for redaction and an initial race blind review of the narrative portion of the police report, modeled after a pilot program in Yolo County District Attorney and partnered with the Stanford Computational Policy lab in 2021 to find and redact race data from police reports so that the initial charging determination could be performed "race blind."[55] The process allows for both manual redaction and electronic redaction, and specifically allows either method "so long as the method used reasonably ensures correct redaction:

> This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer

[52] Exhibit X (1), Test Claim, page 39.

[53] See for example, Exhibit X (2), Commission on State Mandates, Decision and Parameters and Guidelines on *Racial and Identify Profiling,* 18-TC-02, adopted September 25, 2020, https://csm.ca.gov/matters/18-TC-02/doc20.pdf (accessed September 11, 2026), pages 9-10; Exhibit X (3), Commission on State Mandates, Amendment to Parameters and Guidelines on *Sexually Violent Predators,* 05-PGA-43 (CSM 4509), adopted October 30, 2009, https://csm.ca.gov/decisions/022715.pdf (accessed September 11, 2026), page 4; Exhibit X (4), Commission on State Mandates, Parameters and Guidelines on *Post Conviction: DNA Court Proceedings,* 00-TC-21, 01-TC-08, adopted May 31, 2007, https://csm.ca.gov/decisions/doc51.pdf (accessed September 11, 2026), page 6.

[54] Exhibit A, Test Claim Decision, page 2; Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[55] Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

programming, *so long as the method used reasonably ensures correct redaction*.[56]

Moreover, if the mandated program is not performed correctly, and there is evidence of implicit bias when seeking or obtaining a criminal conviction, the defendant can request relief under the Racial Justice Act and have the conviction set aside.[57]

Thus, based on the declaration filed by the claimant and the legislative history of the test claim statute, Section IV.C. of the Parameters and Guidelines identifies the following one-time activity for reimbursement:

> One-time training for each county and city employee performing the activities in Sections IV.A. and IV.B. of these Parameters and Guidelines.

In addition, standard boilerplate language for training is added to Section V., Claim Preparation and Submission, to state the following:

> 6. Training
>
> Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV.C. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

The claimant also requests reimbursement for ongoing training to provide "individualized guidance to users in response to service requests, for example, by explaining how to navigate the new interface and the steps for conducting the new initial charging evaluation process." This request is denied. The Commission has approved ongoing training only when the program has been subject to numerous lawsuits seeking to determine and clarify the responsibilities of local government.[58] In this case, there

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[56] Penal Code section 741(b)(1), emphasis added.

[57] Penal Code section 745 (Stats. 2020, ch. 317 (AB 2542)). Penal Code 745(a) says "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." See also, Exhibit X (5), Commission on State Mandates, Test Claim Decision on *Criminal Procedure: Discrimination*, 24-TC-02, adopted September 26, 2025, https://csm.ca.gov/decisions/24-TC-02-092625.pdf (accessed September 11, 2026).

[58] See, for example, Exhibit X (6), Commission on State Mandates, Final Staff Analysis for Parameters and Guidelines on *Peace Officer Procedural Bill of Rights*, CSM 4499, adopted July 27, 2000, page 5; Exhibit X (7), Commission on State Mandates,

has not been significant litigation over this program and there is not substantial evidence supporting the ongoing request for reimbursement.

c. The receipt of scanned police reports is reasonably necessary to comply with the mandate to redact the narrative portion of the police report by automation with the use of computer programming.

The claimant requests reimbursement for county and city prosecuting agencies to receive electronic police reports since redaction software requires that the reports be electronic. The claimant states the following:

> Claimant requests that the Commission amend the Parameters and Guidelines to provide for reimbursement of the costs incurred for the activities required for prosecuting agencies to receive electronic police reports. Because redaction software can be used to redact only electronic police reports, these activities are reasonably necessary to comply with the Test Claim Statute's mandate that prosecution agencies redact the narrative portion of police reports, including by "mechanically" redacting the reports.
>
> The Test Claim Statute requires that prosecuting agencies independently develop and execute a redaction process—including redacting "by automation with the use of computer programming"—following the California Department of Justice's (DOJ) Race-Blind Charging Guidelines ("Guidelines"). (Pen. Code, § 741(b) & (b)(1).) The Guidelines, in turn, describe various examples of redaction processes that satisfy this statutory mandate. (See Test Claim at p. 53; Cal. Dept. of J., Race-Blind Charging Guidelines: Penal Code Section 741, § III(d) (Jan. 1, 2024).) Notably, in providing an example of how redactions are applied automatically to police narratives using a software application, the Guidelines describe how the prosecuting agency receives police reports from the investigating agency in electronic form as scanned files. (Test Claim at p. 53; Guidelines, § III(d)(3).) The declarations submitted in support of the Test Claim describe how the two claimants that automated redactions using software obtain electronic police reports. (Decision at p. 16; Declaration at ¶¶ 21–25; Test Claim at p. 33, Declaration of Jeff C. Greeson, at ¶ 4.).[59]

The claimant is correct that the mandate allows cities and counties to redact either manually or by automation with the use of computer programming, and this is identified in Section VI.A.2. of the Parameters and Guidelines.[60] DOJ's Guidelines for this

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Parameters and Guidelines on *Peace Officer Procedural Bill of Rights*, CSM 4499, adopted, July 27, 2000, pages 4-5.

[59] Exhibit D, Claimant's Comments on Draft Expedited Parameters and Guidelines, page 4.

[60] Penal Code section 741(b)(1).

program identify the following examples of redaction processes, including the receipt of scanned police reports (either through PDF or Optical Character Recognition (OCR)), to satisfy the program's requirements:

> (1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.
>
> (2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.
>
> (3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.
>
> (4) The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.[61]

The claimant also submitted declarations with the Test Claim indicating the redaction process by automation with the use of computer programming.[62]

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[61] Exhibit X (1), Test Claim, pages 68-69 (DOJ's Race-Blind Charging Guidelines).

[62] Exhibit A, Test Claim Decision, pages 17-20 (summary of the Declarations).

Based on DOJ's Guidelines, receiving scanned police reports to comply with the redaction process is reasonably necessary to comply with the mandate and the following underlined language is added to Section IV.A.2.:

3. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

   Reimbursement for this activity includes the following redaction processes outlined in DOJ's Race Blind Charging Guidelines, including the receipt of scanned police reports (either through PDF or Optical Character Recognition (OCR)), to satisfy the program's requirements:

   a. The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.

   b. The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

   c. The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.

d. The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.[63]

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[64]

D. Offsetting Revenues and Reimbursements (Section VII. Offsetting Revenues and Reimbursements)

Section VII., Offsetting Revenues and Reimbursements, contains the following standard language:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

E. The Remaining Sections of the Parameters and Guidelines

Section V., Claim Preparation and Submission; Section VI. Record Retention; Section VIII. State Controller's Claiming Instructions; Section IX. Remedies Before the Commission; and Section X. Legal and Factual Basis for the Parameters and Guidelines contain standard boilerplate language.

V. Conclusion

Based on the foregoing analysis, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

PARAMETERS AND GUIDELINES[65]

Penal Code Section 741(b)

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[63] Exhibit X (1), Test Claim, pages 68-69 (DOJ's Race-Blind Charging Guidelines).

[64] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[65] Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

Statutes 2022, Chapter 806, Section 2 (AB 2778)

Race-Blind Charging

24-TC-07

Period of reimbursement begins July 1, 2023

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial "race blind" review and evaluation of a case before the prosecutor's ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.[66]

On August 14, 2026, the Commission on State Mandates (Commission) adopted a Decision finding 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 for counties and cities, beginning July 1, 2023, for the following reimbursable activities:[67]

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

      Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[68]

[66] Exhibit A, Test Claim Decision, page 2; Exhibit X (1), Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

[67] Exhibit A, Test Claim Decision, pages 35-37.

[68] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State*

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

   If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[69]

   However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system,

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Mandates (Kern High School Dist.) (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

[69] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[70]

All other provisions of the test claim statute and claims for reimbursement are denied.

II. ELIGIBLE CLAIMANTS

Any city, county, or city and county, subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes and incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on June 10, 2025, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

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

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the

[70] Exhibit A, Test Claim Decision, page 37; Exhibit X (1), Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

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

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

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

   1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)

   2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

      Reimbursement for this activity includes the following redaction processes outlined in DOJ's Race Blind Charging Guidelines, including the receipt of scanned police reports (either through PDF or Optical Character Recognition (OCR)), to satisfy the program's requirements:

      a. The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision

from the initial charging evaluation is hand recorded in a log for later comparison to the second review.

b. The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

c. The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.

d. The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.[71]

Redacting any additional materials or "the entire report" received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.[72]

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted

[71] Exhibit X (1), Test Claim, pages 68-69 (DOJ's Race Blind Charging Guidelines).

[72] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)[73]

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

   - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
   - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
   - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

   However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

   Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system,

[73] Exhibit A, Test Claim Decision, page 36; Exhibit X (1), Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)[74]

C. One-time training for each county and city employee performing the activities in Sections IV.A. and IV.B. of these Parameters and Guidelines.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes

[74] Exhibit A, Test Claim Decision, page 37; Exhibit X (1), Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV.C. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using the federal de minimis indirect cost rate percentage of direct labor identified in the Office of Management and Budget Circular, at Code of Federal Regulations, title 2, section 200.414(f), excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds the de minimis rate.[75]

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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

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

[75] Effective October 1, 2024, the federal de minimis rate was raised from 10 percent to 15 percent. (Code of Federal Regulations, title 2, § 200.414(f) (89 FR 30046, 30092.)

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter[76] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 September 29, 2026, I served the:

- **Current Mailing List dated September 28, 2026**
- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued September 29, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 September 29, 2026 at Sacramento, California.

Jill Magee

Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/28/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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 F

Commission on State Mandates
Filed Date
10/07/26

October 7, 2026

Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: **Draft Proposed Decision and Parameters and Guidelines**
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b);
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Ms. Gmur:

Please be advised the claimants have reviewed the Draft Proposed Decision and Parameters and Guidelines and agree with the staff recommendations. Claimants will not be submitting comments.

Thank you for your cooperation.

_____
Arthur M. Palkowitz, Esq.
Claimant Representative

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.

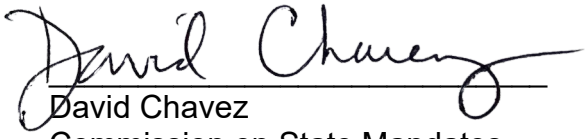
On October 8, 2026, I served the:

- **Current Mailing List dated September 28, 2026**
- **Claimants' Comments on the Draft Proposed Decision and Parameters and Guidelines filed October 7, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 October 8, 2026 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/28/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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 G

MALIA M. COHEN
CALIFORNIA STATE CONTROLLER

Commission on State Mandates
Filed Date
10/15/2026

October 15, 2026

Juliana F. Gmur, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95841

SUBJECT: Draft Proposed Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Juliana F. Gmur:

The State Controller's Office reviewed the Draft Proposed Parameters and Guidelines for Race-Blind Charging and we have no comment.

If you have any questions, please contact John Saephan, Local Reimbursements Section, Local Government Programs and Services Division, by email at JSaephan@sco.ca.gov, or by telephone at 916-324-2664.

Sincerely,

Darryl Mar

Darryl Mar
Manager, Local Reimbursements Section

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 October 15, 2026, I served the:

- **Current Mailing List dated September 28, 2026**
- **Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines filed October 15, 2026**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 October 15, 2026 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/28/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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Adam Whelen, Director of Public Works, *City of Anderson*
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R. Matthew Wise, Supervising Deputy Attorney General, *Department of Justice*
Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255, Sacramento, CA 94244-2550
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Matthew.Wise@doj.ca.gov

Linda Wong, Fiscal Analyst, *State Controller's Office*
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Arthur Wylene, General Counsel, *Rural County Representatives of California (RCRC)*
1215 K Street, Suite 1650, Sacramento, CA 95814
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Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
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Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
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Kaily.Yap@dof.ca.gov

Siew-Chin Yeong, Director of Public Works, *City of Pleasonton*
3333 Busch Road, Pleasonton, CA 94566

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syeong@cityofpleasantonca.gov

Traci Young, IS Project Director, *City and County of San Francisco*
San Francisco Public Utilities Commission (SFPUC), 525 Golden Gate Ave, San Francisco, CA 94102
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Morgan Zamora, Prison Advocacy Coordinator, *Ella Baker Center for Human Rights*
1419 34th Avenue, Suite 202, Oakland, CA 94601
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Aly Zimmermann, CIty Manager, *City of Rocklin*
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5585
alyz@rocklin.ca.us

Helmholst Zinser-Watkins, Analyst II, *State Controller's Office*
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Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit H

For CSM Use Only	
Filing Date:	Commission on State Mandates Filed Date June 10, 2025
TC #:	24-TC-07

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:

Race-Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

City of Sacramento

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

Leyne Milstein, Interim City Manager

Street Address, City, State, and Zip:

915 L Street, 5th Floor, Sacramento, CA 95814

Telephone Number (916)808-8491

Email Address lmilstein@cityofsacramento.org

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:

Arthur M. Palkowitz, Esq. Attorney for Claimants

Organization: Law Offices of Arthur M. Palkowitz

Street Address, City, State, Zip:

12807 Calle de la Siena, San Diego, CA 92130

Telephone Number (858)259-1055

Email Address law@artpalk.onmicrosoft.com

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:

Penal Code Section 741(b)
Statutes 2022, Chapter 806
Assembly Bill No. 2778, Section 2
Effective Date: January 1, 2023
Page 93 (1-4)

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 10 / 2025

☐ 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] 09 / 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: 2025 - 2026 Total Costs: $50,000,000.00

☑ Identifies all dedicated funding sources for this program;

State: CA-None

Federal: None

Local agency's general purpose funds: Yes. General Funds

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:

Crime Statistics Report for the Department of Justice (Case No. 12-PGA-01, 02-TC-04 and 02-TC-11);

Crime Statistics Report for the Department of Justice Amended (07-TC-10.)

☑ 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 41 to 44.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages None to None.

☑ 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 None to None.

☑ 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 36 to 39.

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.)

Leyne Milstein
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Interim City Manager
Print or Type Title

Leyne Milstein (Jul 17, 2025 14:48 PDT)
Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Test Claim Form

Final Audit Report 2025-07-17

Created:	2025-07-16
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAABbyXIg0MCWq0iMqTbPG8z1amU53x6bMu

"Test Claim Form" History

Document created by CSM Sign (csmsign@csm.ca.gov)
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2025-07-16 - 7:38:33 PM GMT

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2025-07-16 - 7:49:06 PM GMT

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Form filling Date: 2025-07-17 - 2:58:16 PM GMT - Time Source: server

Document emailed to Leyne Milstein (lmilstein@cityofsacramento.org) for signature
2025-07-17 - 2:58:19 PM GMT

Email viewed by Leyne Milstein (lmilstein@cityofsacramento.org)
2025-07-17 - 9:48:22 PM GMT

Document e-signed by Leyne Milstein (lmilstein@cityofsacramento.org)
Signature Date: 2025-07-17 - 9:48:50 PM GMT - Time Source: server

Agreement completed.
2025-07-17 - 9:48:50 PM GMT

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

For CSM Use Only	
Filing Date:	Commission on State Mandates Filed Date June 10, 2025
TC #:	24-TC-07

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:

Race-Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

County of Santa Clara

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

Margaret Olaiya. Director of Finance

Street Address, City, State, and Zip:

70 West Hedding Street, East Wing, San Jose, CA 95110

Telephone Number: (408)299-5201

Email Address: margaret.olaiya@fin.sccgov.org

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:

Arthur M. Palkowitz, Esq. Attorney for Claimants

Organization: Law Offices of Arthur M. Palkowitz

Street Address, City, State, Zip:

12807 Calle de la Siena, San Diego, CA 92130

Telephone Number: (858)259-1055

Email Address: law@artpalk.onmicrosoft.com

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:

Penal Code Section 741(b)
Statutes 2022, Chapter 806
Assembly Bill 2778, Section 2
Page 93 (1-4)
Effective date; January 1, 2023

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 10 / 2025

☐ 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] 06 / 24 / 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.)

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☑ 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: 2025 - 2026 Total Costs: $50,000,000.00

☑ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: Yes. General Funds

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:

Crime Statistics Report for the Department of Justice (Case No. 12-PGA-01, 02-TC-04 and 02-TC-11);

Crime Statistics Reports for the Department of Justice Amended (07-TC-10).

☑ 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 41 to 44.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages None to None.

☐ 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 None to None.

☑ 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 20 to 32.

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.)

Margaret Olaiya
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Director of Finance
Print or Type Title

Margaret Olaiya
Margaret Olaiya (Jul 17, 2025 21:19 PDT)
Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Test Claim Form

Final Audit Report 2025-07-18

Created:	2025-07-17
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAiq-kWYn99muLd3MLylbTYcriWOA1x8AX

"Test Claim Form" History

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Document emailed to Arthur Palkowitz (law@artpalk.onmicrosoft.com) for filling
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2025-07-17 - 3:03:12 PM GMT

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Form filling Date: 2025-07-17 - 10:23:50 PM GMT - Time Source: server

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2025-07-17 - 10:23:51 PM GMT

Email viewed by Margaret Olaiya (margaret.olaiya@fin.sccgov.org)
2025-07-18 - 4:18:36 AM GMT

Document e-signed by Margaret Olaiya (margaret.olaiya@fin.sccgov.org)
Signature Date: 2025-07-18 - 4:19:57 AM GMT - Time Source: server

Agreement completed.
2025-07-18 - 4:19:57 AM GMT

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

For CSM Use Only	
Filing Date:	Commission on State Mandates Filed Date June 10, 2025
TC #:	24-TC-07

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:

Race -Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

County of Sutter

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

Nathan Black, Auditor/Controller

Street Address, City, State, and Zip:

1160 Civic Center Blvd. Suite D, Yuba City, CA 95993

Telephone Number: (530)822-7127

Email Address: NBlack@co.sutter.ca.us

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:

Arthur M. Palkowitz, Esq. Attorney for Claimants

Organization: Law Offices of Arthur M. Palkowitz

Street Address, City, State, Zip:

12807 Calle de la Siena, San Diego, CA 92130

Telephone Number: (858)259-1055

Email Address: law@artpalk.onmicrosoft.com

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:

Penal Code Section 741(b)
Statutes 2022, Chapter 806
Assembly Bill No. 2778, Section 2
Effective Date: January 1, 2023
Page 93 (1-4)

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 10 / 2025

☐ 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] 06 / 14 / 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.)

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☑ 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: 2025 - 2026 Total Costs: $50,000,000.00

☑ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: Yes. General Funds.

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:

Crime Statistics Reports for the Department of Justice (02-TC-04 and 02-TC-11);

Crime Statistics Reports for the Department of Justice Amended (07-TC-10).

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

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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.)

Nathan Black
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Auditor/Controller
Print or Type Title

Nathan Black
Nathan Black (Jul 18, 2025 16:44 PDT)
Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Test Claim Form

Final Audit Report 2025-07-18

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2025-07-15 - 9:58:20 PM GMT

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2025-07-15 - 10:47:02 PM GMT

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2025-07-18 - 2:18:49 PM GMT

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Document e-signed by Nathan Black (nblack@co.sutter.ca.us)
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Test Claim: Race-Blind Charging

Assembly Bill No. 2778, Statutes 2022, Chapter 806, Section 2
Adding Penal Code § 741(b); Effective Date: January 1, 2023

Claimants: County of Santa Clara, County of Sutter, City of Sacramento

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM _____
	Race-Blind Charging
	Assembly Bill No. 2778
County of Santa Clara, County of Sutter, City of Sacramento	Statutes 2022, Chapter 806, Section 2
	Penal Code § 741, subd. (b)(1)–(6)
	(Page 93 (1-4).)
Claimants	Effective Date: January 1, 2023

I. Introduction

This test claim by County of Santa Clara ("Santa Clara"), County of Sutter ("Sutter"), and City of Sacramento ("Sacramento") (collectively "Claimants") addresses the requirements of Assembly Bill ("A.B.") 2778, Statutes 2022, chapter 806, § 2, Penal Code section 741, subdivision (b)(1)–(6), effective on January 1, 2023, page 93 (1-4.) ("test claim statute"). This test claim is filed pursuant to California Code of Regulations, title 2, section 1183.1.

Claimants agree to file this test claim as a joint effort and claimants attest to all of the following in the test claim filing:

(1) The claimants allege state-mandated costs result from the same statutes or executive order;

(2) The claimants agree on all issues of the test claim; and

(3) The claimants have designated one person to act as the sole representative for all claimants. (Cal. Code Regs, tit. 2, § 1183.1, subd. (b).)

Beginning on January 1, 2025, the test claim statute requires local prosecution agencies to develop and execute a new race-blind initial charging evaluation process in which local prosecutors make an initial charging determination based on case documentation that has been redacted to remove any direct means of identifying the race of suspects, victims, and witnesses. Specifically, the test claim statute requires that case documentation be redacted, that the initial charging evaluation determine whether the case should be charged or not charged, and that a prosecutor without knowledge of specified facts perform the initial charging evaluation based on the redacted case documentation. (A.B. No. 2778, Stats. 2022, ch. 806, § 2, Pen. Code, § 741, subd. (b)(1)–(6), eff. Jan. 1, 2023.)

II. In enacting A.B. 2778, the Legislature intended to reduce racial bias.

"In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or 'unconscious' bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved." (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (a) [citing Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, p. 70].)

"One method to address bias is to 'acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions.'" (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (b) [quoting Baughman, *supra*, at p. 71].)

> "We've seen it time and time again where a person of color is given a harsher punishment for the same crime a non-person of color commits. Creating a system where a person's race is unknown during the time of initial charging is imperative. It is long past time we start addressing the issue of punishing a person based on the crime and not the color of their skin." (AB 2778 Assembly Floor Analysis, p. 3.)

"In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done 'race blind.' The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases."[1] (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (c).) "[T]he spirit, goal, and legislative intent behind Penal Code section 741" is "to reduce the potential for unconscious bias to influence the initial charging decision in a case." (Cal. Dept. of Justice, Race-Blind Charging Guidelines (Jan. 1, 2024) p. 1.)

III. The California Constitution requires the State to reimburse all local agencies.

Article XIII B, section 6 of the California Constitution states:

> 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 intent of Article XIII B, section 6 is "to [p]reclude 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 San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Thus, the subvention requirement of Section 6 is "directed to state-mandated increases in the services provided by [local

[1] The Stanford Computational Policy Lab has since relocated to Harvard University. The Harvard Computational Policy Lab similarly assisted Santa Clara in implementing the test claim statute. (See Declaration of J. Gibbons-Shapiro, ¶ 13.)

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

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. (*San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.)

2. Under the first alternative test set forth by the California Supreme Court, a "new program or higher level of service" is established by "programs that carry out the governmental function of providing services to the public." (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 56.)

3. Under the second alternative test set forth by the California Supreme Court, a "new program or higher level of service" is established by "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." (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 56.)

4. The mandated activity is a new law when compared with the legal requirements in effect immediately before the enactment of the test claim statute, and it increases the level of service provided to the public in enforcing a state policy. (*San Diego Unified School Dist., supra*, 33 Cal.4th at pp. 874–875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.)

IV. The test claim statute mandates new activities on Claimants.

The requirements for prosecution agencies to independently develop and execute a process to review and to redact information based on general criteria are mandated by the State. The California Supreme Court has stated that claimants must be legally or practically compelled to perform an activity, explaining:

> 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. [citations omitted] Stated differently,

> legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey.

(*Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; see also *San Diego Unified School Dist., supra*, 33 Cal.4th at p. 874.)

Claimants are legally compelled as they "*shall* independently develop and execute versions of this redaction and review process." (Pen. Code, § 741, subd. (b).) The test claim statute consistently uses such "mandatory language"—namely, the word "shall" employed fourteen separate times in the test claim statute—to impose new duties on Claimants, none of which existed prior to the enactment of the test claim statute.

Penal Code section 741, subdivision (b), requires, "[P]rosecution agencies *shall* independently develop and execute versions of this redaction and review process." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, subd. (b), italics added [adding Section 741, subd. (b) to the Penal Code].)

Penal Code section 741, subdivision (b)(1), requires, "Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation *shall* be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which *shall* precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the 'narrative' portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(1).)

Penal Code section 741, subdivision (b)(2), requires, "The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, *shall* determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other

evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation *shall* be performed by a prosecutor who does not have knowledge of the redacted facts for that case." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(2).)

Penal Code section 741, subdivision (b)(3), requires, "After completion of a race-blind initial charging evaluation, the case *shall* proceed to a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint or allow the case to be submitted to a grand jury." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(3).)

Penal Code section 741, subdivision (b)(4)(A), requires, "Each of the following circumstances *shall* be documented as part of the case record:

(i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.

(ii) The initial charging evaluation determined that the case *shall* be charged and the second review determined that no charge be filed." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(A).)

Penal Code section 741, subdivision (b)(4)(B), requires, "The explanation for the charging decision change *shall* be documented as part of the case record." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(B).)

Penal Code section 741, subdivision (b)(4)(C), requires, "The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, *shall* be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(C).)

Penal Code section 741, subdivision (b)(5), requires, "If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for

that inability *shall* be documented and retained by the agency. This documentation *shall* be made available by the agency upon request." (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(5).)

Penal Code section 741, subdivision (b)(6), requires, "The county *shall* collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

V. The test claim statute imposes a new program or higher level of service on Claimants.

The actions compelled by Penal Code, subdivision (b), impose a new program or higher level of service under either prong of the California Supreme Court's test.

First, the test claim statute mandates actions that "carry out a governmental function of providing services to the public." (*San Diego Unified Sch. Dist., supra*, 33 Cal.4th at p. 874 (citation omitted).) Upon declaring that unconscious bias may infect the criminal justice system, the test claim statute identifies a corrective measure, a model of race blind charging that was previously trialed by other district attorney offices. (A.B. No. 2778, Stats. 2022, ch. 806, § 1.) The test claim statute mandates this model statewide, thereby expanding an important public service to address racial bias in the criminal justice system.

Courts have repeatedly found that state laws aimed at providing beneficial and protective public services create programs or higher levels of service under this prong, and accordingly involve reimbursable State mandates. For example, permitting conditions establishing heightened stormwater drainage requirements involved a program because they benefitted the public with increased pollution abatement. (*Department of Fin.*, *supra*, 85 Cal.App.5th at pp. 555–556.) Similarly, a law requiring local agencies to contribute costs of educating area pupils with special needs at state schools created a program because "the education of handicapped children is clearly a governmental function providing a service to the public." (*Lucia Mar Unified Sch. Dist.*, *supra*, 44 Cal.3d at p. 835.) And a law requiring that public school districts afford hearings with specified protections to students facing expulsion created a higher level of service for an existing program because "[p]roviding public schooling clearly constitutes

a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public." (*San Diego Unified Sch. Dist*., *supra*, 33 Cal.4th at p. 879.) Here, likewise, the test claim statute concerns a program because counties provide an important service to the public in carrying out a race blind charging process.

Second, the test claim statute "implement[s] a state policy, impose[s] unique requirements on local governments and do[es] not apply generally to all residents and entities in the state." (*San Diego Unified Sch. Dist., supra*, 33 Cal.4th at p. 874 [citation omitted].) By its very terms, the test claim statute uniquely applies to prosecution agencies, and not to all residents and entities in the state. (See generally Pen. Code, § 741, subd. (b)(1)–(6).)

VI. A new program is mandated when local agencies incur increased costs.

Government Code section 17514 provides that "'[c]osts mandated by the state' means 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 Section 6 of Article XIII B of the California Constitution."

Government Code section 17564, subdivision (a), provides that "[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars." Each Claimant alleges increased costs exceeding the $1,000.00 minimum claim amount articulated in Government Code section 17564(a).

Government Code section 17556, subdivision (e), states that there are no costs mandated by the state, if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill. There is no evidence that additional ongoing revenue has been appropriated, specifically to fund the costs of the mandated activities in this test claim. Thus, Government Code section 17556, subdivision (e), does not apply to deny this claim.

Accordingly, the evidence in the record supports the finding that the Claimants have incurred increased costs mandated by the State, pursuant to Government Code section 17514. However, to the extent a local agency receives any funding or grant funding and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the local agency.

The author of the bill intended for local governments to be reimbursed for costs incurred to implement the Race-Blind Charging legislation. (Declaration of Kevin McCarty, ¶ 5.)

VII. The Commission on State Mandates has the authority to decide a test claim.

The Commission on State Mandates has the authority, pursuant to Government Code section 17551, subdivision (a), to hear and decide upon a claim by a local agency that the local agency or is entitled to be reimbursed by the State for costs mandated by the State, as required by section 6 of article XIII B of the California Constitution. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331–334; Gov. Code, §§ 17551, 17552.) The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. (*County of San Diego*, *supra*, 15 Cal.4th at p. 109.)

VIII. Claimant Santa Clara first incurred increased costs in Fiscal Year 2024–2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Santa Clara first incurring increased costs on June 24, 2024, to implement the activities required by the test claim statute. (See Declaration of J. Gibbons-Shapiro (JGS Dec.), ¶ 16.)

The activities performed by Claimant Santa Clara District Attorney's Office (DAO) included conducting the initial charging evaluation and entering documentation in the case record, including changes in the decision and reason for changes. (Pen. Code, § 741, subd. (b)(2),(4)-(5); JGS Dec. ¶ 7,10, 11–13.) Costs for these activities are $1,589,814.00. (JGS Dec. Ex. 1, Task 1.)

Other activities performed were uploading electronic cases into CiberLaw, the DAO's case management system (Task 2); conducting background screening for vendor employees (Task 3); deploying redaction software and new Ciberlaw workflows (Task 4); and providing technical support for the redaction software and new CiberLaw workflows and end user support (Task 5). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 8–10, 12, 14, 16, 17, 19, 22, 25; JGS Dec. Ex. 1, Tasks 2–5.) Costs for Task 2 are $74,735.84; costs for Task 3 are $932.68; costs for Task 4 are $14,683.31; and costs for Task 5 are $14,111.96.

Additional activities include developing statistical reports and data dashboards (Task 6); programming and deploying a new program in Claimant Santa Clara's Criminal Justice Information Control (CJIC) system to redact local suspect criminal history documentation (Task 7); and providing training (Task 8). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 8–9,19, 21; JGS Dec. Ex. 1, Tasks 6–8.) Costs for Task 6 are $8,094.92; costs for Task 7 are $9,324.00; and costs for Task 8 are $46,256.00.

Additional activities include conducting governance meetings (Task 9); and integrating Axon Justice Premier with CiberLaw (Task 10). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Decl. ¶ 20, 23–24; JGS Dec. Ex. 1, Tasks 9, 10.) Costs for Task 9 are $7,112.60; and costs for Task 10 are $191,241.44.

Vendor Costs include the following:

HTC's costs for implementing new workflows in CiberLaw and the integration between CiberLaw and the redaction software in the amount of $25,000.00. (JGS Dec. ¶ 8–12,14–15; Pen. Code, § 741, subd. (b)(1)–(5); JGS Dec. Ex. 2, Task 1.)

Microsoft cloud hosting costs for running Redaction Software in the amount of $35,415.95. (JGS Dec. ¶ 9, 14; Pen. Code, § 741, subd. (b)(1); JGS Dec. Ex. 2, Task 3.)

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Santa Clara has incurred increased actual and estimated costs in Fiscal Year 2024–2025 as follows:[2]

Total Costs of Santa Clara employees/third-party professionals costs (JGS Dec. Ex. 1, Tasks 1–10)	$1,956,306.75

[2] Santa Clara's costs are greater than the other Claimants in part due to its larger size, greater number of arrests, and higher wages due to significantly higher costs of living.

Total Vendor Costs (JGS Dec. Ex. 2, Tasks 1–4.)	$60,415.95
Total Actual and Estimated Costs 2024–2025	$2,016,722.70

IX. The actual or estimated annual costs that will be incurred by Claimant Santa Clara to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Santa Clara will incur increased actual and estimated costs in **Fiscal Year 2025–2026** as follows:

The activities performed by Claimant Santa Clara District Attorney's Office (DAO) include conducting the initial charging evaluation and entering documentation in the case record, including changes in the decision and reason for changes (Task 1). (Pen. Code § 741, subd. (b)(2)(4)-(5); JGS Dec. ¶ 7,10, 11–13; JGS Dec. Ex. 1, Task 1.) Costs for these activities are $3,179,628.00. (JGS Dec. Ex. 1, Task 1.)

Other activities performed include uploading electronic cases into CiberLaw (Task 2); and providing technical support for the Redaction Software and new CiberLaw workflows and end user support (Task 5). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 17, 19, 22, 25; JGS Dec. Ex. 1, Tasks 2–5.) Costs for Task 2 are $149,471.68; and costs for Task 5 are $9,689.12.

Additional activities include developing statistical reports and data dashboards (Task 6). (Pen. Code, § 741, subd.(b)(6); JGS Dec. ¶ 18; JGS Dec. Ex. 1, Tasks 6–8.) Costs for Task 6 are $8,094.92.

Additional activities include conducting governance meetings (Task 9); and integrating Axon Justice Premier with CiberLaw (Task 10). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 20, 23–24; JGS Dec. Ex. 1, Tasks 9, 10.) Costs for Task 9 are $15,257.36; and costs for Task 10 are $285,777.44.

Vendor Costs include the following:

HTC's costs for implementing integration between CiberLaw and Axon Justice Premier in the amount of $40,000. (JGS Dec. ¶ 15, 23; Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. Ex. 2, Task 2.)

Microsoft cloud hosting costs for running Redaction Software in the amount of $59,110.32. (JGS Dec. ¶ 9, 14; Pen. Code, § 741, subd. (b)(1); JGS Dec. Ex. 2, Task 3.)

Axon Justice Premier software for submitting electronic cases in the amount of $534,000.00. (JGS Dec. ¶ 23; Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. Ex. 2, Task 4.)

Costs of Santa Clara Employees/third-party professionals (JGS Dec. Ex. 1, Tasks 1-10)	$3,647,918.52
Vendor Costs (JGS Dec. Ex. 2, Tasks 1-4)	$633,110.32
Total Actual and Estimated Costs 2025–2026	$4,281,028.84

X. Claimant Sutter first incurred increased costs in Fiscal Year 2024–2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Sutter first incurring increased costs on June 14, 2024, when the contract with Sicuro Analytics was executed to implement the activities required by the test claim statute.

In preparation for the implementation of this legislation, as each law enforcement agency has different forms, and the fields which could contain race-based information could be located in various fields, it soon became apparent that to do this manually would be extremely time consuming and expensive. As a result, due to salary savings, Sutter hired a consultant, Sicuro Analytics, which has a Race Blind Charging Solution that is programmed to use artificial intelligence ("AI") to redact all race-based descriptions. This can include, but is not limited to, names, race, complexion, and physical description. (Greeson Dec. ¶ 3, 4.)

Activities performed by Sutter include when law enforcement agencies reports within Sutter County are received, they are scanned in the Race Blind Charging Solution program. This web-based application uses Artificial Intelligence ("AI") to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and redacts the data. The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. (Pen. Code, § 741, subd. (b)(1) –(2); Greeson Dec. ¶ 4.)

The prosecutor decides the initial charge(s) to file based upon the redacted report and then the prosecutor must decide if the original charges were correct. If the prosecutor determines the original charges were not correct, substantial notes are required to document the reason for the change in charges. (Pen. Code, § 741, subd. (b)(1), (4); Greeson Dec. ¶ 4.)

In Fiscal Year 2024-2025, Sutter incurred actual and estimated costs of implementing the activities mandated by the test claim statute, Penal Code section 741, subdivision (b)(1)–(6), to be as follows:

Race Blind Charging Services

Sicuro Implementation Costs

Invoice 0624-2	$2,310	June, 2024 Services
Invoice 0724-2	$4,950	July, 2024 Services
Invoice 0824-2	$6,600	August, 2024 Services
Invoice 0924-2	$4,620	September, 2024 Services
Invoice 1224	$11,880	December, 2024 Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0225	$1,760	February, 2025 Services
Invoice 0325	$1,760	March, 2025 Services
Invoice 0425	$1,760	April, 2025 Services
Invoice 0525	$1,760	May, 2025 Services
Invoice 0625	$1,760	June, 2025 Services

Total Actual and Estimated Costs 2024-2025: $39,160.00

XI. The estimated annual costs that will be incurred by Claimant Sutter to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

In Fiscal Year 2025–2026, Sutter incurred estimated costs of implementing the activities mandated by the test claim statute, Penal Code section 741, subdivision (b)(1)–(6), to be as follows:

a. Race-Blind Charging Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0725	$1,760	July, 2025 Services
Invoice 0825	$1,760	August, 2025 Services
Invoice 0925	$1,760	September, 2025 Services
Invoice 1025	$1,760	October 2025 Services
Invoice 1125	$1,760	November 2025 Services
Invoice 1225	$1,760	December 2025 Services
Invoice 0126	$1,760	January 2026 Services
Invoice 0226	$1,760	February 2026 Services
Invoice 0326	$1,760	March 2026 Services
Invoice 0426	$1,760	April 2026 Services
Invoice 0526	$1,760	May 2026 Services
Invoice 0626	$1,760	June 2026 Services

Total County of Sutter 2025–2026 increased estimated costs: $21,120.00

XII. Claimant Sacramento first incurred increased costs in Fiscal year 2024-2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Sacramento first incurring costs in September 2024, to implement the activities required by the test claim statute. Benner Dec. ¶ 6 (a).)

The activities performed by Sacramento include implementing a two-step redaction process to identify racial information within the documents provided by arresting agencies, to redact that information, to produce the resulting material for review by the prosecutor performing the initial charging evaluation, and reasonably ensure correct redaction is applied in accordance with the implemented race-blind charging guidelines. (Pen. Code, § 741, subd. (b)(1)–(6); Benner Dec. ¶ 3.)

Secretaries drafted a procedures document, showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference if/when needed. Secretaries and DCAs were trained on the new procedures. (Pen. Code, § 741, subd. (b)(1)–(5); Benner Dec. ¶ 6 (a)–(c).)

Secretaries activities include electronically uploading police reports, manually redacting them, sending them to a filing attorney, recording the initial decision, and documenting the decision from the second review. (Pen. Code, § 741, subd. (b)(1)–(3); Benner Dec. ¶ 8.)

Implementation of Penal Code section 741, subdivision (b)(6), requires regular updates in the form of meetings and emails to gauge the success of the implemented procedures. Continued review of the process ensures the filing DCAs are adequately staffed to keep up with the increased workload. (Pen. Code, § 741, subd. (b)(6); Benner Dec. ¶ 7.)

In performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Sacramento incurred increased actual and estimated costs in Fiscal Year 2024–2025 as follows:

Time spent by Secretarial Staff $30,597.60.
Time spent by Attorneys Staff $91,680.00

Total Sacramento actual and estimated increased costs 2024–2025: $122,277.60

(Benner Dec. ¶ 9,11.)

XIII. The actual or estimated annual costs that will be incurred by Claimant Sacramento to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Sacramento incurred increased actual and estimated costs in Fiscal Year 2025–2026 as follows:

Time spent by Secretarial Staff $61,195.20
Time spent by Attorney Staff $183,360.00

Total Sacramento actual and estimate of increased costs 2025–2026: $244,555.20.

(Benner Dec. ¶ 12.)

XIV. A statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Claimants estimate the statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is $50,000,000.00.

XV. Identification of all of the funding sources available for this program.

Claimants are unaware of any funding resources available for this program.

(a.) Dedicated state funds.

Claimants are unaware at this time of any dedicated state funds available for the Race Blind Charging program.

(b.) Dedicated federal funds.

Claimants are unaware at this time of any dedicated federal funds available for the Race Blind Charging program.

(c.) Other nonlocal agency funds.

Claimants are unaware at this time of any other dedicated nonlocal agency funds available for the Race Blind Charging program.

(d.) The local agency's general purpose funds.

Claimants anticipate using their general-purpose funds for the Race Blind Charging program.

(e.) Fee authority to offset costs.

Claimants are unaware at this time of any fee authority available for the Race Blind Charging program.

XVI. Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

Claimants are aware at this time of a prior approved mandate related to the Race Blind Charging program: “Crime Statistics Reports for the Department of Justice; Crime Statistics Reports for the Department of Justice Amended.” (Case No. 12-PGA-01, 02-TC-04 and 02-TC-11 and 07-TC-10.)

XVII. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Claimants are unaware at this time of any legislatively determined mandate related to the Race Blind Charging program.

DECLARATION OF JAMES GIBBONS-SHAPIRO

1. I, James Gibbons-Shapiro, declare:

2. I have been employed by the County of Santa Clara (the "County") in its District Attorney's Office (DAO) since 1997 and currently hold the title of Assistant District Attorney. I have occupied this position since 2014.

3. As an Assistant District Attorney, I am responsible, *inter alia*, for overseeing the DAO's internal IT team and approving all changes made to the County's Criminal Justice Information Control (CJIC) system and to the portion of County's Microsoft Government Cloud managed by the DAO IT Team ("the Cloud"). In this position, I also help oversee the County's actions in carrying out the new programs mandated by Penal Code section 741, subdivision (b) ("Section 741(b)"), described in detail below. I have personal knowledge of the facts set forth in this Declaration and the attached exhibits, and if called to testify to the statements made herein, I could and would do so competently.

4. Section 741(b) was added by Assembly Bill No. 2778 (Stats. 2022, ch. 806) and became effective on January 1, 2023. Assembly Bill No. 2778 requires all offices of the district attorneys to implement Section 741(b) by January 1, 2025.

5. Section 741(b) mandates that all prosecution agencies in California provide new programs beginning on January 1, 2025. The DAO is a prosecution agency in California.

6. As an Assistant District Attorney, I am familiar with the DAO's new activities arising from Section 741(b) and the estimated, actual and anticipated costs incurred in carrying out these activities.

7. Under Section 741(b), the DAO must conduct an initial race-blind charging evaluation, an entirely new requirement in determining whether to charge an individual with a crime. (Pen. Code, § 741, subd. (b); see Ex. 1, Task 1.) To conduct this initial race-blind charging evaluation, the DAO must redact case information received from law enforcement agencies and suspect criminal history documentation. (Pen. Code, § 741, subd. (b)(1)–(2).)

8. To comply with Section 741(b), the DAO must redact all indicia of race from cases received from law enforcement agencies, such as police reports, and from suspect criminal history documentation. Pursuant to Penal Code Section 741, subdivision (b)(1), the DAO may apply the redactions "mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction." (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Tasks 4, 7; Ex. 2, Tasks 1, 3.)

9. To the extent possible, the DAO has used software to apply redactions as it has a greater rate of accuracy and is more cost effective in light of the high volume of cases processed in Santa Clara County. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Tasks 4, 7; Ex. 2, Tasks 1, 3.) Because the DAO decided to perform redactions using software (as discussed further in paragraphs 14, 16, and 17), the DAO is not incurring ongoing personnel costs (beyond the software implementation and maintenance tasks discussed in further detail below) specifically related to this activity.

10. The DAO must also implement a new initial charging evaluation process where a prosecutor with no knowledge of the redacted facts must decide whether to charge the suspect based on the redacted documents. (Pen. Code, § 741, subd. (b)(2); see Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) All cases must be put through this initial charging evaluation except for those classes of crimes or factual circumstances that the prosecution agency removes or excludes, for example, due to the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics, or the relevance of racial animus to the charging decision. (Pen. Code, § 741, subds. (b)(2), (c); see Ex. 1, Task 1, 4; Ex. 2, Task 1.)

11. After the initial charging evaluation, the DAO proceeds to a second, complete review using the unredacted reports and all available documents where a prosecutor will decide whether to submit the case to the grand jury or charge the suspect in a criminal complaint, including the applicable charges and enhancements. (Pen. Code, § 741, subd. (b)(3); see Ex. 2, Task 1.)

12. Pursuant to Section 741, subdivision (b)(4)(A), the DAO documents as part of the case record whether the prosecutor's charging decision changed between the initial evaluation and the second review, as well as the reason for the change in the charging decision. (See Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) The DAO is also required to document the reason if they are unable to put a case through a race-blind initial charging evaluation. (Pen. Code, § 741, subd. (b)(4)(B); see Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) This documentation must be made available upon request. (Pen. Code, § 741, subd. (b)(4)(C).)

13. Complying with Section 741(b)'s new mandates, including conducting the initial charging evaluation and entering documentation in the case record, adds to the time that the DAO's attorneys spend reviewing cases and making charging decisions. (See Ex. 1, Task 1.) Between January 1 and June 30, 2025, DAO attorneys will have spent an estimated 30 additional minutes per case and will have reviewed an estimated 13,473 cases. Between July 1, 2025 and June 30, 2026, DAO attorneys are expected to have spent an estimated 30 additional minutes per case and to have reviewed an estimated 26,946 cases.

14. In Santa Clara County, redactions are automatically applied to police reports using software provided by Harvard University's Computational Policy Lab (CPL)

("the Redaction Software"). (See Ex. 1, Tasks 4–5; Ex. 2, Tasks 1, 3.) Although CPL provides the Redaction Software at no cost to the County, the County incurs usage costs for hosting the Redaction Software in the Cloud, where it leverages technologies such as advanced optical character recognition and generative artificial intelligence. (See Ex. 2, Task 3.)

15. In addition, the County contracted with HTC Global Services, Inc. (HTC) to integrate the DAO's case management system, CiberLaw, with the Redaction Software and develop and implement new workflows in its case management system, CiberLaw. (See Ex. 2, Task 1.) These workflows enable DAO attorneys to (1) conduct the initial charging evaluations, including reviewing the redacted cases (Pen. Code, § 741, subd. (b)(2)); (2) document any change in the charging decision between the initial charging evaluation and the second review and the reason for the change (Pen. Code, § 741, subd. (b)(4)(A)–(B)); and (3) document the reason if they are unable to put a case through a race-blind initial charging evaluation (Pen. Code, § 741, subd. (b)(5)).

16. The County first incurred costs relating to Section 741(b) on June 24, 2024, when it started conducting project planning meetings with CPL, as described in Paragraph 17. (Pen. Code, § 741, subd. (b)(1)–(6); see Ex. 1, Task 4.)

17. The process of implementing the new Redaction Software and CiberLaw workflows involved the following actions, among others, taken by County employees and third-party professionals:

    a. Conducting regular project planning meetings with CPL beginning on June 24, 2024 to ensure the Redaction Software was installed and tested at least four weeks prior to the January 1, 2025 implementation deadline. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
    b. Configuring remote access for CPL to the Cloud and to County networks, which enabled CPL to support the Redaction Software and retrieve data (which is used by CPL to increase the accuracy of redactions and reduce errors). (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
    c. Conducting the federal and state criminal background checks of CPL employees, as required by the FBI Criminal Justice Information Services (CJIS) Security Policy and California Department of Justice (DOJ) CLETS Policies, Practices, and Procedures, who needed access to DAO systems containing federal Criminal Justice Information (CJI) and other information derived from the California Law Enforcement Telecommunications System (CLETS) in order to deploy the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 3.)
    d. Providing CPL with a historical sample of several hundred police reports for purposes of configuring and improving the accuracy of the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
    e. Deploying the Redaction Software in the Cloud, which involved the following activities:

i. Provisioning the Cloud resources and creating production and non-production networks to ensure communication among the Cloud resources (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
ii. Configuring the Cloud networks to communicate with the DAO's on-premises network, which hosts CiberLaw (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
iii. Conducting security review of the system architecture (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
iv. Collaborating with Microsoft to obtain their recommendations on implementing the Redaction Software in the Cloud and troubleshooting issues (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
v. Configuring the Cloud to set the appropriate access levels;
vi. Installing the Redaction Software in the Cloud (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
vii. Validating the Cloud components were functioning as expected after deployment (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
viii. Providing system logs to CPL to troubleshoot issues (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4); and
ix. Performing user acceptance testing (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4).

f. Conducting meetings with HTC to discuss project scope and workflow design. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
g. Conducting meetings with HTC and CPL to design the integration between the Redaction Software and CiberLaw. Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
h. Assisting HTC with developing new user interfaces and integrations with the Redaction Software, including the following activities:
    i. Defining functional and technical requirements as well as changes to functionality and the frontend user experience (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
    ii. Deploying the software updates into testing and production environments (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4); and
    iii. Conducting user acceptance testing (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4).
i. Conducting meetings with CPL to review how the Redaction Software is performing and address issues that arise. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
j. Providing ongoing technical support for the Redaction Software, including working with CPL to troubleshoot redaction errors that arise during production and providing CPL with error details for use in improving the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 5.)
k. Collaborating with CPL and HTC to deploy and validate software updates that address bugs or improve user experience for the Redaction Software

and CiberLaw workflows. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 5.)

18. Section 741, subdivision (b)(6), requires counties to collect data from the race-blind initial charging evaluation process and make the data available for research purposes. The process for implementing this requirement included the following actions taken by County employees:

    a. Developing reports and data dashboards to provide statistics to gauge how the Redaction Software is running and at what rate attorneys are changing their charging decisions between the initial charging evaluation and the second review (Pen. Code, § 741, subd. (b)(6); see Ex. 1, Task 6); and
    b. Pulling, cleaning, and providing data from CiberLaw to CPL for purposes of conducting research on the effectiveness of race-blind charging (Pen. Code, § 741, subd. (b)(6); see Ex. 1, Task 6).

19. To implement Section 741(b), it was reasonably necessary for the DAO to educate staff on Section 741(b)'s requirements and how to implement it, including how to use the new tools conduct an initial charging evaluation. The training included all DAO attorneys because attorneys regularly rotate onto assignments where they are responsible for conducting charging evaluations. These activities included the following:

    a. Conducting a two-hour user training session for 98 attorneys, including background on the law and instructions on navigating the new user interface. (See Ex. 1, Task 8.)
    b. Instructing support staff on how to identify which documents require redaction and how to flag them for redaction in CiberLaw. (See Ex. 1, Task 5.)
    c. Assisting end users in response to service requests, for example, by explaining how to navigate the new workflows and the steps for conducting the initial charging evaluation and the second review. (See Ex. 1, Task 5.)

20. To implement Section 741(b), it was also reasonably necessary to conduct regular governance meetings within the DAO to monitor the project status, review the statistical reports, and assess the impact on attorneys' workload. During these governance meetings, two Assistant District Attorneys, one Supervising District Attorney, and the DAO's IT Manager have met to decide how to implement Section 741(b), how to allocate resources to cover the additional work required to implement the Redaction Software and new CiberLaw work flows, and how to ensure the charging units are adequately staffed to cover the additional work required to conduct initial charging evaluations. During these meetings, they also review (1) the statistical reports to assess at what rate attorneys are changing their charging determinations between the initial charging

evaluation and the second review; and (2) individual cases where there has been a change to determine if there is a legitimate rationale for the change. By conducting these reviews, the DAO ensures that it is effectuating the Legislature's intent in enacting Section 741(b); namely, to eliminate racial bias from charging decisions. (Pen. Code, § 741, subd. (b)(1)–(6); see Ex. 1, Task 9.)

21. To date, the Redaction Software provided by CPL is able to redact only police reports. To comply with the January 1, 2025 deadline, the DAO relied on local law enforcement agencies to manually redact state and local suspect criminal history documentation. Beginning in February 2025, the DAO worked with the County's Technology Services and Solutions (TSS) department to modify the County's CJIC system, which maintains local suspect criminal history documentation, to apply those redactions automatically by creating a new program in CJIC. The new program went live in March 2025. The process of implementing the new program in CJIC involved the following actions, among others, taken by County employees:

    a. Assigning resources to develop and implement the new program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    b. Cloning the existing program and modifying it to replace database values indicating race in the program's screen, PDF and printed versions. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    c. Creating a new transaction in CJIC for end users to use to access the program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    d. Conducting unit testing and quality assurance testing of the new program.
    e. Deploying the new program to the test environment and remediating issues that arose during the deployment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    f. Launching the new program into the production environment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    g. Modifying CJIC to permit individual end users to be assigned access to the new transaction. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    h. Notifying stakeholders regarding the availability of the new program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
    i. Resolving service requests and issues that arose after deployment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)

22. To implement Section 741(b), it was reasonably necessary for the DAO to fully convert to the electronic submission of cases by local police departments. Prior to the effective date of AB 2778, some units in local police departments still submitted their cases to the DAO in paper. In order to apply the Redaction Software, the DAO required these units to submit their cases electronically using a temporary custom solution built by the DAO. The process of transitioning these units to submitting their cases electronically required a County employee to establish user accounts in the DAO's custom solution for the end users in local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 5.)

23. Beginning in February 2025, the DAO started the process of transitioning from this custom solution to Axon Justice Premier for the electronic submission of cases from local police departments, including integrating Axon Justice Premier with CiberLaw. Axon Justice Premier is reasonably necessary to implement Section 741(b) because it ensures that local police departments can submit their cases electronically, thereby enabling those cases to be redacted and presented to DAO attorneys for review during the initial charging evaluation without having to manually scan the documents. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10; Ex. 2, Tasks 2, 4.)

24. The process of implementing the electronic submission of cases in Axon Justice Premier has involved the following actions, among others, taken by County employees and third-party professionals:

    a. Gathering business requirements for integrations related to CiberLaw and Axon. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    b. Attending regular project planning and design meetings.
    c. Coordinating with Axon and HTC to define the scope of the project and the technical and business requirements. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    d. Conducting meetings with Axon to design the integration between Axon and CiberLaw. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    e. Conducting meetings with HTC to discuss project scope and workflow design. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    f. Developing design documentation and diagrams for integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    g. Conducting security and IT architecture review of the design documentation and diagrams. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
    h. Assisting HTC with developing new user interfaces and integrations with Axon, including the following activities:
        i. Defining functional and technical requirements as well as changes to functionality and the frontend user experience (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).
        ii. Deploying the software updates into testing and production environments (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10); and
        iii. Conducting user acceptance testing (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).
    i. Deploying the integrations in the County's Information Sharing Environment, including the following activities:
        i. Setting up and deploying development, test, and production environments (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
        ii. Creating and developing system requirements based on business requirements (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);

iii. Developing and deploying source codes and test scripts for integration (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
iv. Defining and developing quality assurance test plans for functional and load testing (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
v. Defining and developing quality assurance test cases (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
vi. Coordinating release planning (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
vii. Configuring pre-production settings (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
viii. Deploying integrations in the production environment (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
ix. Drafting and delivering documentation, including the runbook (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10); and
x. Performing knowledge transfer to relative stakeholders (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).

j. Coordinating with Axon and HTC to review development progress and backlog through the scrum process. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
k. Notifying local police departments of the new workflow and solution. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
l. Conducting user acceptance testing with end users in both DAO and local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
m. Training end users in both the DAO and local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
n. Providing ongoing technical support for Axon, CiberLaw, and the ISE, including working with Axon and HTC to troubleshoot errors that arise during production as related to the integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
o. Collaborating with Axon and TSS to deploy and validate software updates that address bugs or improve user experience for Axon and CiberLaw workflows as related to the integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)

25. DAO staff must also manually upload the electronic cases into CiberLaw in order to leverage the integration between CiberLaw and the Redaction Software and the new CiberLaw workflows for conducting an initial charging evaluation. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 2.)

26. In 2024-2025 the County estimates the increased costs of implementing the activities mandated by the test claim statute to be as follows:

a. An estimated $1,956,306.75 for an estimated 8,714 hours of employee and third-party professional labor. (See Ex. 1, Tasks 1–10.)
b. An estimated $60,415.95 in vendor costs during the 2024-2025 fiscal year. (See Ex. 2, Tasks 1–4.)

Total 2024-2025 estimated increased costs are $2,016,722.70.

27. In 2025-2026 the County estimates the costs of implementing the activities mandated by the test claim statute to be as follows:

    a. An estimated $3,647,918.52 beginning in the 2025-2026 fiscal year, accounting for an estimated 16,231 hours of employee and third-party professional labor. (See Ex. 1, Tasks 1–10.)
    b. An estimated $633,110.32 in vendor costs during the 2025-2026 fiscal year. (See Ex. 2, Tasks 1–4.)

Total 2025-2026 estimated increased costs are $4,281,028.84.

28. If not reimbursed by the State, the County would pay for all the costs discussed above from its General Fund.

29. To the best of my knowledge, the County has not received any local, State, or federal funding and does not have a fee authority to offset the increased direct and indirect costs that the County will incur to implement the programs mandated by Section 741(b).

30. To the best of my knowledge, there are no legislatively determined mandates on Section 741(b).

31. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

32. Executed on July 16, 2025, at San José, California.

JAMES GIBBONS-SHAPIRO
Assistant District Attorney
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Exhibit 1: Estimated costs of County employees and third-party professionals incurred by implementing Penal Code Section 741(b).

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
1. Conducting the initial charging evaluation and entering documentation in the case record; documenting changes in decision and reason for changes. (JGS Decl. ¶ 7, 10, 11–13; Pen. Code, § 741, subd. (b)(2), (4)–(5).)	Deputy District Attorney I-IV	$236.00	6,736.5	$1,589,814.00	13,473	$3,179,628.00	$4,769,442.00
2. Uploading electronic cases (e.g., police reports and suspect criminal history documentation) into CiberLaw. (JGS Decl. ¶ 25; Pen. Code, § 741, subd. (b)(1)–(4).)	Justice System Clerk; Legal Secretary	$111.88	668	$74,735.84	1336	$149,471.68	$224,207.52
3. Conducting background screening for CPL employees. (JGS Decl. ¶ 17, subd. (c); Pen. Code, § 741, subd. (b)(1).)	Criminal Investigator II	$266.48	3.5	$932.68	0	$0.00	$932.68

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
4. Deploying Redaction Software and new Ciberlaw workflows. (JGS Decl. ¶ 8–10, 12, 14, 16, 17; Pen. Code, § 741, subd. (b)(1)–(6).)	IT Manager	$258.04	34	$8,773.36	0	$0.00	$8,773.36
	Infrastructure Engineer	$218.51	20	$4,370.20	0	$0.00	$4,370.20
	Network Engineer	$102.65	15	$1,539.75	0	$0.00	$1,539.75
5. Providing technical support for the Redaction Software and new CiberLaw workflows and end user support. (JGS Decl. ¶ 17, 19, 22; Pen. Code, § 741, subd. (b)(1)–(5).)	IT Manager	$258.04	26	$6,709.04	24	$6,192.96	$12,902.00
	Infrastructure Engineer	$218.51	32	$6,992.32	16	$3,496.16	$10,488.48
	Network Engineer	$102.65	4	$410.60	0	$0.00	$410.60
6. Developing statistical reports and data dashboards. (JGS Decl. ¶ 18; Pen. Code, § 741(b)(6).)	IT Manager	$258.04	8	$2,064.32	8	$2,064.32	$4,128.64
	Business Intelligence Analyst	$201.02	30	$6,030.60	30	$6,030.60	$12,061.20
7. Programming and deploying new CJIC program. (JGS Decl. ¶ 8–9, 21; Pen. Code, § 741, subd. (b)(1).)	Senior Application Developer	$252.00	20	$5,040.00	0	$0.00	$5,040.00
	Quality Assurance Engineer	$252.00	16	$4,032.00	0	$0.00	$4,032.00

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
	System Engineer	$252.00	1	$252.00	0	$0.00	$252.00
8. Providing training. (JGS Decl. ¶ 19; Pen. Code, § 741, subd. (b)(1)–(5).)	Deputy District Attorney I-IV	$236.00	196	$46,256.00	0	$0.00	$46,256.00
9. Conducting governance meetings. (JGS Decl. ¶ 20; Pen. Code, § 741, subds. (b)(1)–(6), (c).)	Assistant District Attorney	$380.37	6	$2,282.22	12	$4,564.44	$6,846.66
	Assistant District Attorney	$381.99	6	$2,291.94	12	$4,583.88	$6,875.82
	Supervising District Attorney	$337.06	6	$2,022.36	12	$4,044.72	$6,067.08
	IT Manager	$258.04	2	$516.08	8	$2,064.32	$2,580.40
10. Integrating Axon Justice Premier with CiberLaw. (JGS Decl. ¶ 23–24; Pen. Code, § 741, subd. (b)(1)–(6).)	IT Manager	$258.04	52	$13,418.08	52	$13,418.08	$26,836.16
	Senior IT Project Manager	$230.00	208	$47,840.00	208	$47,840.00	$95,680.00

Exhibit 2: Estimated vendor costs incurred by Penal Code Section 741(b).

Costs	FY 2024-2025	FY 2025-2026	Total Cost
1. HTC's costs for implementing new workflows in CiberLaw and integration between CiberLaw and the Redaction Software. (JGS Decl. ¶ 8–12, 14–15; Pen. Code, § 741(b)(1)–(5).)	$25,000.00	$0.00	$25,000.00
2. HTC's costs for implementing integration between CiberLaw and Axon Justice Premier. (JGS Decl. ¶ 15, 23; Pen. Code, § 741(b)(1)–(6).)	$0.00	$40,000	$40,000
3. Microsoft cloud hosting costs for running Redaction Software. (JGS Decl. ¶ 9, 14; Pen. Code, § 741(b)(1).)	$35,415.95	$59,110.32	$94,526.27
4. Axon Justice Premier software for submitting electronic cases. (JGS Decl. ¶ 23; Pen. Code, § 741(b)(1)–(6).)	$0.00	$534,000.00	$534,000.00
TOTAL	**$60,415.95**	**$633,110.32**	**$693,526.27**

Test Claim: Race-Blind Charging
Claimant: County of Sutter
Section: 6 Declaration-Jeff C. Greeson

1. I, Jeff C. Greeson, am an attorney at Law, Licensed to practice before the courts of this state, and the Chief Deputy District Attorney for the County of Sutter ("Sutter"). I have been one of the individuals charged with assisting in the implementation of AB 2778, Penal Code 741(b)(1-6), in Sutter County.

2. Prior to the enactment of this test claim legislation, when a report was received from a law enforcement agency, there was no requirement that any of the information in the report was subject to redaction. The prosecutor to whom the case was assigned would review the report and determine the appropriate charges against the alleged offender.

3. In the initial review of this legislation, it was obvious that to do the required redactions manually would be cost prohibitive, we determined there would be cost savings by utilizing a contractor. Our office selected Sicuro Analytics. We are informed and believe that Sicuro has also contracted with other counties to formulate a program to enable compliance with the Race-Blind Charging mandate.

4. Throughout the day, various local law enforcement agencies within Sutter County bring their reports to the District Attorney's Office. When reports are received, they are scanned into Sicuro's program commonly referred to as the Race Blind Charging Solution. This web-based application uses Artificial Intelligence (hereinafter referred to as "Al") to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and redacts the data. (Penal Code Section 741(b)(1).The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. The prosecutor then decides which charge(s) to file based upon the redacted report. Once the initial charges are decided, the prosecutor then must review the original, unredacted report, and the prosecutor must decide if the original charges were correct. (Penal Code Section 741(b)(1). If the prosecutor determines the original charges were not correct, substantial notes are required to document the reason for the change in charges. (Penal Code Section 741(b)(4). The documentation requirements are substantial.

5. There is a 48-hour limit from the time of arrest before a defendant is arraigned. We sometimes receive reports late in the morning and even into the early afternoon, yet have to decide by 1:00 p.m., so that formal charges are at the courthouse by 3:00 p.m. for calendar call.

6. The process requires the prosecutor to review each report twice, and then make required documentation for changes in the charges. (Penal Code Section 741(b)(3). This was never required prior to the enactment of AB 2778. It should also be noted that each of the law enforcement agencies that submit reports to our office have their own report forms, and fields are located in different areas on the forms. Furthermore, law enforcement agencies are continually changing and modifying their forms. This requires continual updates to the Al process within Sicuro's Race Blind Charging Solution so that all of the racial indicia can be redacted. Sicuro is compiling statistics which need to be gathered and maintained. (Penal Code Section 741 (b)(6).

7. Our office has not yet had an opportunity to fully track our attorney time and compare the additional staff burden that we will bear when we fully implement case review under Sicuro's Race Blind Charging Solution. We are currently facing a staffing crisis with attorneys, and cannot devote the resources necessary to reliably document how much more time it will add to an average work day.

8. I am informed and believe, and based upon such information, allege that Sicuro is reviewing the Municipal and Superior Court's website to see what charges were historically alleged, in order to determine whether there is a statistical discrepancy compared to charging after implementation of Sicuro's application.

9. In 2024-2025 Sutter estimates the costs of implementing the activities mandated by the test claim statute, Penal Code 741 (b)(1-6) to be as follows:

    a. Sutter initially incurred increased costs when the contract with Sicuro was executed on June 14, 2024.

    b. Race-Blind Charging Services

    Sicuro Implementation

Invoice 0624-2	$2,310	June, 2024 Services
Invoice 0724-2	$4,950	July, 2024 Services
Invoice 0824-2	$6,600	August, 2024 Services
Invoice 0924-2	$4,620	September, 2024 Services
Invoice 1224	$11,880	December, 2024 Services

    Sicuro Subscription, User Portal, and Overhead

Invoice 0225	$1,760	February, 2025 Services
Invoice 0325	$1,760	March, 2025 Services
Invoice 0425	$1,760	April, 2025 Services
Invoice 0525	$1,760	May, 2025 Services
Invoice 0625	$1,760	June, 2025 Services

    Total 2024-2025 actual and estimated costs are: $39,160.

10. In 2025-2026 Sutter estimates the costs of implementing the activities mandated by the test claim statute, Penal Code 741 (b)(1-6) to be as follows:

    a. Race-Blind Charging Services

    Sicuro Subscription, User Portal, and Overhead

Invoice 0725	$1,760	July, 2025 Services
Invoice 0825	$1,760	August, 2025 Services
Invoice 0925	$1,760	September, 2025 Services
Invoice 1025	$1,760	October, 2025 Services

Invoice 1125	$1,760	November, 2025 Services
Invoice 1225	$1,760	December, 2025 Services
Invoice 0126	$1,760	January, 2026 Services
Invoice 0226	$1,760	February, 2026 Services
Invoice 0326	$1,760	March, 2026 Services
Invoice 0426	$1,760	April, 2026 Services
Invoice 0526	$1,760	May, 2026 Services
Invoice 0626	$1,760	June, 2026 Services

Total 2025-2026 estimated costs are: $21,120.

11. If not reimbursed by the State, Sutter would pay for all the costs discussed above from its General Fund.

12. To the best of my knowledge, Sutter has not received any local, State, or federal funding and does not have a fee authority to offset the increased direct and indirect costs that the County will incur to implement the programs mandated by Section 741(b)(1-6).

13. To the best of my knowledge, there are no legislatively determined mandates on Section 741(b)(1-6).

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed this 11th day of July, 2025 at Yuba City, California.



Jeff C. Greeson, Chief Deputy District Attorney
County of Sutter

DECLARATION OF MICHAEL BENNER IN SUPPORT OF CITY OF SACRAMENTO'S REQUEST FOR REIMBURSEMENT PURSUANT TO THE IMPLEMENTATION OF RACE-BLIND CHARGING PROCEDURES IN ACCORDANCE WITH PENAL CODE SECTION 741, SUBDIVISION (b)

I, Michael Benner, declare:

1. I have been employed by the Office of the City Attorney for the City of Sacramento for 22 years and I currently serve as Supervising Deputy City Attorney for the Community Advocacy and Public Safety Division ("CAPS"). My duties include, but are not limited to, the following:

- Supervise and oversee the handling by deputies of civil, criminal and administrative law matters, including the preparation of legal opinions, ordinances, resolutions, contracts, and other legal documents.
- Assign, train, direct and evaluate subordinate professionals, paralegals, and investigation support staff and provide input as to training, duties and evaluation of other support staff.
- Provide training guidance for staff involved in various aspects of professional work; recommend and implement disciplinary actions when necessary.
- Ensure workloads are balanced; ensure production and performance of quality work; and promote efficiency in the office.
- Help to develop and administer Office policies and procedures within assigned scope of responsibility; monitor the efficiency and effectiveness of professional workflow, and perform other duties as assigned.

2. I am personally aware of the implementation of the race-blind charging guidelines pursuant to Penal Code Section (PC) 741, subdivision (b) and the specific requirements listed in PC 741(b), which took effect on January 1, 2025.

3. In an effort to comply with the specific statutory requirements listed in Penal

Code section 741(b)(1-6), the Sacramento City Attorney's Office ("CAO") has implemented a two-step redaction process to identify racial information within the documents provided by arresting agencies, to redact that information, and to produce the resulting material for review by the prosecutor performing the initial charging evaluation, and reasonably ensure correct redaction is applied in accordance with the implemented race-blind charging guidelines.

4. Since the implementation of this program on January 1, 2025, the CAPS Division workload has significantly increased because of the additional time and effort required to comply with the procedures mandated under this program.

5. On information and belief, since the implementation of this program on January 1, 2025, and to date, the support staff in the CAPS Division, in accordance with the implemented redaction guidelines, has redacted a total of approximately 571 police reports which equate to a total of 190 hours of labor time.

6. On information and belief, to implement the new redaction and reviewing requirements of PC741 (b) , the following actions were taken by the CAO:

a. Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741 (b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes. Meetings were held on an as-needed basis, at least monthly, through implementation in January 2025.

b. Secretaries drafted a procedures document, showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference if/when needed. (Penal Code Section 741 (b)(1).) Prior to race-blind charging (RBC), there was only one DCA assigned to make criminal filing decisions. Prior to RBC, the average daily time spent making criminal filing decisions by the single DCA was 4 hours per day. Since RBC became required, this time has doubled to 8 hours per day. As such, we have assigned a second DCA to assist in making filing decisions, as making criminal filing decisions is in addition to the multiple other

responsibilities the DCAs have. (Penal Code Section 741(b)(1-6). The total increase in DCA time spent making charging decisions due to RBC has increased to approximately 20 hours per week.

c. Secretaries and DCAs were trained on the new procedures and given a trial/error period that began in December 2024.

7. On information and belief, implementation of PC 741(b)(6) has required regular updates in the form of meetings and emails to gauge the success of the implemented procedures. Continued review of the process ensures the filing DCAs are adequately staffed to keep up with the increased workload.

8. As of May 2025, our Secretaries are training an additional Secretary on the procedures required by PC 741(b)(1-3), including electronically uploading police reports, manually redacting them, sending them to a filing attorney, recording the initial decision, and then documenting the decision from the second review.

9. On information and belief, the additional time spent by Secretarial staff is an average of 38 hours per month. At an average rate of pay of $67.10, this is a monthly cost of $2,549.80 per Secretary, totaling $30,597.60 per Secretary each year. CAO has two Secretaries in this assignment, making the annual Secretarial cost for implementing PC 741(b) requirements $61,195.20.

10. On information and belief, as noted in paragraph 6(b), above, since the implementation of this program on January 1, 2025, and to date, the prosecuting DCAs in the CAPS Division have spent an average of eight (8) hours per day performing the initial and second reviews of the redacted and unredacted police reports to comply with the requirements under this program. (Penal Code Section 741(b)(1-5). This equates to an increase of 4 additional hours per day, or 960 hours annually, of DCA time that is a direct result of PC 741(b) requirements. CAO has one DCA per day making filing decisions. At an average rate of pay of $191.00, this is an increased cost of $183,360.00 incurred by the CAO for DCA time spent implementing the race-blind charging guidelines.

11. On information and belief, the total estimated costs (reflecting actual costs and projections through June 30, 2025) for the CAO in fiscal year 2024-25 resulting from implementation of PC 741(b) requirements, is $122,277.60, for six months of work at the rates described in Paragraphs 9 and 10, above.

12. On information and belief, the total estimated costs for the CAO in fiscal year 2025-26 resulting from implementation of PC 741(b) requirements, is $244,555.20, as described in Paragraphs 9 and 10, above.

13. If not reimbursed by the State, the CAO would be forced to pay for all the costs discussed above from its General Fund, which may result in decreased city services.

14. To the best of my knowledge, the CAO has not received any local, State, or Federal funding and does not have a fee authority to offset the increased direct and indirect costs that the CAO has and will incur to implement the changes mandated by PC 741(b).

15. The City of Sacramento prosecutes criminal disobediences of city codes that includes violations, misdemeanors, and infractions.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2025, in Sacramento, California.

Michael Benner (Jul 1, 2025 12:25 PDT)

Michael J. Benner
Supervising Deputy City Attorney
City of Sacramento

DECLARATION OF MAYOR KEVIN MCCARTY IN SUPPORT OF CITY'S REQUEST FOR REIMBURSEMENT PURSUANT TO THE IMPLEMENTATION OF RACE-BLIND CHARGING PROCEDURES IN ACCORDANCE WITH PENAL CODE SECTION 741, SUBDIVISION (A)

I, Kevin McCarty, declare:

1. I am currently the Mayor of the City of Sacramento in the state of California. I assumed office on December 10, 2024, and my current term ends in 2028.

2. From 2014 to 2024 I served as Sacramento's Assemblymember representing the 6th Assembly District which includes the majority of the City of Sacramento and parts of the unincorporated County.

3. In 2022, I authored Assembly Bill ("A.B.") No. 2778, Statutes 2022, Chapter 806, Section 2, codified as California Penal Code § 741 also known as the "Race Blind Charging" bill, which mandates that the California Department of Justice establish a "Race Blind Charging System" that all prosecutors must implement which is designed to address systemic biases in the criminal justice system and promote a more fair and equitable charging process.

4. Based on personal knowledge, AB 2788 became California law which requires all prosecution agencies to adopt race-blind charging procedures by January 1, 2025.

5. When I authored the bill, I explicitly intended that local government be reimbursed for costs incurred to implement this program and this is consistent with the legislative record of A.B. No. 2778, which precludes the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities based on taxing and spending limitations.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct to the best of my knowledge and recollection.

Executed on June 25, 2025, in Sacramento, California.

Declarant:
Kevin McCarty, Sacramento Mayor

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2778

CHAPTER 806

An act to add Section 741 to the Penal Code, relating to crimes.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, McCarty. Crimes: race-blind charging.

Existing law provides a district attorney the discretion to file criminal charges against an individual. Existing law allows a district attorney to complete necessary investigations into alleged criminal conduct and make the decision of whether to proceed with filing criminal charges. Existing law allows a district attorney to participate in any project or program to improve the administration of justice.

This bill would, beginning on January 1, 2024, require the Department of Justice to develop and publish "Race-Blind Charging" guidelines whereby all prosecuting agencies, as specified, implement a process to review a case for charging based on information, from which all means of identifying the race of the suspect, victim, or witness have been removed or redacted. Following the department's guidelines, the bill would require prosecution agencies to independently develop and execute a process to review and to redact information based on general criteria, including, beginning January 1, 2025, how cases are to be redacted, that the initial charging evaluation is to determine whether the case should be charged or not charged, and that a prosecutor without knowledge of specified facts is required to perform the initial charging evaluation based on redacted information. The bill would require a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint, or allow the case to be submitted to a jury. If the decision to charge or not to charge after a second review is different from the charging determination after the initial charging evaluation, the bill would require documentation of the change in charging determination as well as an explanation for the change to be part of the case record and would require these documents to be disclosed, upon request, after sentencing or dismissal of the charges, unless the documents are privileged or work product. The bill would require a decision not to put a case through a race-blind charging evaluation to be documented. The bill would authorize a prosecuting agency to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation, including homicides, hate crimes, and cases involving public integrity. The bill would make related legislative findings and declarations.

By imposing a higher level of service on local prosecutors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or "unconscious" bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.)

(b) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." (id. 71) In other contexts, such as science, employment, or academia, the "blinding" of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)

(c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done "race blind." The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.

SEC. 2. Section 741 is added to the Penal Code, to read:

741. (a) Beginning January 1, 2024, the Department of Justice shall develop, issue, and publish "Race-Blind Charging" guidelines for a process whereby all prosecution agencies, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted.

(b) Following the department's guidelines, prosecution agencies shall independently develop and execute versions of this redaction and review process with the following general criteria:

(1) Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

(2) The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case.

(3) After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

(4) (A) Each of the following circumstances shall be documented as part of the case record:

(i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.

(ii) The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

(B) The explanation for the charging decision change shall be documented as part of the case record.

(C) The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law.

(5) If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

(6) The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

(c) Each prosecution agency may remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. This list of exclusions and the reasons for exclusion shall be available upon request to the Department of Justice and members of the public. Due to the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision, each of the following crimes may be excluded from a race-blind initial charging evaluation process:

(1) Homicides.

(2) Hate crimes.

(3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.

(4) Domestic violence and sex crimes.

(5) Gang crimes.

(6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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CONCURRENCE IN SENATE AMENDMENTS
AB 2778 (McCarty)
As Amended June 21, 2022
Majority vote

SUMMARY

Requires the Department of Justice (DOJ) to develop a "Race-Blind Charging" guideline for enumerated prosecutorial agencies to follow which, at the initial charging stage, would require redacting documents of certain identifying information related to the race of the suspect, victim, or witness.

Senate Amendments

1) Specify that "Race-Blind Charging" guidelines must redact direct, rather than all, means of identifying the race of a suspect, victim, or witness.

2) State that the prosecution agency shall be the agency to redact the charging documents received from law enforcement agencies.

3) Require the prosecution agency to disclose, upon request, certain documents explaining the reason a specified charging decision was made.

4) Made non-substantive grammatical changes.

COMMENTS

1) Required that, commencing January 1, 2024, the DOJ develop and publish guidelines for a process called "Race-Blind Charging" which must be adhered to by agencies prosecuting misdemeanors or felonies.

2) Required any initial review of a case for charging, be based on documents from which all means of identifying the race of the suspect, victim, or witness has been redacted.

3) Provided that, beginning January 1, 2025, prosecution agencies shall independently develop and execute versions of the process created by the DOJ.

4) Stated that the prosecution agencies' redaction process adhere to the following:

   a) Redacting racially identifying information from criminal histories, reports received from law enforcement agencies, and other pertinent documents. Such redactions may occur manually, by hand, performed by personnel not involved in the charging process. Or such redactions may occur by use of computer programming so long as the method reasonably assures correct redaction;

   b) Applying any such redactions to any part of the police report which would reasonably assure any racial identifying information is sufficiently removed;

   c) Only using a prosecutor without knowledge of the redacted facts to make the initial charging decision;

d) After the initial charging decision is made, i.e. whether at least one crime has been determined to have been committed, then the case may proceed to a second review where the previously redacted information is revealed;

e) At the second review stage, specific charges and enhancements may be considered and charged;

f) Documenting the following:

i) Whether the initial charging decision determined that no charges be filed, but the second review determined a charge be filed;

ii) Whether the initial charging decision determined a charge be filed, but the second review determined no charge be filed; and,

iii) An explanation for the charging decision under these circumstances.

5) Stated that any documentation or explanation for the change between the initial charging evaluation and the second review must be released or disclosed upon request after sentencing or dismissal of all charges filed, subject to applicable laws.

6) Required, in cases where race-blind initial charging did not occur, the prosecution agency to document and retain the reason for such occurrence and to make it available upon request.

7) Provided that the county shall collect the data from the race-blind charging process and make such data available for research purposes.

8) Authorized a prosecuting agency to remove certain offenses or factual circumstances from race-blind charging, including:

a) Homicide;

b) Hate crimes;

c) Physical confrontations captured on video;

d) Domestic violence and sex crimes;

e) Gang crimes;

f) Financial crimes where redacting voluminous documentation is impractical;

g) Offenses involving public integrity such as conflict of interest;

h) Cases directly investigated by the prosecuting agency, or in which the prosecution agency assisted; and,

i) Cases charged by way of grand jury indictment or investigation.

According to the Author
"We've seen it time and time again where a person of color is given a harsher punishment for the same crime a non-person of color commits. Creating a system where a person's race is unknown during the time of initial charging is imperative. It is long past time we start addressing the issue of punishing a person based on the crime and not the color of their skin."

Arguments in Support
According to the Yolo County District Attorney's Office, "In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or 'unconscious' bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman *et ai. Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System* (Dec. 2015) Behavioral Science & Policy, 70.) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." *{id.* 71) In other contexts, such as science, employment, or academia, the 'blinding' of evaluators assists in dispelling concerns of discrimination or bias in decision making, (*id.* 71-72)

"In 2021, our office partnered with the Stanford Computational Policy lab to develop a program to find and redact race data from police reports in order that an initial charging determination could be performed 'race blind.' We became the first office in the state to incorporate this process into our case management system, which uses the same initial (redacted) and secondary (unredacted) processes to charge our cases, with a few exceptions, *e.g.,* hate crimes. While the road to race blind charging had its challenges, we feel we have now "paved the way" and removed operational obstacles for other offices to do the same.

"AB 2778 would help decrease the specter of racial bias in one of its most prominent places in the criminal justice system - the initial charging assessment. By stripping police reports of all race-related data of the suspect, victim, or witness, it reduces the potential for unconscious bias and increases community confidence in the charging process by having the initial charging assessment done 'race-blind.' "

Arguments in Opposition
None submitted.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

1) *DOJ*: The DOJ reports costs of $559,000 in fiscal year (FY) 2022-23, 984,000 in FY 2023-24 and approximately $3 million annually thereafter to the DOJ in additional staff and infrastructure to develop and publish race-blind charging guidelines and implement a process to review cases for charging based on information, from which any means of identifying the race of the suspect, victim or witness have been removed or redacted (General Fund).

2) *Local Reimbursements:* Unknown, potentially reimbursable costs, possibly in the millions of dollars annually additional staff and possible third party IT vendor contracts for county district attorney offices to independently develop and execute a process based on the process created by the DOJ to review and redact certain information about a suspect, witness or

victim information reports before charging anyone (Local Funds, General Fund). Costs may also include additional staff and IT infrastructure to collect data from a race-blind charging process and document why a DA office did not use a race-blind charging process in any case. General Fund costs will depend on whether this bill imposes a state-mandated local program as determined by the Commission on State Mandates.

VOTES:

ASM PUBLIC SAFETY: 7-0-0
YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago, Seyarto

ASM APPROPRIATIONS: 16-0-0
YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ASSEMBLY FLOOR: 72-0-6
YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon
ABS, ABST OR NV: Berman, Mia Bonta, Kiley, Mayes, O'Donnell, Blanca Rubio

SENATE FLOOR: 39-0-1
YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
ABS, ABST OR NV: Grove

UPDATED

VERSION: June 21, 2022

CONSULTANT: Mureed Rasool / PUB. S. / (916) 319-3744 FN: 0004472

CALIFORNIA
DEPARTMENT OF JUSTICE
DIVISION OF CRIMINAL LAW

RACE-BLIND CHARGING GUIDELINES

Penal Code Section 741

JANUARY 1, 2024

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GUIDELINES FOR RACE-BLIND CHARGING PURSUANT TO PENAL CODE SECTION 741

The California Department of Justice is issuing the following Race-Blind Charging Guidelines in accordance with Penal Code section 741, subdivision (a). These Guidelines address the specific statutory requirements listed in Penal Code section 741, as well as provide practical guidance as to how to implement those requirements.[1] Studies have shown that unconscious bias may infect decisions within the criminal justice system, despite the best intentions of the actors involved.[2] These Guidelines are intended to operate in accordance with the spirit, goal, and legislative intent behind Penal Code section 741, which is namely to reduce the potential for unconscious bias to influence the initial charging decision in a case.

I. Redaction of Cases Received from Law Enforcement Agencies and Suspect Criminal History Documentation; General Statement of Purpose and Scope

(a) Redaction Requirement: Effective January 1, 2025, Penal Code section 741, subdivision (b)(1) requires prosecution agencies to redact all case materials received from law enforcement agencies, including police reports and suspect criminal history documentation, to remove direct means of identifying the suspect(s)', victim(s)', and witness(es)' race in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation.

(b) Method of Redaction: The redaction process may occur in a separate version of the documents and may be done mechanically, by hand, by personnel not associated with the charging of the case, or by automation using computer software. The method used for redaction must reasonably ensure correct redaction. The redaction may be applied to the entire report or only to the "narrative" portion of the report, so long as the portion submitted for initial review is sufficient for that review and the unredacted portions are not part of the initial charging evaluation. (§ 741, subd. (b)(1).)

(c) Research supports the notion that implicit bias is most likely to occur in situations where prosecutors are making a high volume of quick decisions.[3] Accordingly, when implementing race-blind charging procedures, prosecution agencies should be especially mindful of these Guidelines when handling these routine cases.

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1 The Department of Justice contemplates these Guidelines applying, at a minimum, to all criminal cases. The language of Penal Code section 741 does not appear to apply to juvenile cases.

2 Assem. Bill No. 2778 (Stats. 2022, ch. 806, § 1), citing Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.

3 See Smith, Robert J., and Justin D. Levinson, The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion (2011) Seattle UL Rev. 35, 795; Singh, Balbir, et al., When Practice Fails to Reduce Racial Bias in the Decision to Shoot: The Case of Cognitive Load (2020) Social Cognition 38.6, 555-570; Kleider-Offutt, Heather M., Amanda M. Clevinger, and Alesha D. Bond, Working Memory and Cognitive Load in the Legal System: Influences on Police Shooting Decisions, Interrogation and Jury Decisions (2016) Journal of Applied Research in Memory and Cognition 5.4, 426-433.

II. Race-Blind Initial Charging Evaluation; Purpose and Scope

(a) (1) Penal Code section 741, subdivision (b) requires a two-step process for charging cases—(1) a "race-blind initial charging evaluation" based only on redacted reports, and then (2) the "ordinary charging evaluation" based on unredacted reports and all available evidence. The initial charging evaluation is intended to perform a gate-keeping and recording function prior to the actual charging process, rather than the more thorough second review to determine individual charges or decide charges with certainty. Accordingly, the initial charging evaluation shall determine only whether a case should be charged or not be charged against a particular defendant and shall not determine individual charges. (§ 741, subd. (b)(2).)

(2) A case "should be charged" for purposes of this section if the reviewing prosecutor determines, based on redacted material, that a charge, of any type, should be alleged in the case. A case "should not be charged" for the purposes of this section if the reviewing prosecutor determines that no charge, of any type, should be alleged in the case.

(3) A "case" for these purposes means the collection of charges as they would appear in a single criminal complaint. Other evidence may be considered as part of this initial charging evaluation, so long as the other evidence does not reveal redacted facts. (§ 741, subd. (b)(2).) The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case. (§ 741, subd. (b)(2).)

(4) The prosecutor performing the initial charging evaluation shall use some means, handwritten or electronic, to record the decision of the initial charging evaluation for each case (i.e., "should be charged" or "should not be charged" or words to that effect).

(b) (1) The initial charging evaluation shall be based solely on redacted information, including redacted reports, criminal histories, and narratives. (§ 741, subd. (b)(2).)

(2) At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency may, at its option, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent "supplemental" reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.

(3) Only the materials used by the prosecution agency to make the initial charging evaluation must be redacted as provided below.

III. Redaction Process for Initial Charging Evaluation

(a) Each prosecution agency must create a redaction process for the materials used for the initial charging evaluation to ensure that the "direct means" of identifying the race of the suspect(s), victim(s), and/or witness(es) have been removed or redacted, as required by Penal Code section 741, subdivision (a). Personnel not associated with evaluating or charging the case shall perform the redaction, either manually or through automation, so long as the method used reasonably ensures correct redaction. (§ 741, subd. (b)(1).)

(b) For purposes of this section, the "direct means" for identifying the race of the suspect(s), victim(s) and witness(es) are (1) the stated race or ethnicity, (2) the first or last name, and (3) the skin color or complexion. In addition, the prosecution agency may redact other information that provides an indirect means for identifying the race of the suspect(s), victim(s), and/or witness(es).

(c) For purposes of this section, "redaction" means that, by way of removal or obliteration, the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation. The charging prosecutor, at the initial charging evaluation stage, should also not be privy to any other evidence that could reveal the race of any suspect, victim or witness including, but not limited to, photographs, recordings, surveillance videos, or cell phone data.

(d) A prosecution agency may use any appropriate means to effectively and efficiently locate the direct means for identifying race within a document, to redact that information, and to produce the resulting material for review by the prosecutor performing the initial charging evaluation. The method used must reasonably ensure correct redaction. (§ 741, subd. (b)(1).) Examples of redaction processes that would satisfy the statute include, but are not limited to the following:

(1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.

(2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

(3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.

(4) The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.

(e) The method of redaction used should reasonably ensure correct redaction. (§ 741, subd. (b)(1).) Where software is used, it should be validated before implementation. The software selected should also have appropriate safeguards to prevent unauthorized access to the sensitive information.

(f) Software appropriate for review and redaction of materials includes, but is not limited to, the following:

(1) Adobe Acrobat Pro DC: Adobe Acrobat Pro DC allows users to redact sensitive information from PDF documents by permanently removing the selected text, images, or metadata. To use this software, the document is opened in Acrobat Pro DC and the user employs the "Redact" tool from the "Protect" tab. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.

(2) Foxit PhantomPDF: Foxit PhantomPDF is a PDF editor that allows users to redact sensitive information from PDF documents. To use this software, the document is opened in Foxit PhantomPDF and then the user employs the "Redaction" tool from the "Protect" tab. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.

(3) PDFsam Basic: PDFsam Basic is a free, open-source PDF editor that allows users to redact sensitive information from PDF documents. To use this software, the document is opened in PDFsam Basic, the user then employs the "Redact" tool. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.

(4) ABBYY FlexiCapture: ABBYY FlexiCapture is a data capture and document processing software that can be used to redact sensitive information from documents. To use this software, the document is uploaded into ABBYY FlexiCapture, the user then employs the "Redaction" tool. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.

(g) When redacting case materials describing multiple suspects, victims or witnesses, multiple names or other descriptors should be replaced with a generic term that allows the reviewing prosecutor to distinguish between multiple suspects, victims, or witnesses. For example, replace "John Doe" with "Person 1," or replace "dark complexion" with "complexion 1."

(1) As a further example, an original version of a narrative would read as follows: "John Smith, who was robbed, identified his attacker as a Black male wearing jeans shorts and a red tank top. Joe Doe, a Black male, was later detained by police wearing jean shorts and a red tank top and Joe Doe is a male with dark complexion and long black hair. Later, John Smith was brought to the scene of Joe Doe's detention and identified Joe Doe as his robber."

(2) The redacted version could read as follows: "[Person 1], who was robbed, identified his attacker as a [race] male wearing jeans shorts and a red tank top. [Person 2] was later detained by police wearing jean shorts and a red tank top and [Person 2] is a male with [complexion 1] and long black hair. Later, [Person 1] was brought to the scene of [Person 2's] detention and identified [Person 2] as his robber."

IV. Use of Artificial Intelligence (AI) Tools for Redaction

(a) Incorporating AI tools for redaction can greatly improve the efficiency and accuracy of the redaction process. However, it is important to ensure that the AI system used is validated before implementation and that appropriate safeguards are in place to prevent unauthorized access to sensitive information.

(b) AI tools can use natural language processing (NLP) algorithms to identify sensitive information in the document. The AI system can be trained on a large set of examples to recognize specific types of information, such as names or complexion, that need to be redacted.

(c) Once the information to be redacted has been identified, the AI system can automatically redact the information by removing it or replacing it with generic terms discussed in these guidelines. The AI system may be trained on a set of examples to know the preferred method of redaction for specific types of information.

(d) The AI system's performance should be monitored to ensure the accuracy of the redaction. In cases where the AI system creates an error, a human reviewer can manually review the document and make any necessary corrections.

V. Second Review for Charging

(a) After completion of the race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence, i.e., whatever available evidence the charging prosecutor deems appropriate in the normal course of charging a case. (§ 741, subd. (b)(3).) During the second review, the prosecutor may consider and charge in a criminal complaint any applicable charges and enhancements, or the case may be submitted to a grand jury. (§ 741, subd. (b)(3).)

(b) The second review is intended to be the ordinary charging process for the prosecution agency without limitation on the information or evidence that a charging prosecutor may consider, the methodologies used, or the timeframe in which this charging consideration is performed.

(c) The prosecutor performing the second review for charging must be the same prosecutor who performed the initial charging review. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review must be performed anew by a different prosecutor, who will then also ultimately perform the second review for charging.

(d) It is expected that the second complete review using all available evidence will sometimes result in prosecutors changing their determination from the initial charging evaluation.

VI. Documentation of Charging Decision

(a) The prosecution agency should document all charging decisions—both the initial charging evaluation and the second, complete review. This includes documenting either of the following circumstances as part of the case record for a case:

(1) The initial charging evaluation determined that the case should not be charged, and the second review determined that a charge, of any type, shall be filed, or

(2) the initial charging evaluation determined that the case should be charged, and the second review determined that no charge, of any type, would be filed (§ 741, subd. (b)(4)(A)(i)-(ii).

(b) The prosecution agency shall also document the explanation for an occurrence of either of the above two circumstances as part of the case record or within the case management system. (§ 741, subd. (b)(4)(B).) The charging prosecutor should specifically explain why the change described in (a)(1) or (a)(2) occurred.

(c) If this explanation is being documented within a case management system or captured using a form, each prosecution agency may develop and utilize any number of predefined explanations (e.g., review of video revealed a legal defense; awaiting additional evidence/ rejected for follow-up; important evidence not collected (e.g., third- party statements); suspect eligible for pre-filing diversion; suspect provided proof of status (e.g., driver's license, program completion); suspect's custody status/existing sentence affected charging decision; suspects probation or parole status affected charging decision; victim's concerns or requests affected charging decision; race redaction made mistake(s) that affected charging decision), so long as an "other" category (with space for explanation) also exists for any explanation not covered by the predefined choices.

(d) The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, must be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Penal Code section 1054.6 or any other applicable law. Responses to such requests shall be governed by the terms of the California Public Records Act (Government Code section 7920, et seq.). (§ 741, subd. (b)(4)(C).)

VII. Inability to Conduct Race-Blind Initial Charging Evaluation

(a) If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability must be documented and retained by the agency. (§ 741, subd. (b)(5).)

(b) If such an explanation is being documented within a case management system, or captured using a form, each prosecution agency may develop any number of predefined explanations (e.g., redaction process failed to account for term revealing race), so long as an "other" category (with space for explanation) also exists for any explanation not covered by the predefined choices.

(c) A list of cases in which the race-blind initial charging evaluation was unable to be performed, and the explanation for why the evaluations were not able to be performed shall be made available to the public upon request. (§ 741, subd. (b)(5).) The information may be redacted to the extent necessary to protect core attorney work product under Penal Code section 1054.6. Responses to such requests shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).

VIII. Collection of Data and Availability for Research Purposes

(a) Each county in which a prosecution agency resides must, on an annual basis, collect the data resulting from the race-blind initial charging evaluation process as described in these guidelines (§ 741, subd. (b)(6)), except as such information is protected by privilege including, but not limited to, that found in Penal Code section 1054.6. Each county must ensure that the data is collected, stored and transmitted in a way appropriate to protect sensitive information.

(b) The collected data must be made available for research purposes to bona fide accredited public or private nonprofit educational institutions, or to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education, for bona fide research purposes.

(c) Responses to requests for research data shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).

(d) Only the raw data generated by the process, rendered anonymous for privacy, shall be provided for research; the underlying materials, reports, or criminal history information are not required to be produced by these Guidelines. The raw data would include crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures.

IX. Exceptions to the Race-Blind Process

(a) Prosecution agencies may exclude the crimes listed at Penal Code section 741, subdivision (c) from the race-blind charging process.

(b) Each prosecution agency may further remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. (§ 741, subd. (c).) "Classes of crimes" refers to subdivisions within particular sections of the Penal Code describing different crimes, e.g., section 368 describes different types of elder abuse, or a generic description that could be subsumed under multiple Penal Code sections, e.g., fraud.

(c) Prosecuting agencies shall keep a list of crimes or classes of crimes that they do not include in race-blind review and the reasons for their exclusion from that review. This list of exclusions and the reasons for exclusion shall be available upon request to the Department of Justice and members of the public. (§ 741, subd. (c).) Requests for this data shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).

X. Glossary of Terms

(a) Race-Blind Initial Charging Evaluation: The first step discussed in Penal Code section 741 for charging a criminal case, in which the case information and suspect criminal history documentation are redacted to remove the direct means for identifying the race of the suspect(s), victim(s) and witness(es) and used to determine whether, as a general matter, the case should be charged. This evaluation is performed by a prosecutor who does not have knowledge of the redacted information.

(b) Redacted: To censor or conceal specific information in a document or record. In the context of the race-blind process for charging a criminal case as required by Penal Code section 741, the redaction is applied to the case information and suspect criminal history documentation in order to perform the race-blind initial charging evaluation. For purposes of race-blind charging, "redaction" does not require the "black box" style for concealing information. Rather, it encompasses any means of removal or obliteration of the direct means for identifying race, such that the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation.

(c) Narrative: A description or account of an event or situation, often in chronological order. In the context of the race-blind process for charging a criminal case required by Penal Code section 741, the narrative refers to the portion of the report that may be redacted for the purpose of the race-blind initial charging evaluation.

(d) Second Review for Charging: The second step in the race-blind process required by Penal Code section 741 for charging a criminal case, in which the case information and suspect criminal history documentation are reviewed using the unredacted information, along with all available evidence. This review mimics the ordinary criminal charging process that pre-existed the race-blind process, and is used to determine the most applicable individual charges and enhancements.

(e) Criminal Complaint: A written accusation or formal charge made by a prosecutor against a person suspected of committing a crime.

(f) Reasonably ensure correct redaction: This refers to the level of confidence that the redaction process will accurately identify and remove sensitive information from the document without causing harm to the rest of the information contained in the document. The redaction process should have a low error rate and should not cause unintended consequences, such as removing information that should not have been redacted or altering the meaning of the document. Methods employed by prosecution agencies to ensure correct redaction may also include the following:

(1) Regularly reviewing a random sample of the redacted documents to ensure that sensitive information has been accurately removed;

(2) Conducting user testing to ensure that the redaction process is user-friendly and easy to use;

(3) Monitoring the redaction process to ensure that there are no unintended consequences, such as removing information that should not have been redacted or altering the meaning of the document;

(4) Keeping a record of the redaction process and documenting any issues or concerns that arise during the process.

(g) Validated: This refers to the process of testing and verifying that the software used for redaction is accurate, reliable, and suitable for the intended purpose. This includes testing the software on a representative set of documents to ensure that it correctly identifies and redacts sensitive information. Methods employed by prosecution agencies to ensure validation of software include the following:

(1) Conducting a thorough evaluation of the software's accuracy, reliability, and suitability for the intended purpose;

(2) Testing the software on a representative set of documents to ensure that it correctly identifies and redacts sensitive information;

(3) Monitoring the software's performance over time to ensure that it remains accurate and reliable;

(4) Keeping a record of the software validation process and documenting any issues or concerns that arise during the process;

(5) Regularly updating the software to ensure that it remains accurate and up- to-date.

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 July 24, 2025, I served the:

- **Current Mailing List dated July 23, 2025**
- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued July 24, 2025**
- **Test Claim filed by the City of Sacramento, County of Santa Clara, and County of Sutter on June 10, 2025**

  Race-Blind Charging, 24-TC-07
  Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023
  City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 July 24, 2025 at Sacramento, California.

Jill Magee
_____
Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/23/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

September 29, 2020

Captain Jeffrey Jordon
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San Diego Police Department
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Ms. Natalie Sidarous
State Controller's Office
Local Government Programs
and Services Division
3301 C Street, Suite 740
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision and Parameters and Guidelines
Racial and Identity Profiling, 18-TC-02
Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46[1]
City of San Diego, Claimant

Dear Captain Jordon and Ms. Sidarous:

On September 25, 2020 the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-captioned matter.

Please keep Decision and Parameters and Guidelines together as one document, as it together constitutes the entire decision of the Commission and the "Decision" portion informs the interpretation of the "Parameters and Guidelines." It is hoped that by providing the entire Decision and Parameters and Guidelines with the claiming instructions that claimants will be better equipped to correctly claim reimbursement, resulting in fewer reductions upon audit and fewer incorrect reduction claims.

Sincerely,

Heather Halsey
Executive Director

[1] Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Government Code Section 12525.5 as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017 Chapter 328 (AB 1518) California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229; as added by Register 2017, No. 46[1] The period of reimbursement begins November 7, 2017.	Case No.: 18-TC-02 *Racial and Identity Profiling* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 25, 2020*) (*Served September 29, 2020*)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on September 25, 2020.

Heather Halsey, Executive Director

[1] Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Government Code Section 12525.5 as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017 Chapter 328 (AB 1518) California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229; as added by Register 2017, No. 46[1] The period of reimbursement begins November 7, 2017.	Case No.: 18-TC-02 *Racial and Identity Profiling* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 25, 2020*) (*Served September 29, 2020*)

DECISION

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 25, 2020. Captain Jeffrey Jordon of the City of San Diego Police Department appeared on behalf of the City of San Diego (claimant). Chris Hill and Brittany Thompson appeared on behalf of the Department of Finance (Finance).

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 the Proposed Decision and Parameters and Guidelines by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Andre Rivera, Representative of the State Treasurer, Vice Chairperson	Yes

[1] Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

Jacqueline Wong-Hernandez, Representative of the State Controller	Yes

I. Summary of the Mandate

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017. Specifically, the Commission found that the mandate was imposed on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all "stops" within their own jurisdiction, conducted by the agency's peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

II. Procedural History

On May 22, 2020, the Commission adopted the Test Claim Decision.[2] On May 22, 2020, Commission staff issued the Draft Expedited Parameters and Guidelines.[3] On June 12, 2020, the claimant filed comments on the Draft Expedited Parameters and Guidelines.[4] On July 6, 2020, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.[5] On July 23, 2020, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines stating that it had no additional comments to offer.[6]

III. Positions of the Parties

A. City of San Diego

The claimant has requested that the Commission add several activities, which it asserts are reasonably necessary to comply with the mandated program. Claimant asserts that it is necessary that local agencies update their policies and procedures to provide a sufficient level of explanation to its peace officers that must perform the functions of Government Code section 12525.5.[7] The claimant also states that updating information technology, specifically adopting and testing software, which allows local agencies to comply with state-mandated activities is reasonable and necessary.[8] To that end, the claimant requests that Section IV. of the Draft

[2] Exhibit A, Test Claim Decision.

[3] Exhibit B, Draft Expedited Parameters and Guidelines.

[4] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

[5] Exhibit D, Draft Proposed Decision and Parameters and Guidelines.

[6] Exhibit E, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

[7] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[8] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

Expedited Parameters and Guidelines be amended to provide for reimbursement of one-time activities to include: update policies and procedures to incorporate the requirements of the test claim statute; train staff (peace officers) assigned to perform the reimbursable activities listed in Section IV. of the Parameters and Guidelines; and install and test the software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops. The claimant also requests that Section IV. of the Draft Expedited Parameters and Guidelines authorize ongoing reimbursement for updated training to meet any new requirements made by the Legislature or the Racial and Identity Profiling Act (RIPA) Board; and update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.[9] Specifically, the claimant requests that the following activities be added to the Parameters and Guidelines:

One-time activities:

a. Update policies and procedures to incorporate the requirements of the Test Claim Statute.

b. Train staff (peace officers) assigned to perform the reimbursable activities listed in section IV of these Parameters and Guidelines (one-time for each employee).

c. Installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

Ongoing activities:

a. As modifications are made to the Test Claim Statute provide for updated training to meet any new requirements made by the legislature or the Racial and Identity Profiling Act Board.

b. Update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.[10]

The claimant has also filed a Declaration of Captain Jeffrey Jordon, San Diego Police Department, to support these requests.[11]

B. Department of Finance

The Department of Finance (Finance) has not filed any comments on the Draft Expedited Parameters and Guidelines.

IV. Discussion

A. Eligible Claimants (Section II. of Parameters and Guidelines)

[9] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[10] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[11] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), pages 3-6.

In the Test Claim Decision, the Commission found that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and Title 11, California Code of Regulations sections 999-224-999.229 (Register 2017, No. 46), constitutes a state-mandated new program or higher level of service, and imposes costs mandated by the state, *only* on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) who perform the requirements of the test claim statute and regulations for stops within their own jurisdictions, and cities and counties that contract for officers from other city or county reporting agencies in order to carry out their basic and essential function of providing police protection services in their jurisdictions.[12] The Commission also found that the test claim statutes did not impose a state-mandated program on K-12 school districts and community college districts; and on cities and counties when they assign their peace offices out to work for other government or private entities based on a contract or memorandum of understanding.[13]

Section II. of the Proposed Parameters and Guidelines therefore states the following:

> Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county's law enforcement agencies that meet the following criteria:
>
> - Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
> - Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.
>
> ***K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.***

B. Period of Reimbursement (Section III. of Parameters and Guidelines)

Government Code section 17557(e) establishes the period of reimbursement for an approved test claim based on when the test claim is filed; "[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." Based on the filing date of June 14, 2019 for this Test Claim, the potential period of reimbursement, pursuant to Government Code section 17557(e), would begin July 1, 2017.[14] However, as indicated in the Commission's Test Claim Decision, the Commission partially approved the claim *only* for the activities mandated by Government Code section 12525.5 and the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§

[12] Exhibit A, Test Claim Decision, pages 4, 53.

[13] Exhibit A, Test Claim Decision, page 9.

[14] Exhibit A, Test Claim Decision, page 25.

999.224 through 999.229, Register 2017, No. 46).[15] These regulations became operative and effective on November 7, 2017.[16] The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted.

Accordingly, Section III. of the Parameters and Guidelines states that the period of reimbursement begins November 7, 2017.[17]

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission's regulations, the Parameters and Guidelines must identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." "Reasonably necessary activities" are defined in the Commission's regulations as follows:

> "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.[18]

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in accordance with Government Code sections 17557(a), 17559, and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

Here, Section IV. of the Parameters and Guidelines lists the activities that the Commission approved as reimbursable state-mandated activities. The claimant has filed comments on the Draft Expedited Parameters and Guidelines identifying additional activities alleged to be reasonably necessary to comply with the mandate. Specifically, the claimant requests reimbursement for the following one-time activities: update policies and procedures to incorporate the requirements of the Test Claim statute; train staff (peace officers) assigned to perform the reimbursable activities listed in section IV. of the Parameters and Guidelines; and

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[15] Exhibit A, Test Claim Decision, page 25.

[16] Exhibit A, Test Claim Decision, page 25.

[17] Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

[18] California Code of Regulations, title 2, section 1183.7(d).

install and test the software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.[19]

The claimant also requests that Section IV. of the Parameters and Guidelines provide reimbursement for the following ongoing activities alleged to be reasonably necessary to comply with the mandate: updated training to meet any new requirements made by the Legislature or RIPA; and update software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.[20] Each of these requests will be discussed in turn.

1. The proposed one-time activity to update policies and procedures is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant requests reimbursement for the one-time activity of updating policies and procedures to incorporate the requirements of the test claim statute.[21] While the claimant's comments focus on costs associated with training and information technology, the comments are silent as to the specific need for updating local agency policies and procedures. Neither Captain Jordon's declaration filed with the comments, nor Captain Jordon's declaration and exhibits filed with the Test Claim demonstrate why updating policies and procedures is reasonably necessary to comply with the mandate. The only reference to this allegedly necessary activity is the claimant's assertion that "in order to comply with the test claim statutes, it is necessary for local agencies that employ peace officers to update their policies and procedures, and provide training related to data collection and reporting."[22] There is no follow-up to this statement in the comments regarding why updating or adopting policies and procedures is necessary, nor does the record contain any specificity regarding costs incurred or the steps taken in regard to updating agency policy and procedure.

For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and section 1183.7 of the Commission's regulations, the claimant must explain and support, with substantial evidence in the record and in accordance with the Commission's regulations, why updating policies and procedures is reasonably necessary to comply with the mandate. Section 1187.5 of the Commission's regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Accordingly, the Commission denies this request.

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[19] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[20] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[21] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[22] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

2. The proposed activity to provide one-time training for each peace officer employee and supervisor assigned to perform the reimbursable activities is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The claimant requests reimbursement to provide one-time training to employees and supervisors assigned to perform the reimbursable activities listed in Section IV. of these Parameters and Guidelines.[23] In support of this request, the claimant contends that the mandate requires law enforcement personnel to learn new definitions, software applications for the collection and submission of data, and extensive rules governing exceptions to data collection during stops.[24] [25]

The Commission finds there is substantial evidence in the record to support the finding that one-time training per employee performing the mandate is reasonably necessary to comply with the mandate. Captain Jordon's declaration, signed under the penalty of perjury, and filed with the Test Claim, declares that it would not be possible for local agencies employing peace officers to collect stop data and report it to the Attorney General without being familiar with how a stop is defined and when it must be reported.[26] Captain Jordon notes that prior to the enactment of Government Code 12525.5, no law enforcement agency in California was mandated to collect and report stop data as is now required.[27] As a result, local law enforcement agencies that employ peace officers must be trained and supervised to perform these activities correctly, and the collection and reporting of this data requires specialized expertise in information technologies.[28] As for supervisory training, Captain Jordon declares that supervisors must be trained to determine if their officers are collecting and submitting the required stop data.[29] Captain Jordon attached training logs to his declaration outlining leadership training in 2018, where peace officer managers were trained on AB 953 and RIPA.[30] And he attached a log showing the peace officer staff who were trained on the RIPA requirements.[31] All sworn members of the San Diego Police Department (SDPD) were required to receive at least 15 minutes of training via an online PowerPoint presentation related to new stop data items to be collected and submitted under Government Code 12525.5(a)(1), while supervisors were required to receive an additional hour of training to ensure officers assigned to them were accurately

[23] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[24] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

[25] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

[26] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

[27] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

[28] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

[29] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 2.

[30] Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 2, 3.

[31] Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 27-97.

collecting and submitting the data pursuant to the alleged mandate.[32] There is no evidence rebutting these declarations.

In addition, the reporting requirements for this program, and the exceptions to reporting, are detailed and specific, and require that the reports be audited and validated pursuant to the Department of Justice (DOJ) specifications. The legislative history of Government Code section 12525.5 and the test claim regulations demonstrate that training costs were anticipated by the Legislature and DOJ. In their Economic and Fiscal Impact Statement, DOJ stated that AB 953 would likely result in increased demand for training professionals and support staff to help law enforcement agencies implement the reporting requirements.[33] Also, the Senate Committee on Appropriations – in its report regarding AB 953 – noted that "Additional costs for training on the process would likely be required."[34]

Accordingly, the Commission finds that the evidence in the record supports the finding that one-time training per employee is reasonably necessary to comply with the mandate. This activity is included in Section IV.A. Reimbursable Activities (One-Time Activities) as follows:

- One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in section IV.B. of these Parameters and Guidelines.

    3. The proposed one-time activity to install and test software to comply with the mandated requirements to collect and report stop data is supported by evidence in the record and is, therefore, reasonably necessary to comply with the mandate.

The test claim regulations require claimants to:

- Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)
- Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)

The claimant contends that the one-time activity to install and test software is necessary to comply with the state-mandated requirements for the collection and reporting of data on all

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[32] Exhibit F, Excerpt from the Test Claim (Exhibit 12, Command Training Logs), pages 27-97; Exhibit F, Excerpt from the Test Claim (Narrative), pages 2, 8.

[33] Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5), page 1.

[34] Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 1.

applicable stops.[35] In support of this, the claimant states that it has incurred costs to obtain, test, process and validate the collected data through hardware and software applications.[36, 37] The claimant noted that its Information Technology costs were relatively minor because the San Diego Sheriff's Department provided a custom data collection application and submission tools free of charge.[38] The application was loaded by Data Systems members on to SDPD's desktop and mobile computers so officers could use the software to submit data.[39] Additional testing was done, however, to make sure the software worked properly and all of these activities were needed to comply with the mandate before going "live" on June 27, 2018.[40] Notably, the Economic and Fiscal Impact Statement for the DOJ regulations indicates that the DOJ was developing a web-based application to provide to the local agencies to assist with submission of data collected pursuant to Government Code section 12525.5.[41]

Accordingly, the Commission finds that the evidence in the record supports the finding that one-time installation and testing of software is reasonably necessary to comply with the mandate. This activity is included in Section IV.A. Reimbursable Activities (One-Time Activities) as follows:

- One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting requirements of data on all applicable stops.

4. The proposed ongoing activity of providing training to meet new requirements imposed by the Legislature or RIPA is not consistent with the law and is therefore denied.

The claimant requests reimbursement for the ongoing activity of providing training to meet any new requirements made by the Legislature or the RIPA Board. This proposed activity is not consistent with the law. In the event the Legislature or DOJ change the law and increase the responsibilities of local government under this program, then new a test claim would have to be filed pursuant to Government Code sections 17551 and 17553. If the Legislature or DOJ repeals

[35] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 2.

[36] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

[37] Exhibit F, Excerpt from the Test Claim (Declaration of Captain Jeffrey Jordon), page 1.

[38] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 4.

[39] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 4.

[40] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines (Declaration of Captain Jeffrey Jordon), page 3.

[41] Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5), page 11.

one of the activities mandated by the state, or otherwise changes the future liability of the State under article XIII B, section 6, then the State can request that the Parameters and Guidelines be amended under Government Code section 17557(d), or the State can file a request to adopt a new test claim decision under Government Code section 17570. Thus, these Parameters and Guidelines cannot account for future changes in law.

And the RIPA Board is not tasked with, nor have they been given authority to revise or amend the requirements under the test claim statute. Rather, the RIPA Board is tasked with reviewing and analyzing reported data, working with law enforcement to review and analyze racial and identity profiling practices and procedures, issuing a report of their findings, and holding at least three annual public meetings.[42]

The Commission therefore denies the request for ongoing training on the basis of future changes in the law.

5. The proposed ongoing activity of updating software, as necessary, to comply with the requirements of collecting and reporting data is not supported by substantial evidence in the record explaining why this activity is reasonably necessary to comply with the mandate.

The claimant has also requested ongoing reimbursement for updating software, as necessary, to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.[43] There is nothing in the record demonstrating that this is a reasonably necessary activity. The claimant has not provided or pointed to any evidence in the record demonstrating that the software used to perform the requirements under the mandate needs updating. Notably, the DOJ Economic and Fiscal Impact Statement does not mention that agencies would likely be subject to ongoing costs related to updating software.[44]

Accordingly, the Commission denies this request.

D. Claim Preparation and Submission (Section V of the Parameters and Guidelines)

Consistent with the approval of one-time training, Section V. of the Parameters and Guidelines (Claim Preparation and Submission) includes the boilerplate language for claiming the costs of training as follows:

5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the

[42] Exhibit F, Excerpt from the Test Claim (Senate Committee on Appropriations, Analysis of AB 953 [2015-2016 Reg. Sess.], August 17, 2015), page 4.

[43] Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[44] Exhibit F, Excerpt from the Test Claim (California Department of Justice, Economic and Fiscal Impact Statement, AB 953 Stop Data Reporting Regulations to Implement Gov. Code Section 12525.5).

reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

V. Conclusion

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

PARAMETERS AND GUIDELINES[45]

Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518)

California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229 as added by Register 2017, No. 46[46]

Racial and Identity Profiling

18-TC-02

Reimbursement for this program begins November 7, 2017.

I. SUMMARY OF THE MANDATE

On May 22, 2020, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Government Code section 12525.5, as added and amended by Statutes 2015, chapter 466 and Statutes 2017, chapter 328, and California Code of Regulations, title 11, sections 999.224- 999.229 (Register 2017, No. 46), constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning November 7, 2017, on city and county law enforcement agencies that employ peace officers (other than probation officers and officers in a custodial setting) to electronically report to the Attorney General, on an annual basis, data on all "stops" within their own jurisdiction, conducted by the agency's peace officers; and on those city and county law enforcement agencies that contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the city or county's law enforcement agencies that meet the following criteria:

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[45] Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

[46] Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

- Employ peace officers (other than probation officers and officers in a custodial setting) to perform the requirements of the test claim statute and regulations for stops within their own jurisdictions; *or*
- Contract for peace officers from other cities or counties in order to carry out their basic and essential function of providing police protection services in their jurisdictions.

K-12 school districts and community college districts are not eligible to claim for this program. Cities and counties may not claim the costs of their peace officer employees that are incurred while they are assigned out to work for other government or private entities based on a contract or memorandum of understanding.

PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on June 14, 2019, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, the regulations adopted by DOJ to implement section 12525.5 (Cal. Code Regs., tit. 11, §§ 999.224 through 999.229, Register 2017, No. 46) became operative and effective on November 7, 2017,[47] establishing the period of reimbursement beginning November 7, 2017.

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

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

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities.

[47] The Legislature, in Government Code section 12525.5(a)(2) and (e), delayed local agency compliance with the program to a date after the regulations were required to be adopted.

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

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

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. <u>One-Time Activities</u>

1. One-time training per peace officer employee and supervisor assigned to perform the reimbursable activities listed in Section IV.B. of these Parameters and Guidelines.
2. One-time installation and testing of software necessary to comply with the state-mandated requirements for the collection and reporting of data on all applicable stops.

B. <u>Ongoing Activities</u>

1. Identification of the peace officers required to report stops, and maintenance of a system to match individual officers to their Officer I.D. number.
    a. On January 1 of each year until the agency begins reporting data to the DOJ, each reporting agency shall count the number of peace officers it employs who are required to report stops to determine the date that agency must start collecting stop data and reporting to the DOJ pursuant to Government Code section 12525.5(a)(1)(2). (Cal. Code Regs, tit. 11, § 999.227(a)(8) [Register 2017, No. 46].)
    b. Reporting agencies shall create the Officer's I.D. Number for each officer required to report stops. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)
    c. Reporting agencies shall maintain a system to match an individual officer required to report stops to his or her Officer's I.D. Number. (Cal. Code Regs, tit. 11, § 999.227(a)(11) [Register 2017, No. 46].)

2. Collection and reporting data on all stops, as defined,[48] conducted by that agency's peace officers for the preceding calendar year in accordance with sections 999.226(a) and 999.227 of the regulations.

   a. Begin collecting and reporting data on all stops on or before the following dates (Gov. Code, § 12525.5(a)(2), Stats. 2017, ch. 328):

      (1) An agency that employs 1,000 or more peace officers shall begin collecting data on or before July 1, 2018, and shall issue its first round of reports on or before April 1, 2019.

      (2) An agency that employs 667 or more but less than 1,000 peace officers shall begin collecting data on or before January 1, 2019, and shall issue its first round of reports on or before April 1, 2020.

      (3) An agency that employs 334 or more but less than 667 peace officers shall begin collecting data on or before January 1, 2021, and shall issue its first round of reports on or before April 1, 2022.

      (4) An agency that employs one or more but less than 334 peace officers shall begin collecting data on or before January 1, 2022, and shall issue its first round of reports on or before April 1, 2023.

   The following are **not** reportable:

   - Data elements described in section 999.226(a) for passengers in vehicles subject to a stop who have not been observed or suspected of violating the law, or who have not been subjected to the officer's actions listed in section 999.226(a)(12)(A), excluding "Vehicle impounded" and "None."[49]
   - Stops made during public safety mass evacuations.[50]
   - Stops during an active shooter incident.[51]

[48] See Government Code section 12525.5(g)(2) (Stats.2015, ch.466) and California Code of Regulations, title 11, section 999.224(a)(14) (Register 2017, No. 46), which define a "stop" as "any detention by a peace officer of a person, or any peace officer interaction with a person in which the peace officer conducts a search, including a consensual search, of the person's body or property in the person's possession or control;" section 999.227(b) and (c) for interactions that are not reportable as "stops;" and section 999.227(d) for peace officer interactions that are reportable only if the officer takes additional specified actions.

[49] California Code of Regulations, title 11, section 999.227(b) (Register 2017, No. 46).

[50] California Code of Regulations, title 11, section 999.227(c)(1) (Register 2017, No. 46).

[51] California Code of Regulations, title 11, section 999.227(c)(2) (Register 2017, No. 46).

- Stops that occur during or as a result of routine security screenings required of all persons to enter a building or special event, including metal detector screenings, including any secondary searches that result from the screening.[52]
- The following interactions are ***not*** reportable unless a person is detained based upon individualized suspicion or personal characteristics, or the officer engages in the actions described in the data values in section 999.226(a)(12)(A)(1)-(22): Interactions during: traffic control of vehicles due to a traffic accident or emergency situation that requires that vehicles are stopped for public safety purposes; any type of crowd control in which pedestrians are made to remain in a location or routed to a different location for public safety purposes; interactions during which persons are detained at a residence so that the officer may check for proof of age for purposes of investigating underage drinking; and checkpoints and roadblocks in which an officer detains a person as the result of a blanket regulatory activity or neutral formula that is not based on individualized suspicion or personal characteristics.[53]
- Interactions that take place with a person in his or her residence who is the subject of a warrant or search condition.[54]
- Interactions that take place with a person in his or her residence who is the subject of home detention or house arrest while an officer is on home detention or house arrest assignment.[55]
- Stops in a custodial setting.[56]
- Stops that occur while the officer is off-duty.[57]

b. The agency's peace officers shall collect the following required categories of stop data, and all applicable "data elements," "data values," and narrative explanatory fields described in section 999.226(a) for every person stopped, and in accordance with section 999.227(a)(4)-(6), (b) and (d) of the regulations, and complete all stop reports for stops made during the officer's shift by the end of the officer's shift, or if exigent circumstances preclude doing so, as soon as practicable: (Gov. Code, §12525.5(b), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, §§999.226(a), 999.227(a)(1)(2)(4)(5)(6)(9), (b) and (d) [Register 2017, No. 46].)

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[52] California Code of Regulations, title 11, section 999.227(c)(3) (Register 2017, No. 46).

[53] California Code of Regulations, title 11, section 999.227(d)(1).

[54] California Code of Regulations, title 11, section 999.227(d)(2) (Register 2017, No. 46).

[55] California Code of Regulations, title 11, section 999.227(d)(3) (Register 2017, No. 46).

[56] California Code of Regulations, title 11, section 999.225(c) (Register 2017, No. 46).

[57] Exhibit A, Test Claim Decision, page 6; Exhibit F, Final Statement of Reasons, Proposed Regulations, Title 11, Sections 999.224-999.229, pages 12-13, https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-fsor-revised-110817.pdf (accessed on November 8, 2019).

(1) "ORI number," which is "the data element that refers to the reporting agency's Originating Agency Identifier, a unique identification code number assigned by the Federal Bureau of Investigation." (Cal Code Regs., tit. 11, § 999. 226(a)(1) [Register 2017, No. 46].)

(2) "Date, Time, and Duration of Stop." (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(2) [Register 2017, No. 46].)

(3) "Location of Stop." (Gov. Code, §12525.5(b)(1), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(3) [Register 2017, No. 46].)

(4) "Perceived Race or Ethnicity of Person Stopped." (Gov. Code, § 12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(4) [Register 2017, No. 46].)

(5) "Perceived Gender of Person Stopped." (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(5) [Register 2017, No. 46].)

(6) "Person Stopped Perceived to be LGBT." (Cal Code Regs., tit. 11, § 999.226(a)(6) [Register 2017, No. 46].)

(7) "Perceived Age of Person Stopped." (Gov. Code, §12525.5(b)(6), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(7) [Register 2017, No. 46].)

(8) "Person Stopped Has Limited or No English Fluency." (Cal Code Regs, tit. 11, § 999.226(a)(8) [Register 2017, No. 46].)

(9) "Perceived or Known Disability of Person Stopped." (Cal Code Regs., tit. 11, § 999.226(a)(9) [Register 2017, No. 46].)

(10) "Reason for Stop." (Gov. Code, §12525.5(b)(2), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(10) [Register 2017, No. 46].)

(11) "Stop Made in Response to a Call for Service." (Cal Code Regs., tit. 11, § 999.226(a)(11) [Register 2017, No. 46].)

(12) "Actions Taken by Officer During Stop." (Gov. Code, §12525.5(b)(7), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(12) [Register 2017, No. 46].)

(13) "Result of Stop." (Gov. Code, §12525.5(b)(3)(4)(5), Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.226(a)(13) [Register 2017, No. 46].)

(14) "Officer's Identification (I.D.) Number." (Cal Code Regs., tit. 11, § 999.226(a)(14) [Register 2017, No. 46].)

(15) "Officer's Years of Experience." (Cal Code Regs., tit. 11, § 999.226(a)(15) [Register 2017, No. 46].)

(16) "Type of Assignment of Officer." (Cal Code Regs., tit. 11, § 999.226(a)(16) [Register 2017, No. 46].)

c. The following additional data values shall be reported for stops (as defined in section 999.227(e)(3) of the regulations) at a K-12 school: the name of the school where the stop took place; indicate if the stop is of a student, whether there is a perceived disability related to hyperactivity or impulsive behavior of the student, the possible conduct warranting discipline under the Education Code, whether there was an admission or written statement obtained from the student, whether the student is suspected of violating school policy, and whether the student was referred to a school administrator or counselor. (Cal Code Regs., tit. 11, § 999.227(e)(3)(4) [Register 2017, No. 46].)

3. Electronic submission of data to DOJ and retention of stop data collected

   a. Submit all required stop data to the system developed by the DOJ in electronic format that complies with the DOJ interface specifications via one of the three approved submission methods: (1) a web-browser based application developed by the DOJ; (2) a system-to-system web service; and (3) a secured file transfer protocol. (Cal Code Regs., tit. 11, § 999.228(a), (b) [Register 2017, No. 46].)

   b. Authorize and remove users to the system as necessary. Automated systems handling stop data and the information derived therein shall be secure from unauthorized access, alteration, deletion or release. (Cal Code Regs., tit. 11, § 999.228(e) [Register 2017, No. 46].)

   c. Each reporting agency, *except* those agencies that report stop data via the DOJ web-browser based application, shall keep a record of its source data for three years and to make it available for inspection by DOJ. (Cal Code Regs., tit. 11, § 999.228(h) [Register 2017, No. 46].)

4. Audits and validation of data collected

   a. Ensure that the technical specifications for data values are consistent with the regulations and follow the data dictionary prepared by DOJ. (Cal Code Regs., tit. 11, § 999.224(a)(5) [Register 2017, No. 46].)

   b. Ensure that all data elements, data values, and narrative explanatory fields conform to the regulations and correct any errors in the data submission process through the DOJ's error resolution process. (Cal Code Regs., tit. 11, § 999.229(b) [Register 2017, No. 46].)

   c. Agencies submitting records via the system-to-system web service or the secure file transfer protocol shall include a unique stop record number for each stop, so that DOJ can use the record number to relay information on errors when necessary. (Cal Code Regs., tit. 11, § 999.229(c) [Register 2017, No. 46].)

5. For stop data collected, ensure that the name, address, social security number, or other unique personally identifiable information of the individual stopped, searched, or subjected to property seizure, and the badge number or other unique identifying information of the peace officer involved, is not transmitted to the Attorney General in an open text field. (Gov. Code, § 12525.5, Stats. 2015, ch. 466; Cal Code Regs., tit. 11, § 999.228(d) [Register 2017, No. 46].)

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

5. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects

broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

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

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

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

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter[58] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 September 29, 2020, I served the:

- **Decision and Parameters and Guidelines adopted September 25, 2020**

  Racial and Identity Profiling, 18-TC-02
  Government Code Section 12525.5, as added and amended by Statutes 2015, Chapter 466 (AB 953); Statutes 2017, Chapter 328 (AB 1518); California Code of Regulations, Title 11, Sections 999.224, 999.225, 999.226, 999.227, 999.228, and 999.229, as added by Register 2017, No. 46[1]
  City of San Diego, 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 September 29, 2020 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
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[1] Note that Register 2016, 50-2 was incorrectly cited in the test claim filing. The correct register is Register 2017, No. 46.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/4/20

Claim Number: 18-TC-02

Matter: Racial and Identity Profiling

Claimant: City of San Diego

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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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS AND GUIDELINES: Welfare and Institutions Code Sections 6250 and 6600 through 6608 Statutes 1995, Chapter 762, Statutes 1995, Chapter 763, Statutes 1996, Chapter 4 Filed on April 7, 2006, by State Controller's Office, Requestor.	No. 05-PGA-43 (CSM 4509) *Sexually Violent Predators* ADOPTION OFAMENDMENT TO PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.2 (Adopted on October 30, 2009)

AMENDMENT TO PARAMETERS AND GUIDELINES

On October 30, 2009, the Commission on State Mandates adopted the attached amendment to parameters and guidelines. The period of reimbursement for the activities in this amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Paula Higashi, Executive Director

Dated: November 3, 2009

Amended: October 30, 2009
Adopted: September 24, 1998

AMENDMENT TO PARAMETERS AND GUIDELINES

Welfare and Institutions Code Sections 6250 and 6600 through 6608

Statutes 1995, Chapter 762
Statutes 1995, Chapter 763
Statutes 1996, Chapter 4

Sexually Violent Predators

05-PGA-43 (CSM-4509)

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

I. Summary and Source of the Mandate

Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996, established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

On June 25, 1998, the Commission adopted a Statement of Decision which approved reimbursement for the following services:

- Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings. (Welf. & Inst. Code, § 6601, subd. (i).)
- Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. (Welf. & Inst. Code, § 6601, subd. (i).)
- Preparation and filing of the petition for commitment by the county's designated counsel. (Welf. & Inst. Code, § 6601, subd. (j).)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. (Welf. & Inst. Code, § 6602.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at trial. (Welf. & Inst. Code, §§ 6603 and 6604.)
- Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6605, subds. (b) through (d), and 6608, subds. (a) through (d).)

- Retention of necessary experts, investigators, and professionals for preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. (Welf. & Inst. Code, §§ 6603 and 6605, subd. (d).)
- Transportation and housing for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. (Welf. & Inst. Code, § 6602.)

Chapters 762 and 763, Statutes of 1995, were enacted on October 11, 1995, and became operative on January 1, 1996. Chapter 4, Statutes of 1996, relating to the transportation and housing of potential sexually violent predators at a secured facility, was enacted as an urgency measure and became operative on January 25, 1996.

II. Eligible Claimants

Counties or cities and counties.

III. Period of Reimbursement

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the County of Los Angeles on May 30, 1996. Therefore, costs incurred for Chapter 762, Statutes of 1995 and Chapter 763, Statutes of 1995, are eligible for reimbursement on or after January 1, 1996. Costs incurred for Chapter 4, Statutes of 1996, regarding transport and secured custody of defendants, are eligible for reimbursement on or after January 25, 1996.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and

declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant, all direct and indirect costs of labor, supplies and services, for the following activities only are eligible for reimbursement:

A. Designation by the County Board of Supervisors of the appropriate District Attorney or County Counsel who will be responsible for the sexually violent predator civil commitment proceedings.

   1. Development of internal policies and procedures (one-time activity).
   2. One-time training for each employee who normally works on the sexually violent predator program on the county's internal policies and procedures.

B. The following reimbursable activities must be specifically identified to a defendant:

   1. Initial review of reports and records by the county's designated counsel to determine if the county concurs with the state's recommendation. Such activity includes the following:

      a. Secretarial and paralegal services to assist the county's designated counsel; and
      b. Copying and making long distance telephone calls.
      c. Investigator services that are necessary to determine the sufficiency of the factual evidence supporting a petition.

   2. Preparation and filing of the petition for commitment by the county's designated counsel. Such activities include secretarial and paralegal services to assist the county's designated counsel in the preparation and filing of the petition for commitment.
   3. Preparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing. Preparation for the probable cause hearing includes the following:

      a. Secretarial, paralegal and investigator services;
      b. Copying and making long distance telephone calls; and
      c. Travel.

   4. Preparation and attendance by the county's designated counsel and indigent defense counsel at pre-trial and trial hearings. Preparation for the pre-trial and trial hearings include the following:

a. Secretarial, paralegal and investigator services;

b. Copying and making long distance telephone calls; and

c. Travel.

5. Preparation and attendance by the county's designated counsel and indigent defense counsel at subsequent hearings regarding the condition of the sexually violent predator. Preparation for the subsequent hearings includes the following:

   a. Secretarial, paralegal and investigator services;

   b. Copying and making long distance telephone calls; and

   c. Travel.

6. Retention of court-approved experts, investigators, and professionals for the indigent defendant in preparation for trial and subsequent hearings regarding the condition of the sexually violent predator. Such activity includes the following:

   a. Copying and long distance telephone calls made by the court-approved expert, investigator and/or professional; and

   b. Travel.

7. Transportation and housing costs for each potential sexually violent predator at a secured facility while the individual awaits trial on the issue of whether he or she is a sexually violent predator. Counties shall be entitled to reimbursement for such transportation and housing costs, regardless of whether the secured facility is a state facility or county facility, except in those circumstances when the State has directly borne the costs of housing and transportation, in which case no reimbursement of such costs shall be permitted.

V. Claim Preparation and Submission

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

   Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personal services include compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

   Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

   Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.

4. Travel

   Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

   The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.

6. Fixed Assets

   List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is reimbursable.

B. Indirect Costs

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. Data for Development of a Statewide Cost Estimate

The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 95814, Facsimile number: (916) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the Legislature's appropriation for this program.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 1405 and 1417.9 as added by Statues 2000, Chapter 821, and amended by Statutes 2001, Chapter 943 Filed on June 29, 2001; By County of Los Angeles, Claimant	No. 00-TC-21, 01-TC-08 *Post Conviction: DNA Court Proceedings* ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12 *(Adopted on May 31, 2007)*

PARAMETERS AND GUIDELINES

On May 31, 2007, the Commission on State Mandates adopted the attached Parameters and Guidelines.

Paula Higashi
PAULA HIGASHI, Executive Director

June 1, 2007
Date

Adopted: May 31, 2007

PARAMETERS AND GUIDELINES

Penal Code Sections 1405 and 1417.9

Statutes 2000, Chapter 821; Statutes 2001, Chapter 943

Post Conviction: DNA Court Proceedings
00-TC-21, 01-TC-08

County of Los Angeles, Claimant

I. SUMMARY OF THE MANDATE

On July 28, 2006, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

- **Representation and investigation by indigent defense counsel**: Effective January 1, 2001, for indigent defense counsel investigation of the DNA-testing and representation of the convicted person (except for drafting and filing the DNA-testing motion) (Pen. Code, § 1405, subd. (c), as added by Stats. 2000, ch. 821).
- **Prepare and file motion for DNA testing & representation by indigent defense counsel**: Effective January 1, 2002, if the person is indigent and has met the statutory requirements, and if counsel was not previously appointed by the court, prepare and file a motion for DNA testing, if appropriate (Pen. Code, § 1405, subds. (a) & (b)(3)(A)). Also, provide notice of the motion to "the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested"(Pen. Code, § 1405, subd. (c)(2)).
- **Prepare and file response to the motion:** Effective January 1, 2001, prepare and file a response to the motion for testing, if any, by the district attorney "within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause" (Pen. Code, § 1405, subd. (c)(2)).
- **Provide prior test lab reports and data:** Effective January 1, 2001, when the evidence was subjected to DNA or other forensic testing previously, for either the prosecution or defense, whichever previously ordered the testing, to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing (Pen. Code, § 1405, subd. (d)).
- **Agree on a DNA lab:** Effective January 1, 2001, for the indigent defense counsel and the district attorney to agree on a DNA-testing laboratory (Pen. Code, § 1405, subd. (g)(2)).

- **Writ review:** Effective January 1, 2001, prepare and file petition, or response to petition, for writ review by indigent defense counsel and the district attorney of the trial court's decision on the DNA-testing motion (Pen. Code, § 1405, subd. (j)).
- **Retain biological material:** Effective January 1, 2001, retain all biological material that is secured in connection with a felony case for the period of time that any person remains incarcerated in connection with that case (Pen. Code, § 1417.9, subd. (a)).

The Commission found that all other statutes in the test claim, including holding a hearing on the DNA-testing motion pursuant to Penal Code section 1405, subdivision (e), as well as appointment of counsel when counsel was previously appointed and disposal of the biological material before the convicted person's release from prison (Pen. Code, § 1417.9, subd. (b)), are not a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for fiscal year 1999-2000. However, the operative date of the test claim statutes, as enacted by Statutes 2000, chapter 821, is January 1, 2001. Additionally, Penal Code section 1405, as amended by Statutes 2001, chapter 943, is operative January 1, 2002. Therefore, costs incurred pursuant to Statutes 2000, chapter 821, are reimbursable on or after January 1, 2001, and costs incurred pursuant to Statutes 2001, chapter 943, are reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or

declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

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

For each eligible claimant, the following activities are reimbursable:

A. Indigent Defense Counsel[1] and/or District Attorney Activities

1. Representation of indigent convicted person and investigation. *Reimbursement period begins January 1, 2001.*

   a. For indigent defense counsel to investigate the DNA-testing and represent the convicted person. (Pen. Code, § 1405, subd. (c), as added by Stats. 2000, ch. 821). The following activities are reimbursable:

      i) Reading letters from convicted persons or those writing on behalf of convicted persons.

      ii) Writing to or responding to initial correspondence from convicted persons and their attorneys seeking information regarding Penal Code section 1405.

      iii) Retrieving and reviewing court files, public defender files, and appellate counsel files.

      iv) Researching legal, technical, and scientific issues.

      v) Interviewing witnesses.

      vi) Subpoenaing records.

      vii) Meeting with clients (convicted persons) in person or on the telephone, as well as written consultation.

2. Prepare and file motion for DNA-testing. *Reimbursement period begins January 1, 2002.*

   a. For counsel to prepare and file a motion for DNA testing, if the person is indigent and has met the statutory requirements, and if counsel was not previously appointed by the court pursuant to Penal Code section 1405 before January 1, 2002. (Pen. Code, § 1405, subds. (a) & (b)(3)(A)).

   b. Provide notice of the motion to "the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested" (Pen. Code, § 1405, subd. (c)(2)).

[1] This category includes the Public Defender, Alternate Public Defender, and court-appointed indigent defense counsel.

3. Prepare and file response to the motion. *Reimbursement period begins January 1, 2001.*

   a. Prepare and file a response to the motion for testing, if any, by the district attorney "within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause" (Pen. Code, § 1405, subd. (c)(2)). The following activities are also reimbursable:

      i) Consulting and meeting about DNA-testing for the convicted person with the trial attorneys, appellate counsel, members of the Alternate Public Defender's Innocence Unit, the Post Conviction Center, the district attorney's office, the Attorney General, or individuals from other Innocence Projects.

      ii) Reviewing the file and trial transcript.

      iii) Interviewing persons who worked on the criminal conviction, such as the trial attorney, investigating officer, or criminalist.

      iv) Performing other investigative activities necessary to respond to the inmate's motion.

4. Provide prior test lab reports and data. *Reimbursement period begins January 1, 2001.*

   a. Provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing when the evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, whichever previously ordered the testing. (Pen. Code, § 1405, subd. (d)).

Time spent by the indigent defense counsel and district attorney at a hearing on the motion for DNA-testing pursuant to Penal Code section 1405, subdivision (e), is not reimbursable.

5. Agree on a DNA lab. *Reimbursement period begins January 1, 2001.*

   a. If the court grants the motion for DNA-testing, for the indigent defense counsel, and the district attorney in non-capital cases, to agree on a DNA-testing laboratory (Pen. Code, § 1405, subd. (g)(2)).

6. Writ review. *Reimbursement period begins January 1, 2001.*

   a. Prepare and file petition for writ of mandate or prohibition to appeal trial court's order on motion for DNA-testing, or respond to petition for writ of mandate or prohibition by indigent defense counsel and the district attorney (Pen. Code, § 1405, subd. (j)). The following activities are also reimbursable:

      i) Appointing counsel,

      ii) Filing motions,

      iii) Litigating motions pursuant to Penal Code section 1405, subdivision (j), and

      iv) Time spent in court.

B. Retention of biological material in a condition suitable for DNA-testing[2]
(Pen. Code, § 1417.9, subd. (a)). *Reimbursement period begins January 1, 2001.*

Retention of biological material that is secured in connection with a felony case, and is introduced into court as an exhibit in the criminal action or proceeding, is reimbursable only after the criminal action or proceeding becomes final pursuant to Penal Code section 1417.1, and for the period of time that any person remains incarcerated in connection with that case.

Retention of biological material that is secured in connection with a felony case, and is not introduced into court as an exhibit in the criminal action or proceeding, is reimbursable only after the criminal action or proceeding becomes final, and for the period of time that any person remains incarcerated in connection with that case.

1. One-Time Activities
    a. Update departmental policies and procedures to retain and preserve biological material in felony cases.
    b. Train evidence and property custodians on storage methods necessary to comply with the requirement to retain biological material secured in connection with a felony case (one-time per employee).
    c. Train investigative personnel, to whom crime lab services are provided, in the methods and procedures necessary to retain biological material (one-time per employee).
    d. Update and test computer software and equipment necessary to identify and retrieve all biological materials associated with a particular case in order to categorize and store evidence items by type of biological material.
2. Ongoing Activities
    a. Write or respond to initial correspondence from convicted persons and their attorneys seeking information regarding Penal Code section 1417.9.
    b. Identify and track biological material that meets the requirements of the subject law to ensure its proper storage and retention.
    c. Respond to requests for biological material held at local agency crime labs which have not been previously examined. This involves a computer and record search for the location or disposition of the biological material sought, manual retrieval of the biological material, and forwarding it to the appropriate party.
    d. Respond to requests for the analysis of evidence held at the local agency crime labs in order to determine if biological material is present and suitable for DNA testing. This involves laboratory testing and analysis and the issuance of a final report.
    e. Meet and confer with parties (attorneys, investigators, etc.) to determine the suitability of DNA testing on the retained biological material in a particular case.

[2] The recommendations published in the *Attorney General's SB 1342 Task Force Report* on implementing the subject *Post Conviction: DNA Court Proceedings* program may be used (see Attachment A).

f. Prepare and track biological material that is sent to agreed upon private vendor DNA laboratories for testing.

g. Respond to requests for biological material held at local agency Property and Evidence Units, including computer and record searches for the location or disposition of the biological material sought, manual retrieval of the biological material, and forwarding it to the appropriate party. This activity includes the costs of going to the agency's storage facility, and with the help of a storage agency representative, either locating lost evidence or locating documentation which demonstrates that the evidence has been destroyed.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee, as specified in Section IV. of this document, under B. **"Retention of biological material in a condition suitable for DNA-testing,"** activities 1.b. and 1.c. Report the name and job classification of each evidence and property custodian and investigative personnel preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

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

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

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

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[3] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, any Office of Criminal Justice Planning grants or other grant funding from a successor agency, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

STATE OF CALIFORNIA
OFFICE *of the* ATTORNEY GENERAL
BILL LOCKYER

On January 1, 2001, a new postconviction testing law was enacted in California. This law, which provides a mechanism for inmates to seek postconviction DNA testing of evidence, creates a new safety check on our criminal justice system that will ensure any wrongly convicted person has the ability to prove his or her innocence through use of newly developed technology. It is the goal of the Postconviction Testing/Evidence Retention Task Force and the California law enforcement community to offer full and fair access to postconviction testing for meritorious claims.

Implementation of postconviction testing procedures raises significant questions regarding evidence retention which law enforcement agencies and the courts will need to address. In order to provide guidance to law enforcement agencies, prosecutors and the courts, on which the core responsibilities for implementation fall, I formed this Task Force. Its charge was to develop consensus about the likely impact of the new law and to provide information, in the form of non-binding recommendations, to assist agencies in complying with its mandates.

The non-binding recommendations compiled in this report address the scope of California's postconviction testing law, its impact on the manner in which evidence is handled and stored, and the length of time for which evidence must be retained. The Task Force's deliberations and final recommendations were informed by current best practices among California law enforcement for evidence handling and storage.

Cooperation between law enforcement, district attorneys, the judiciary, and defense counsel to utilize postconviction testing in appropriate cases will provide Californians with assurance of the fairness our criminal justice system. I believe that the Task Force's report reflects a spirit of cooperation and of commitment to seeing that justice is done in California.

Sincerely,

Bill Lockyer

BILL LOCKYER
Attorney General
State of Caifornia

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Executive Summary

In January 2001, the Attorney General of California called together individuals from law enforcement, district attorneys offices, and judiciary and forensic laboratories to form a Postconviction Testing/Evidence Retention Task Force to address the new **Postconviction DNA Testing Law (SB 1342)** that went into effect January 1, 2001.

Under SB 1342, it is the responsibility of governmental entities, including the courts, in felony conviction cases to retain evidence after conviction in a manner suitable for DNA testing.

The Task Force's charge was to provide information on compliance with the law's mandate regarding biological evidence. (The Task Force did not address the legal issues raised by motions for postconviction testing under the new law.)

It has always been the responsibility of entities having custody of evidence, including courts and district attorneys offices, to adhere to good practices for storage of evidence that will:

- Maintain the potential value of the evidence for re-testing;
- Maintain a proper chain of custody; and,
- Ensure the safety of employees and the public.

Task force recommendations are not binding; they are intended to increase awareness among California law enforcement agencies regarding the postconviction law and to offer guidance for complying with its mandates.

RETENTION OF BIOLOGICAL EVIDENCE

Agencies should retain all items that have a **"reasonable likelihood"** of containing biological evidence. The determination of whether evidence is reasonably likely to contain biological material should be made by or in consultation with an official who has the experience and background sufficient to make such a determination. **If there is any reasonable question, the item should be retained.** The case investigator or prosecutor should be contacted if possible.

STORAGE AND HANDLING OF BIOLOGICAL EVIDENCE AT TRIAL

Courts should attempt to obtain a stipulation from the parties that biological material need not be brought into court and that secondary evidence (photographs, computer images, video tape, etc.) may be used. Courts are urged to discourage the opening of any package containing biological material.

If a court cannot retain evidence on a long-term basis, court personnel should contact the appropriate agency (prosecutor, law enforcement agency or laboratory) for assistance with long-term storage. In such circumstances, the court should document the location of any evidence that is not retained by the court. The court should attempt to obtain a stipulation from the parties that all biological evidence will be retained for storage by the appropriate agency following trial.

In order to maintain the possibility of successful DNA testing with techniques currently in use, evidence containing biological material:

- Should be stored in a dried condition.
- Should be stored frozen, under cold/dry conditions, or in a controlled room temperature environment with little fluctuation in either temperature or humidity.
- Should **not** be subjected to repeated thawing or freezing.

DISPOSAL OF BIOLOGICAL EVIDENCE

In all felony cases, evidence containing biological material **must** be retained until:

1. Notice of disposal is given to all appropriate parties and **no response** is received within 90 days of the notice being sent;

   OR

2. After the inmate is no longer incarcerated in connection with the case.

Even if one of the conditions above is met, it is recommended that the retaining agency contact the investigating officers to see if they have any objections to disposing of evidence.

Summary of Senate Bill 1342

Senate Bill 1342 was passed by the Legislature and signed by Governor Gray Davis on September 28, 2000. As chaptered, the bill added to the Penal Code sections 1405 and 1417.9 and deleted section 1417.

WHO IS ELIGIBLE TO MAKE A MOTION

The statute grants to a defendant who was convicted of a felony and currently serving a term of imprisonment, the right to make a written motion before the court which entered the conviction for the performance of forensic DNA testing.

THE MOTION

The motion must include an explanation of why:

- The applicant's identity was or should have been a significant issue in the case;
- How the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable if the DNA testing had been available at the trial resulting in the judgment of conviction; and,
- A reasonable attempt to identify the evidence to be tested and the type of DNA testing sought.

The motion also must include the results of any previous DNA tests. The court, if necessary, must order the party in possession of those results to provide access to the reports, data and notes prepared in connection with the previous DNA tests to all parties.

CRITERIA FOR GRANTING THE MOTION FOR POSTCONVICTION DNA TESTING

The law directs the court to grant the motion for DNA testing if **all** of the following has been established:

1. The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion;
2. The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect;
3. The identity of the defendant was or should have been a significant issue in the case;
4. The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator or accomplice to the crime or enhancement which resulted in the conviction or sentence;
5. The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the defendant's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at the trial;
6. The evidence sought to be tested either was not tested previously, or was tested previously but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results;
7. The testing requested employs a method generally accepted within the scientific community; and,
8. The motion is not made solely for the purpose of delay.

Any order granting or denying a motion for DNA testing shall not be appealable, and shall be reviewable only through petition for writ of mandate or prohibition as specified.

LENGTH OF TIME FOR WHICH EVIDENCE MUST BE RETAINED

The statute requires the appropriate governmental entity to retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with the case.

The statutes allows a governmental entity to destroy biological materials while an inmate is incarcerated in connection with the case if the following conditions are met:

1. The governmental entity notifies the person who remains incarcerated in connection with the case, any counsel of record, the public defender and the district attorney in the county of conviction, and the Attorney General of its intention to dispose of the material; and,
2. The entity does not receive a response within 90 days of the notice in one of the following forms:
    a. A motion requesting that DNA testing be performed, which allows that the material sought to be tested only be retained until such time as the court issues a final order;
    b. A request under penalty of perjury that the material not be destroyed because a motion for DNA testing will be filed within 180 days, and a motion is in fact filed within that time period; or,
    c. A declaration of innocence under penalty of perjury filed with the court within 180 days of the judgment of conviction or before July 1, 2001, whichever is later, however the court shall permit the destruction of the evidence upon a showing that the declaration is false or that there is no issue of identity which would be affected by future testing.

This provision sunsets on January 1, 2003 and is repealed as of that date unless a later enacted statute extends or deletes this provision.

MANNER IN WHICH EVIDENCE MUST BE RETAINED

The statute provides that the governmental entity has the discretion to determine how evidence containing biological material is retained, as long as it is retained in a condition suitable for DNA testing. *(See Handling and Storage of Evidence at Trial, page 6.)*

Retention of Biological Evidence

Penal Code section 1417.9 mandates the "appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case." This section addresses the legal parameters of the retention requirement and the types of evidence that may be considered "biological material secured in connection with a criminal case."

The statute should be read as part of the framework formulated by SB 1342, related to postconviction DNA testing, and not as rewriting law enforcement's duty to keep evidence it would not have retained as a matter of competent and reasonable law enforcement practice. Accordingly, agencies should not be required to retain material without apparent evidentiary value, or material that is clearly collateral to any question of identity[1].

Nor should the statute be read to require an unreasonable level of conjecture and speculation about what evidence may or may not constitute biological material. A literal reading of section 1417.9 would require the appropriate governmental entity to retain any item of evidence that is or was the product of a living organism, tissue, or toxin, regardless of its application to a case, would compel coroners to refuse burial of bodies, and would remove all government discretion to test a sample in a manner that could consume it – clearly at odds with prevailing law. In accordance with established rules for statutory interpretation, the statute should be read to avoid such absurd and unintended consequences.[2]

LIMITATIONS OF DUTY TO RETAIN EVIDENCE

1. The statute does not expand law enforcement's obligations regarding the collection of evidence nor does it impose any affirmative duty on forensic laboratories to determine prior to trial what items actually contain biological evidence.[3]
2. The statute does not alter existing laws requiring burial and disposal of bodies, or affirmatively require coroners to retain human remains in contravention of present practices.

COMMENTS

Penal Code section 1417.9 ensures that law enforcement keep for a longer time all known biological material with apparent potential significance on an issue of identity. Our recommendation to retain a broader category of evidence is based upon the availability of trained personnel to evaluate evidence and possible questions regarding statutory interpretation. If the burden of retaining the evidence proves unworkable, we will inform the Legislature of this fact when the Legislature considers extension of the evidence retention provision in 2002.[4]

Types of Evidence that Should be Retained

Although the statute mandates only that law enforcement keep all known biological material, we recommend that agencies retain all items that have a **reasonable likelihood** of containing biological evidence. Courts have treated **reasonable likelihood** to mean more than a "possibility" or "speculation."[5]

Any official making the decision to discard evidence should have experience and background sufficient to make the decision, regarding the likelihood the item contains biological evidence, or should consult with a person having such qualifications. **If there is any reasonable question, the item should be retained.** The case investigator or prosecutor should be contacted if possible.

An item should be retained if any of the following apply:

1. The item was clearly documented as having been collected for biological testing, and it is one which forensic science has demonstrated can be tested for DNA.[6]

   Examples of evidentiary substrates where biological material has been found include:

   - ☐ **Clothing and footwear**
   - ☐ **Sexual assault evidence kits**
   - ☐ **Bedding**
   - ☐ **Carpeting and furniture**
   - ☐ **Walls, floors, and ceilings**
   - ☐ **Cigarette butts, envelope flaps, stamps, and chewing gum**
   - ☐ **Beverage and drinking containers**
   - ☐ **Weapons (knife, axe, ball, bat, etc.)**
   - ☐ **Bullets**
   - ☐ **Personal effects of victim or suspect (hats, eyeglasses, toothbrushes, etc.)**
   - ☐ **Any evidence known to have been handled by the suspect or victim**

2. The evidence is part of a kit specifically collected for the purpose of securing biological material, e.g. rape kits, blood alcohol samples.

3. There is affirmative evidence the item contains biological material that can be used to trace identity. Affirmative evidence of biological material means:

   a. The item is one traditionally considered to be biological evidence. DNA has been successfully isolated and analyzed from:

      - ☐ **Blood**
      - ☐ **Semen**
      - ☐ **Tissues**
      - ☐ **Bones, teeth and body organs**
      - ☐ **Hair**
      - ☐ **Saliva**
      - ☐ **Sweat**
      - ☐ **Urine and feces**
      - ☐ **Fingernail scrapings**
      - ☐ **Vaginal secretion**

      Thus, items such as the victim's stained underwear or T-shirt should not be discarded.[7]

   b. The item already has been subject to a presumptive test showing biological material exists.

4. For other reasons, the item has a reasonable likelihood of containing biological evidence as determined by an official with experience and background sufficient to make the decision, or in consultation with a person having such qualifications. If there is any reasonable question, the item should be retained. The case investigator or prosecutor should be contacted, if possible.

Storage of Biological Evidence

THE CRIME laboratory's ability to successfully perform DNA testing on biological evidence recovered from a crime scene, victim or suspect depends on:

- The quantity and quality of the sample
- The time and environmental conditions between deposit and collection of the evidence
- The types of specimens collected
- How evidence is stored

The first three factors depend largely on the circumstances of the specific crime and the collection techniques used. They are not addressed in this report. However, one must be mindful these factors will continue to influence the suitability of biological evidence for testing.

The following recommendations address the final factor, storage of evidence. Evidence suitable for DNA testing that is not properly stored, may be subject to decomposition, deterioration, and/or contamination. Proper storage can minimize decomposition, deterioration and the risk of contamination.

However, regardless of the method chosen to store biological evidence, there will be some degree of sample degradation over time.

In addition, the manner in which evidence was stored in the past also may affect its suitability for DNA testing. Evidence predating the statutory mandate and possibly containing biological material suitable for DNA testing may have been stored under conditions with little control over storage environment or the prevention of contamination. In such cases, the biological material may already have deteriorated, decomposed or been contaminated to the extent that it is no longer suitable for DNA testing.

The following recommendations were developed for the use of all agencies that store evidence to improve the likelihood that evidence containing biological material will be suitable for future DNA testing. The recommendations are divided into two sections: the first addresses short-term storage and handling at trial, and the second addresses long-term storage after the defendant is convicted.

RECOMMENDATIONS

Handling and Storage of Evidence at Trial

Optimal storage of evidence containing biological material may not be realistic or possible during trial. The following recommendations are designed to reduce the potential for decomposition and contamination of biological material during trial.

Courts should limit use of biological material at trial.

Courts should attempt to obtain a stipulation from the parties that biological material need not be brought into court and that secondary evidence (photographs, computer images, video tape, etc.) may be used. Courts are urged to discourage the opening of any package containing biological material.

Courts unable to retain evidence in proper manner should contact the appropriate agency for long-term storage.

If a court cannot properly retain evidence on a long-term basis, court personnel should contact the appropriate agency (prosecutor, law enforcement agency or laboratory) for assistance with long-term storage. In such circumstances, the court should document the location of any evidence that is not retained by the court. The court should attempt to obtain a stipulation from the parties that all biological evidence will be retained for storage by the appropriate agency following trial.

Long-Term Storage of Biological Evidence

Storage conditions

In order to maintain the possibility of successful DNA typing with techniques currently in use, evidence containing biological material:

- Should be stored in a dried condition (or remain dry)
- Should be stored frozen, under cold/dry conditions, or in a controlled room temperature environment with little fluctuation in either temperature or humidity
- Should not be subjected to repeated thawing and refreezing

Dry evidence

Wet or moist evidence containing biological materials should be removed from direct sunlight, air dried, and stored frozen, under cold/dry conditions, or in a controlled room temperature environment as soon as practicable after collection. Elevated temperatures (e.g., hair dryer) should not be used to expedite the drying of wet or moist evidence. Room temperature conditions are satisfactory for drying evidence. Spreading the evidence items out and exposing them to room air can quicken the drying process of folded or bulky items. Care should be exercised to prevent transfer or loss of biological material or trace evidence during the drying process.

Area for drying evidence

The area used to air dry wet or moist evidence items containing biological materials should be clean so as to:

- Prevent cross-contamination between any two or more items in a case e.g., evidence of suspect separated from evidence of victim
- Minimize opportunities for contamination from external sources

Packaging evidence

Paper (e.g., clean butcher paper or paper bags) should be used to package evidence items containing biological materials. Plastic is not recommended for packaging or storing moist or wet evidence items due to the acceleration of the decomposition of biological materials on the evidence items.

Liquid samples

Liquid samples, including liquid blood, collected in glass containers (e.g., blood collection tubes) should not be frozen. Freezing may cause the glass container to break. Liquid blood can be refrigerated for a short period of time. For long-term storage of liquid samples, the samples:

- Can be transferred onto clean cloth or filter paper
- Dried at room temperature
- Should be stored frozen, under cold/dry conditions, or in a controlled room temperature environment with little fluctuation in either temperature or humidity

Extracted DNA samples	Extracted or amplified DNA samples or any reusable products of the typing process (e.g., sample substrate such as extracted cloth, slides prepared during differential extraction) should be stored under frozen conditions. If the original source of DNA or the extracted DNA from the original source is available, then the amplified product does not have to be retained.
Other issues regarding storage	The use of chemical preservatives, vacuum packaging, or the use of unusual containers or packaging materials to preserve evidence containing biological materials for storage should be discussed with crime laboratory personnel.
Chain of custody record	A complete chain of custody record should exist and be maintained for all evidence that is or will be retained for possible future testing.
Limit, control and document access to evidence	Evidence should be stored in a locked storage area when left unattended. Access to the locked storage area should be limited and controlled. To minimize the handling of evidence with biological material, the designated custodian should control access to evidence. If such evidence is handled, the custodian should ensure that proper protective measures are followed to ensure handler safety and the integrity of the evidence. Other than in open court, direct access to evidence such as viewing, handling, and transfer of custody, should be documented.
Identify and label evidence known to contain biological material.	Evidence known to contain biological material should be identified as such with a prominent label affixed by the person who identifies it as containing biological material.
Retain evidence in original packaging	As a general principle, evidence should be retained in its original packaging. Evidence packaged in paper upon receipt may be removed temporarily from paper and placed in plastic for viewing at trial or for other purposes, but it should be returned to paper for long-term storage to prevent degradation of the biological material. Items packaged together upon receipt should be kept together; items packaged separately upon receipt should not be commingled.
Store evidence under seal	To the extent reasonably possible, evidence should be stored under seal (seal with tape, marked with the identity of person affixing the seal). If a package is opened for inspection, it should be resealed before returning for storage.
Wear protective gear	Persons handling evidence containing biological material should take appropriate precautions to prevent cross-contamination and to protect themselves and others from biohazards. They should wear clean gloves and other appropriate personal protective gear, as needed.

EXPERIENCE WITH STORAGE HAS SHOWN:

- Evidence containing biological material suitable for DNA testing is best stored in a dried condition.
- Storage of evidence containing biological material in a wet or moist condition may result in the degradation or loss of DNA evidence.
- Colder temperatures retard degradation better than warmer temperatures.
- When evidence containing biological material is in a dried condition and stored at room temperature, the biological material should still be typeable at one year and may be typeable much longer than one year.
- DNA typing techniques currently in use are extremely sensitive and will work on partially degraded samples.

Regardless of the method chosen to store biological evidence, there will be some degree of sample degradation.

RESULTS OF LABORATORY STUDIES

Controlled laboratory studies have shown that:

- When evidence containing biological materials is stored in a dried condition at room temperature, the biological material should still be typeable at one year or longer.
- Evidence that originally contained a minimal amount of biological material may not be typeable due to the amount of DNA rather than due to any degradation that occurs as a result of storage at room temperature.

References

- *American Society of Crime Laboratory Directors (2001)* "Laboratory Accreditation Board 2001 Manual." ASCLD/LAB. 139 J. Technology Drive, Garner, NC 27529.
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- Lee, H. Gaensslen, R.E. Bigbee, P.D. Kearney, J.J. (1991) *Guidelines for the Collection and Preservation of DNA Evidence*, J. Forensic Ident. 344/41 (5).
- Kline, M. Redman, J. Duewer, D. *Examination of DNA Stability on Different Storage Media*, Chemical Science and Technology Laboratory National Institute of Standards and Technology.
- Wallin, J.M. Buoncristiani, M.R. Lazaruk, K.D. Fildes, N. Holt, C.L. Walsh, P.S. (1999) *TWGDAM Validation of the AmpFLSTR Blue PCR Amplification Kit for Forensic Casework Analysis*, J. Forensic Sci 43(4): 854-870.

GLOSSARY OF TERMS

Cold/dry storage conditions	Cold/dry storage conditions refer to storage of evidence at a temperature at or below 7°C (45°F) and humidity not exceeding 25% relative humidity.
Controlled environment	Controlled environment refers to a storage environment that employs environmental controls (heating and air conditioning) that limit fluctuations in temperature and humidity.
Decompose	Decompose is defined as decay, break up or separate into component parts.
Degradation	Degradation is defined as the transition from a higher to a lower level of quality.
Deteriorate	Deteriorate is defined as to make or become worse; lower in quality or value.
Dried condition	Dried condition refers to having no moisture: not wet, not damp or moist.
Frozen	Frozen refers to storing by freezing. Laboratory freezer storage temperatures are at or below –10°C (14°F).
Room temperature and humidity	Room temperature typically refers to a range of temperatures between 15.5°C (60°F) and 24°C (75°F). Humidity in the storage areas should not exceed 60% relative humidity.
Terminology	The verbs "shall," "must" and "will" indicate mandatory requirements; "should" is used to denote recommended practices; "may" is used in the permissive sense.

Disposal of Biological Evidence

In all felony cases, evidence containing biological material must be retained until:

1. **Notice is given to all appropriate parties and no response is received within 90 days of the notice being sent;** *(See Appendix A: Sample Notification Form, page 13.)*

   OR

2. **After the inmate is no longer incarcerated in connection with the case.**

Even if one of the conditions above is met, we suggest that the retaining agency contact the investigating officers to see if they have any objections to disposing of evidence.

RECOMMENDATIONS

Before an inmate is released

NOTIFICATION

The retaining agency may dispose of biological material **before** the prisoner is released from custody if the entity sends proper notice to all parties and **does not receive a response within 90 days** (Penal Code section 1417.9(b) *See Appendix A: Notification of Disposal (Sample Form) page 13.*

Parties that must be notified:

1. The inmate;
2. The counsel of record for the inmate (this includes counsel who represented the inmate in superior court and any counsel who represented the inmate on appeal);
3. The public defender in the county of conviction;
4. The district attorney in the county of conviction; and,
5. The Attorney General Investigating officers are not included as parties to be notified. However, retaining agencies also may want to contact the investigating officers to determine if they have objections to disposing of evidence.

Response to notification: The retaining agency may dispose of evidence in the case 90 days after sending notification to proper entities **unless** the retaining agency receives any of the following:

- A motion for postconviction DNA testing, filed pursuant to Penal Code section 1405; however, upon filing of that application, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.
- A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing that is followed within 180 days by a motion for DNA testing. The convicted person may request an extension of the 180-day period in which to file a motion for DNA testing, and the agency retaining the biological material has the discretion to grant or deny the request.
- A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing.

After an inmate is released

Agencies that retain evidence can in many cases dispose of biological material once the inmate is no longer incarcerated. However, many agencies do not receive regular notification of inmate release. This may present challenges for retaining agencies that may be unaware that the inmate has been released and that the evidence can be discarded.

There are two potential means by which a retaining agency can determine whether an inmate has been released:

1. **Contact the California Department of Corrections.**

   To find information on whether a particular inmate has been released from prison, an agency may call the Department of Corrections ID/Warrants Unit at (916) 445-6713 and provide the inmate's name and DOB, or CDC number, if available. The retaining agency can call the investigating agency to determine the inmate's name and DOB.

   Note: The ID/Warrants Unit does not provide this information in writing.

2. **Notification of release of certain felons**

   Specified agencies are notified of impending release of certain inmates. Penal Code section 3058.6 requires the Department of Corrections or Board of Prison Terms to notify the chief of police, sheriff, or both, and the district attorney of the county where a prisoner was convicted of a violent felony, 45 days before the prisoner is released. Section 3058.61 provides similar notification prior to the release of convicted stalkers.

   Agencies that receive Penal Code section 3058 et seq. release notices should forward them to the appropriate personnel (property room managers, etc.) including investigating officers. The retaining agency should place a follow-up call to the ID/Warrants Unit to ensure the felon was actually released before disposing of any biological material retained in connection with the case.

For all other felons, the retaining agencies can receive release notification under Penal Code section 3058.5, which provides that the Department of Corrections release information to police agencies, within 10 days upon request, of all parolees who are or may be released in their city or county.

Appendix A – Notification of Disposal (Sample Form)

[Addressee: e.g., Inmate, Counsel] _____

[Address:] _____

[City, State, Zip Code:] _____

Penal Code Section 1417.9 Notification

[Date:] _____

[Case Name:] _____

[Superior Court Number:] _____

[Court Of Appeal Number:] _____

[Notifying Agency and Address:] _____

PLEASE TAKE NOTICE that in accordance with Penal Code section 1417.9, subdivisions (a) and (b), any biological material secured in connection with the above-entitled case will be disposed of within 90 days of **[insert date notification sent:_____]**, the date this notification was sent, unless this notifying agency receives any of the following:

I. A motion filed pursuant to Penal Code section 1405, however, upon filing of that application, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

II. A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Penal Code section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Penal Code section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

III. A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under Penal Code section 1417.9 or on an application by or on behalf of the convicted person filed pursuant to Penal Code section 1405.

Senate Bill No. 1342

CHAPTER 821

An act to add Section 1405 to, and to add and repeal Section 1417 of, the Penal Code, relating to forensic testing.

[Approved by Governor September 28, 2000. Filed with Secretary of State September 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, Burton. Forensic testing: post conviction.

Existing law authorizes the defendant in a criminal case to file a motion for a new trial upon specified grounds including, but not limited to, the discovery of new evidence that is material to the defendant, and which could not, with reasonable diligence, have been discovered and produced at the trial.

This bill would grant to a defendant who was convicted of a felony and currently serving a term of imprisonment, the right to make a written motion under specified conditions for the performance of forensic DNA testing. The bill would require that the motion include an explanation of why the applicant's identity was or should have been a significant issue in the case, how the requested DNA testing would raise a reasonable probability that the verdict or sentence would have been more favorable if the DNA testing had been available at the trial resulting in the judgment of conviction, and a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought. The motion would also have to include the results of any previous DNA tests and the court would be required to order the party in possession of those results to provide access to the reports, data and notes prepared in connection with the DNA tests to all parties. The bill would also provide that the cost of DNA testing ordered under this act would be borne by either the state or by the applicant if, in the interests of justice the applicant is not indigent and possesses the ability to pay.

The bill would also require, except as otherwise specified, the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. These provisions would remain in effect until January 1, 2003. By increasing the duties of local officials this bill would impose a state-mandated local program.

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

SECTION 1. Section 1405 is added to the Penal Code, to read:

1405.(a) A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing.

(1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:

(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

(2) Notice of the motion shall be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted.

(3) If any DNA or other biological evidence testing was conducted previously by either the prosecution or defense, the results of that testing shall be revealed in the motion for testing, if known. If evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, the court shall order the prosecution or defense to

provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA testing.

(b) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(c) The court shall appoint counsel for the convicted person who brings a motion under this section if that person is indigent.

(d) The court shall grant the motion for DNA testing if it determines all of the following have been established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing that is requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.

(6) The evidence sought to be tested meets either of the following conditions:

(A) It was not tested previously.

(B) It was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(e) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. The testing shall be conducted by a laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

(f) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(g) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the district attorney or Attorney General shall not be borne by the convicted person.

(2) In order to pay the state's share of any testing costs, the laboratory designated in subdivision (e) shall present its bill for services to the superior court for approval and payment. It is the intent of the Legislature to appropriate funds for this purpose in the 2000-01 Budget Act.

(h) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. Any such petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeals. In a capital case, the petition shall be filed in the California Supreme Court. The court of appeals or California Supreme Court shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.

(i) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA

testing, a DNA laboratory shall be required to give priority to the DNA testing ordered pursuant to this section over the laboratory's other pending casework.

(j) DNA profile information from biological samples taken from a convicted person pursuant to a motion for postconviction DNA testing is exempt from any law requiring disclosure of information to the public.

(k) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Section 1417.9 is added to the Penal Code, to read:

1417.9. (a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing.

(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2 The notifying entity does not receive, within 90 days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 1405, however, upon filing of that application, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July 1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.

(3) No other provision of law requires that biological evidence be preserved or retained.

(c) This section shall remain in effect only until January 1, 2003, and on that date is repealed unless a later enacted statute that is enacted before January 1, 2003, deletes or extends that date.

Appendix C – SB 1342 Task Force Members

CALIFORNIA ATTORNEY GENERAL'S OFFICE

SACRAMENTO OFFICE

Jan Bashinski
Ward Campbell
Dave Druliner
Janet Gaard
Chris Janzen
Les Kleinberg
Bret Morgan
Peter Siggins

SAN FRANCISCO OFFICE

Enid Camps
Joan Killeen
Ann Patterson

BERKELEY OFFICE

Lance Gima
Gary Sims

LOS ANGELES OFFICE

Mary Sanchez

SAN DIEGO OFFICE

Rick Millar

CALIFORNIA ASSN. OF PROPERTY AND EVIDENCE

Maryann Duncan
Concord Police Department

Mr. Ash Kozuma, Property Manager
Sacramento Police Deptartment

Barbara Peters
Simi Valley Police Department

CALIFORNIA ASSN. OF CRIME LAB DIRECTORS

Bob Jarzen, President
Laboratory of Forensic Services

William Lewellen, Secretary
San Mateo County Sheriff's Office, Forensic Laboratory

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

Woody Clarke, Deputy District Attorney
San Diego County District Attorney's Office

Rock Harmon
Alameda County District Attorney

Larry Brown, Executive Director
California District Attorneys Association

CALIFORNIA STATE CORONER'S ASSOCIATION

Captain Tim Buckhout
Alameda County Sheriff's Department

CALIFORNIA POLICE CHIEFS ASSOCIATION

Sergeant Mike Noonan
Alameda Police Department

Larry Valiska
Alameda Police Department

Chief Burnham (Burny) Matthews
Alameda Police Department

John Lovell

CALIFORNIA STATE SHERIFF'S ASSOCIATION

Jerry Shadiger, Sheriff-Coroner
Colusa County Sheriff-Coroner

Nick Warner
Nick Warner & Associates

CALIFORNIA PEACE OFFICERS ASSOCIATION

Captain Michael Lanam
Fremont Police Department

Lieutenant Gus Arroyo
Fremont Police Department

CALIFORNIA JUDICIAL COUNCIL

Hon. J. Richard Couzens
Placer County Superior Court

Charlene Walker, Division Manager
Sacramento County Superior Court

Joshua Weinstein
Administrative Office of the Courts

Tressa Kentner, Court Executive Officer
Superior Court of San Bernadino County

June Clark
Office of Governmental Affairs

INDIVIDUALS NOT REPRESENTING ORGANIZATIONS

Commander Mario Sanchez
Calexico Police Deptartment

Dean Gialamas
Los Angeles Sheriffs Department

Camille Hill
Orange Co. District Attorney's Office, Sexual Assault Unit

Commanding Officer David Peterson
Los Angeles Police Department, Property Division

John Santy
Orange County District Attorney's Office
Sexual Assault Unit, TracKRS Project

Tom Nasser, Assistant Director
Orange County Sheriff-Coroner Deptartment
Forensic Science Services

Frank McGuire, Deputy District Attorney
Yolo County District Attorney's Office

FOOTNOTES

[1] See Penal Code 1417.9 (b)(2)(C) & 1405 (d); SB 1342 Senate Bill Analysis, August 30, 2000, p. 5, items (3)-(4) [noting Sheriff's Offices and Police Departments differ in how long they store evidence, but most do not store evidence after appeals have been exhausted].

[2] *Santa Clara Local Transportation Authority* v. *Guardino* (1995) 11 Cal.4th 220, 235; *In re Bittaker* (1997) 55 Cal.App.4th 1004, 1009; Cf.*People* v. *Tookes* (N.Y.1996) 639 N.Y.S.2d 913, 915 [assessing practical impact of New York's postconviction DNA testing statute, and rejecting broad interpretation].

[3] Cf. *Arizona* v. *Youngblood* (1988) 488 U.S. 51, 59 [police do not have a constitutional duty to perform any particular tests]; *People* v. *Daniels* (1991) 52 Cal.3d 815, 855.

[4] See Penal Code 1417.9(c) ["This section shall remain in effect only until January 1, 2003, and on that date is repealed unless a later enacted statute that is enacted before January 1, 2003, deletes or extend

[5] *Boyde* v. *California* (1990) 494 U.S. 370, 380; *People* v. *Proctor* (1992) 4 Cal.4th 499, 523; *Strickler* v. *Greene* (1999) 527 U.S. 263, 299-300, Souter, J., dissenting; *Cf., California* v. *Trombetta (1984)* 467 U.S. 479, 488 [constitutional duty of States to preserve evidence is limited to evidence that might be expected to play a role in the suspect's defense].

[6] Cf. *Arizona* v. *Youngblood* (1988) 488 U.S. 51, 58 [limiting duty to preserve evidence in part to "those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant"].

[7] See, generally, National Commission, *Postconviction DNA Testing: Recommendations for Handling Requests* (NIJ Sept.1999) at pp. xv, 21-22.

DECLARATION OF SERVICE BY MAIL

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.

June 1, 2007, I served the:

Adopted Parameters and Guidelines
Post Conviction: DNA Court Proceedings (00-TC-21, 01-TC-08)
Penal Code Sections 1405 and 1417.9 as added by Statues 2000, Chapter 821, and amended by Statutes 2001, Chapter 943
County of Los Angeles, Claimant

by placing a true copy thereof in an envelope addressed to:

Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 603
Los Angeles, CA 90012-2766

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

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 1, 2007 at Sacramento, California.

Victoria Soriano

VICTORIA SORIANO

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

September 29, 2025

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: Decision
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739, Sections 2 and 3.5 (AB 256); Penal Code Sections 745 and 1473, effective January 1, 2023
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

On September 26, 2025, the Commission on State Mandates adopted the Decision approving the Test Claim on the above-captioned matter.

Very truly yours,

Juliana F. Gmur
Executive Director

J:\MANDATES\2024\TC\24-TC-02 Criminal Procedure Discrimination\Correspondence\decisiontrans.docx

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*) (*Served September 29, 2025*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on September 26, 2025.

Juliana F. Gmur, Executive Director

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*) (*Served September 29, 2025*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 26, 2025. Fernando Lemus appeared as the representative and Lucia Gonzalez appeared on behalf of the County of Los Angeles (claimant). Chris Hill appeared on behalf of the Department of Finance (Finance). 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 the Proposed Decision to approve the Test Claim by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Malia Cohen, State Controller, Vice Chairperson	Yes
Karen Greene Ross, Public Member	Yes
Renee Nash, School District Board Member	Yes
William Pahland, Representative of the State Treasurer	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes
Alexander Powell, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	Yes

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.[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.[2] 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.[3] 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.[4] For a post-judgment petition, the judge will evaluate whether it alleges any facts that would establish a violation.[5] If so, or on the State Public Defender's request, it "shall" appoint counsel to a petitioner.[6] The newly appointed counsel may amend the petition.[7] The judge then determines if the petition makes a prima facie case.[8] If there is a prima facie case, the claim continues and the petitioner

[1] 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.

[2] Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4).

[3] 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."].

[4] Penal Code section 745(a), as added by Statutes 2020, chapter 317.

[5] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[6] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[7] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[8] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

may request discovery.[9] Next, the court "shall" hold a hearing.[10] The court "shall make findings on the record."[11] 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.[12] The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.[13] The RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered *on or after* January 1, 2021.[14]

The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.[15] 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.[16]

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.[17]

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[9] Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

[10] 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.

[11] 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.

[12] Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

[13] Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

[14] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[15] Statutes 2022, chapter 739 (AB 256).

[16] Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

[17] Exhibit A, Test Claim, pages 10-11.

The Test Claim was timely filed.[18] 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.[19]

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.[20] The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.[21]

Finally, the Commission finds there are costs mandated by the state and that none of the exceptions in Government Code section 17556 apply.[22] 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, which are civil in nature, 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

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[18] Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17, paragraph 7 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[19] Government Code section 17557(e).

[20] Penal Code section 987.2.

[21] Statutes 2020, chapter 317, section 2.

[22] Exhibit A, Test Claim, pages 17-18, paragraphs 8-10 (Declaration of Elizabeth Lashley-Haynes).

origin either intentionally or implicitly.[23] 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.[24]

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.[25]

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.[26]

03/18/2025 Department of Finance (Finance) filed comments on the Test Claim.[27]

03/19/2025 Contra Costa Office of the Public Defender filed comments on the Test Claim.[28]

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[23] Penal Code section 1473(f); *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 ["A habeas corpus proceeding is not a criminal action."].

[24] Statutes 2020, chapter 317 (AB 2542), section 2(i).

[25] Exhibit A, Test Claim.

[26] Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim.

[27] Exhibit B, Finance's Comments on the Test Claim.

[28] 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.[29]

03/19/2025 Monterey County Office of the Public Defender filed comments on the Test Claim.[30]

03/20/2025 County of Ventura Office of the Public Defender filed comments on the Test Claim.[31]

03/20/2025 University of San Francisco Racial Justice Clinic filed comments on the Test Claim.[32]

03/21/2025 Alameda County Public Defender filed late comments on the Test Claim.[33]

03/27/2025 The claimant filed Response to Request for Clarification of Pleading and Second Notice of Incomplete Test Claim.[34]

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.[35]

04/17/2025 The claimant filed rebuttal comments on the Test Claim.[36]

05/05/2025 California State Association of Counties filed comments on the Test Claim.[37]

06/17/2025 Commission staff issued the Draft Proposed Decision.[38] No comments were filed.

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[29] Exhibit F, Ella Baker Center for Human Rights' Comments on the Test Claim.

[30] Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim.

[31] Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim.

[32] Exhibit I, University of San Francisco Racial Justice Clinic's Comments on the Test Claim.

[33] Exhibit J, Alameda County Public Defender's Late Comments on the Test Claim.

[34] Exhibit A, Test Claim.

[35] Exhibit K, County of Santa Clara's Comments on the Test Claim.

[36] Exhibit C, Claimant's Rebuttal Comments.

[37] Exhibit L, California State Association of Counties' Comments on the Test Claim.

[38] Exhibit M, Draft Proposed Decision.

II. Background

A. Prior Law: The Racial Justice Act (RJA) of 2020 (AB 2542)

The Racial Justice Act (RJA),[39] 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.[40] 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.[41] Beginning on that date, if trial is pending, an RJA violation can be alleged by motion filed by the defendant.[42] If the case is post-judgment, an RJA violation could be alleged by an incarcerated petitioner through a petition for habeas corpus "if judgment was entered on or after January 1, 2021."[43] 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.[44]

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,

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[39] Statutes 2020, chapter 317 (AB 2542).

[40] Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4), as added by Statutes 2020, chapter 317.

[41] 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."].

[42] Penal Code section 745(b) and (c), as added by Statutes 2020, chapter 317.

[43] Penal Code sections 745(b) and 1473(f), as added and amended by Statutes 2020, chapter 317.

[44] 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.[45]

A useful summary of the four above "pathways" to an RJA violation was produced by the Office of the State Public Defender.[46] 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"[47] 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."[48]

[45] Penal Code section 745(a), as added by Statutes 2020, chapter 317.

[46] Exhibit N (1), *Racial Justice Retroactivity, AB 256*, Office of the State Public Defender, pages 3-4.

[47] *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 157.

[48] 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."[49]
- "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."[50]
- "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."[51]
- "Existing precedent tolerates the use of racially incendiary or racially coded language, images, and racial stereotypes in criminal trials."[52]
- "Existing precedent also accepts racial disparities in our criminal justice system as inevitable."[53]

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.[54] The *McClesky* 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

[49] Statutes 2020, chapter 317, section 2(b).

[50] Statutes 2020, chapter 317, section 2(c).

[51] Statutes 2020, chapter 317, section 2(d).

[52] Statutes 2020, chapter 317, section 2(e).

[53] Statutes 2020, chapter 317, section 2(f).

[54] *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.).)[55]

As stated above, Justice Brennan criticized the federal standard in his dissent in the *McCleskey* case as a "fear of too much justice."[56] Through the RJA, California rejects the *McCleskey* "purposeful [or intentional] discrimination" standard and allows a showing of discrimination based on implicit bias as follows:[57]

- "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."[58]
- "Examples of the racism that pervades the criminal justice system are too numerous to list."[59]
- "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."[60]
- "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,

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[55] *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 151-153.

[56] *McCleskey v. Kemp* (1987) 481 U.S. 279, 339 (Brennan, J., dissenting).

[57] *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."].

[58] Statutes 2020, chapter 317, section 2(g).

[59] Statutes 2020, chapter 317, section 2(h).

[60] Statutes 2020, chapter 317, section 2(i).

regarding potential discrimination in seeking or obtaining convictions or imposing sentences."[61]

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).[62] If so, or on the State Public Defender's request, it will appoint counsel to a petitioner.[63] The newly appointed counsel may amend the petition.[64] The judge then determines if the petition makes a prima facie case.[65] 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.[66] A "substantial likelihood" means "more than a mere possibility, but less than a standard of more likely than not."[67] If there is no prima facie case, the petition will be summarily denied with reasons stated on the record.[68]

If there is a prima facie case, the claim continues and the petitioner may request discovery.[69] Because the state may possess or control the relevant evidence, a defendant or petitioner with a prima facia 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.[70] And rather than having to meet the rigorous standards of federal case law to obtain discovery by presenting evidence of discriminatory effect and

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[61] Statutes 2020, chapter 317, section 2(j).

[62] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended 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] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[65] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[66] 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."].

[67] Penal Code section 745(h)(2), as added by Statutes 2020, chapter 317.

[68] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[69] Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

[70] Penal Code section 745(d), as added by Statutes 2020, chapter 317.

intent,[71] 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."[72] 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.[73] 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.[74] The court "shall make findings on the record."[75] If a violation is found on a motion during trial, the court "shall impose a remedy" from a statutory list.[76] 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.[77] The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.[78] No greater sentence may be imposed[79] and the death penalty may not be imposed.[80] Also, to ensure that RJA proceedings are distinct, any other constitutional or statutory remedies of the defendant are not foreclosed.[81]

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."[82]

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[71] *United States v. Armstrong* (1996) 517 U.S. 456.

[72] *Young v. Superior Ct. of Solano County* (2022) 79 Cal.App.5th 138, 144, emphasis added.

[73] 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.

[74] Penal Code section 745(c)(1), as added by Statutes 2020, chapter 317.

[75] 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.

[76] Penal Code section 745(e), as added by Statutes 2020, chapter 317.

[77] Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

[78] Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

[79] Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

[80] 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."].

[81] Penal Code section 745(e)(4), as added by Statutes 2020, chapter 317.

[82] 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.[83]

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.[84] 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)).[85]

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*.[86]

Penal Code section 1473(f), as amended by the test claim statute (and later renumbered as section 1473(e))[87], 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 petitioner may amend the existing petition with a claim that the petitioner's

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[83] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

[84] Statutes 2022, chapter 739 (AB 256).

[85] Exhibit A, Test Claim, pages 10-11; Statutes 2023, chapter 381 (SB 97).

[86] Emphasis added.

[87] Statutes 2023, chapter 381 (SB 97).

> 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.[88]

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.[89] 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.[90]

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

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[88] Emphasis added.

[89] Exhibit N (4), Assembly Committee on Appropriations, April 14, 2021, AB 256 as Amended March 16, 2021, page 1.

[90] Exhibit N (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."[91] *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."[92] 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."[93] If the courts must resort to assigning private counsel for the petitioner, the county must pay reasonable compensation for that service.[94]

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.[95] Timeliness of a motion at trial is required or the motion may be deemed waived.[96] 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."[97] It is also further emphasized that "[t]he defendant does not need to prove intentional discrimination."[98] 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.[99] 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.[100] It has also been clarified that the procedures apply to "adjudications to transfer a juvenile case to adult court."[101] Lastly,

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[91] *Bemore v. Superior Ct. of San Diego County* (2025) 108 Cal. App. 5th 1125, 1147.

[92] *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

[93] *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1152.

[94] 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 . . . ."].

[95] Penal Code section 745(b), as amended by Statutes 2022, chapter 739.

[96] Penal Code section 745(c), as amended by Statutes 2022, chapter 739.

[97] Penal Code section 745(c)(1), as amended by Statutes 2022, chapter 739.

[98] Penal Code section 745(c)(2), as amended by Statutes 2022, chapter 739.

[99] Penal Code section 745(d), as amended by Statutes 2022, chapter 739.

[100] Penal Code section 745(e)(2)(A), as amended by Statutes 2022, chapter 739.

[101] 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."[102]

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.[103]

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.[104] 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.[105]

The claimant asserts that before the test claim statute was enacted, individuals serving state prison sentences were not eligible to file RJA petitions.[106] Accordingly, the claimant states, public defenders were not required to represent them.[107]

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 in their case."[108] This, the claimant states, necessitates conflict checks, investigation of

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[102] Penal Code section 745(h), as amended by Statutes 2022, chapter 739.

[103] Exhibit A, Test Claim, page 10.

[104] Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[105] Exhibit A, Test Claim, page 17, paragraphs 2, 4, and 5 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[106] Exhibit A, Test Claim, page 17, paragraph 3 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[107] Exhibit A, Test Claim, page 17, paragraph 4 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[108] Exhibit A, Test Claim, page 10.

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.[109]

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.[110] It estimates costs of $657,000 for FY 2024-2025[111] and a statewide cost estimate of $2,190,000 for the same fiscal year.[112] 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.[113] 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.[114]

The claimant asserts that the test claim statute imposes requirements unique to local government because the services are provided by local agencies.[115] It additionally asserts that the test claim statute carries out state policy through mandated activities.[116]

The claimant finally asserts that none of the "seven disclaimers" in Government Code section 17556 apply to excuse the state from reimbursement.[117]

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[109] Exhibit A, Test Claim, page 10; page 17, paragraph 6 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[110] Exhibit A, Test Claim, page 11; page 17, paragraphs 7-8 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[111] Exhibit A, Test Claim, page 11; page 17, paragraph 9 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[112] Exhibit A, Test Claim, page 11; page 18, paragraph 10 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[113] Exhibit A, Test Claim, page 18, paragraph 10, fn. 1 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[114] Exhibit A, Test Claim, page 11; page 18, paragraph 11 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[115] Exhibit A, Test Claim, page 12.

[116] Exhibit A, Test Claim, page 13.

[117] Exhibit A, Test Claim, pages 13-14.

The claimant filed rebuttal comments on April 17, 2025.[118] 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."[119] 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.[120]

The claimant further distinguishes this claim from the denied Test Claim *Youth Offender Parole Hearing*s, 17-TC-29, addressed in *County of San Diego v. Commission on State Mandates*.[121] 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."[122] 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."[123]

The claimant did not file comments on the Draft Proposed Decision.

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.[124]

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[118] Exhibit C, Claimant's Rebuttal Comments.

[119] Exhibit C, Claimant's Rebuttal Comments.

[120] Exhibit C, Claimant's Rebuttal Comments.

[121] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

[122] Exhibit C, Claimant's Rebuttal Comments citing *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

[123] Exhibit C, Claimant's Rebuttal Comments citing Statutes 2020, chapter 317, section 2(i) (AB 2542).

[124] Exhibit B, Finance's Comments on the Test Claim, page 2.

Finance did not file comments on the Draft Proposed Decision.

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.[125] 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.[126]

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.[127] Most of the comments were identical. The identical comments were originally stated by the Solano County Office of the Public Defender as follows:

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[125] Exhibit K, County of Santa Clara's Comments on the Test Claim, page 1.

[126] Exhibit K, County of Santa Clara's Comments on the Test Claim, pages 3-6.

[127] 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 Justic 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;

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

Exhibit K, County of Santa Clara's Comments on the Test Claim; Exhibit L, California State Association of Counties' Comments on the Test Claim.

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.[128]

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."[129] 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."[130] The County of Ventura Office of the Public Defender is now "identifying and litigating claims involving the Racial Justice Act."[131] 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."[132]

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

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[128] Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim, pages 1-2.

[129] Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim, page 1.

[130] Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim, page 1.

[131] Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 1.

[132] Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 2.

national origin bias in their California state convictions or sentences."[133] CSAC further states:

> [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).[134]

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."[135]

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.'"[136] 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.[137]

CSAC also asserts that Government Code 17556(g) is "constitutionally suspect."[138] 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

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[133] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 1.

[134] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 1.

[135] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

[136] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

[137] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

[138] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

penalty.[139] Considering this difference in language, "CSAC urges the Commission not to adopt an overly broad reading of Section 17556(g)."[140]

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."[141] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[142]

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.[143]
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.[144]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or

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[139] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

[140] Exhibit L, California State Association of Counties' Comments on the Test Claim, page 2.

[141] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

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

[143] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[144] *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.[145]

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.[146]

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.[147] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[148] 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."[149]

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.[150] 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."[151]

The effective date of the test claim statute is January 1, 2023.[152] The claimant filed the Test Claim on December 19, 2024, more than 12 months after the effective date of the statute.[153]

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

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[145] *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 Cal3d 830, 835.

[146] *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.

[147] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[148] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[149] *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].

[150] Government Code section 17551(c).

[151] California Code of Regulations, title 2, section 1183.1(c), emphasis added.

[152] California Constitution, article IV, section 8(c)(1); Government Code section 9600.

[153] 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."[154]

Additionally, the operative date of Penal Code section 745(j)(3), which applies the RJA retroactively is January 1, 2024.[155] 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."[156] 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.[157]

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[154] Exhibit A, Test Claim, page 17, paragraph 7 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

[155] Penal Code section 745(j)(3), as amended by Statutes 2022, chapter 751.

[156] 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.

[157] 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. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11

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.[158]

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*."[159] 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 decided, the petitioner may amend the existing petition with a claim that the

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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.

[158] Penal Code section 745(j)(3).

[159] Penal Code section 745(j), as added by Statutes 2020, chapter 317, emphasis added.

> 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.[160]

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*."[161]

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,[162] and, thus, there is no constitutional right to the appointment of counsel at the public's expense. The U.S.

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[160] Emphasis added.

[161] Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317, emphasis added.

[162] *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.

Supreme Court has described collateral attacks on judgments as distinctly civil, with no right to counsel as there was 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.[163]
>
> 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.[164]
>
> 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.[165]

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."[166]

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.[167]

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."[168] As seen in the legislative findings listed in the Background, the RJA sets higher civil standards by

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[163] *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556–57.

[164] *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555.

[165] *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

[166] *In re Barnett* (2003) 31 Cal.4th 466, 475.

[167] *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

[168] *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."[169]

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."[170] 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.[171] 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.[172]

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.[173] A county public defender's representation would end at this point because a denial at the prima facie stage is not appealable.[174]

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[169] Exhibit N (5), California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa*,* Annelise Finney, February 13, 2024, page 2; Exhibit N (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."].

[170] Penal Code section 1473(f) (later renumbered as section 1473(e)).

[171] Penal Code section 1473(f) (later renumbered as section 1473(e)).

[172] Penal Code section 745(h)(2).

[173] Penal Code section 1473(f) (later renumbered as section 1473(e)).

[174] 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.[175] 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.[176]

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.[177] 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.[178]

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).[179] 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.[180] 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.[181] 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.

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[175] Penal Code section 1473(f) (later renumbered as section 1473(e)).

[176] Penal Code section 1473(f) (later renumbered as section 1473(e)).

[177] Penal Code section 745(d).

[178] Penal Code section 745(d).

[179] Penal Code section 745(e)(2)(A).

[180] Penal Code section 745(e)(2)(A).

[181] 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. …[182]

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.[183]

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.[184]

Moreover, the courts have interpreted Penal Code section 1473(f) as "*requiring* the appointment of counsel to pursue an RJA petition."[185] 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."[186] The courts have also found the word "shall" is mandatory in similar statutes requiring the appointment of counsel for capital defendant habeas

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[182] *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

[183] *People v. Lara* (2010) 48 Cal.4th 216, 227.

[184] 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"].)

[185] *People v. Wilson* (2024) 16 Cal.5th 874, 960, emphasis added.

[186] *McIntosh v. Superior Court of San Diego County* (2025) 110 Cal.App.5th 33, 46.

corpus petitioners for purposes of post-conviction proceedings.[187] When the Legislature uses the same language in a related statute, courts presume the Legislature intended the language to have the same meaning.[188]

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.[189] 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 XIIIB, section 6 requires reimbursement when "the Legislature or any state agency mandates a new program or higher level of service on any local government." New programs or higher levels 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."[190] Just one of these conditions need be met.[191] 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.[192]

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[187] *Redd v. Guerrero* (9th Cir. 2023) 84 F.4th 874, 893, reviewing Government Code section 68662.

[188] *People v. Wells* (1996) 12 Cal.4th 979, 986.

[189] Statutes 2020, chapter 317, section 2(i) and (j).

[190] *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.

[191] *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.

[192] 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."[193] It also expresses state policy "to ensure everyone is afforded an equal opportunity to pursue justice" and "equal justice under the law."[194] 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."[195]

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[196]	$657,000 estimated[197]

[193] Exhibit N (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

[194] Exhibit N (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

[195] Statutes 2022, Chapter 739, section 1.

[196] Exhibit A, Test Claim, page 17, paragraph 8 (Declaration of Elizabeth Lashley-Haynes).

[197] Exhibit A, Test Claim, page 17, paragraph 9 (Declaration of Elizabeth Lashley-Haynes).

	FY 2023-2024	FY 2024-2025
		$2,190,000 estimated statewide[198]

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.[199] 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.[200]

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. [201] 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."[202] 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.[203] In the Commission's role, it must presume this statute constitutional.[204]

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[198] Exhibit A, Test Claim, page 18, paragraph 10 (Declaration of Elizabeth Lashley-Haynes).

[199] Exhibit A, Test Claim, page 10 citing Declaration of Elizabeth Lashley-Haynes.

[200] Exhibit A, Test Claim, page 18, paragraph 10 (Declaration of Elizabeth Lashley-Haynes).

[201] Exhibit B, Finance's Comments on the Test Claim.

[202] California Constitution, article XIII B, section 6(a)(2).

[203] Exhibit K, County of Santa Clara's Comments on the Test Claim; Exhibit L, California State Association of Counties' Comments on the Test Claim.

[204] California Constitution, article III, section 3.5.

The Commission finds that the test claim statute does not create a new crime or 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.[205] A habeas corpus proceeding collaterally attacks a prior criminal proceeding and is distinctly independent from that criminal proceeding.[206] As the U.S. Supreme Court has said, habeas corpus "is not part of the criminal proceeding itself."[207]

A habeas corpus proceeding is a civil proceeding serving civil purposes only. California case law links this principle to Penal Code section 1473.[208] 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.[209]

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[205] *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 ["A habeas corpus proceeding is not a criminal action."].

[206] *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975.

[207] *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

[208] *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. …"."].

[209] *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."[210] 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.[211]

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.[212] 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."[213] 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.[214] 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."[215]

> As a direct result of the Test Claim Statutes, most youth offenders are statutorily eligible for parole at a youth offender parole hearing conducted

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[210] Penal Code section 1473(f) (later renumbered as section 1473(e)), emphasis added.

[211] Statutes 2020, chapter 317 (AB 2542), section 2(i).

[212] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

[213] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 633.

[214] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 631.

[215] *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.[216]

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."[217] 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."[218]

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,[219] 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

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[216] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640-641.

[217] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[218] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 642.

[219] 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*."[220]

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.[221]

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.

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[220] 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.

[221] 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 September 29, 2025, I served the:

- **Current Mailing List dated September 29, 2025**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued September 29, 2025**
- **Decision adopted September 26, 2025**

  Criminal Procedure: Discrimination, 24-TC-02
  Statutes 2022, Chapter 739, Sections 2 and 3.5 (AB 256); Penal Code Sections 745 and 1473, effective January 1, 2023
  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 September 29, 2025 at Sacramento, California.

Jill Magee
_____

Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/29/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

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ITEM 10

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Executive Summary

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

Staff Analysis

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines, as modified by staff were issued to the parties. (Exhibit H.) Staff made several substantive and technical modifications to the claimant's proposed parameters and guidelines to conform the parameters and guidelines to the Commission's Statement of Decision.

All of the modifications to the claimant's proposed parameters and guidelines are discussed in the staff analysis and outlined in the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

On July 5, 2000, the claimant filed comments on the draft staff analysis disputing *one* issue; namely, reimbursement of legal defense costs. (Exhibit I.)

The Commission found that Government Code section 3304, subdivision (b), constitutes a reimbursable state mandate by requiring local agencies to provide the opportunity for an administrative appeal for specified disciplinary actions. The claimant is requesting, as part of this activity, the defense of any lawsuit resulting from the agency's disciplinary action.

In this regard, the claimant is requesting reimbursement for attorneys' fees, witness fees, and all associated court costs in defense of its case.

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

The claimant also cites Government Code section 3309.5, a statute included in the POBAR legislation, to assert that the superior court has original jurisdiction over *any* proceeding brought by a peace officer for alleged POBAR violations. Section 3309.5 was designed to allow a peace officer to pursue a remedy immediately in court during the investigation and not require that the officer wait until after an administrative appeal. Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

The Department of Finance contends that legal defense costs are not reimbursable since there is no reference in the Commission's Statement of Decision that defending the agency's administrative action constitutes a reimbursable state mandated activity. The Department further states that it is not clear that the Commission's approval of the costs associated with an administrative appeal extends to or encompasses judicial review.

For the reasons stated below, staff disagrees with the claimant's request.

Legal Defense Costs Relating to an Agency's Final Disciplinary Action

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

Before the test claim legislation was enacted, local agencies were issuing disciplinary actions. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even *before* POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision. A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action *even in the absence of POBAR*. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an interrogation and following the receipt of an adverse comment.

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 constitutes a reimbursable state mandate.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following: activities required under prior law or executive order; what new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service." The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the claimant's test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations.

Moreover, the claimant never alleged during the test claim phase, and the Commission did not find, that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

Claimant

City of Sacramento

Chronology

11/30/99	Commission adopts Statement of Decision
12/29/99	Claimant files proposed parameters and guidelines
01/19/00	Department of Finance files comments
02/23/00	Claimant replies to the Department of Finance comments
05/24/00	Pre-hearing Conference held
05/26/00	Staff requests further comments
06/07/00	Claimant files further comments in response to staff request
06/14/00	The State Controller's Office files comments
06/20/00	Draft Staff Analysis and Claimant's Proposed Parameters and Guidelines as Modified by Staff issued
07/05/00	Claimant files comments

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

STAFF ANALYSIS

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the comments submitted by the parties, the test claim legislation, and the Commission's Statement of Decision. (Exhibit H.)

On July 5, 2000, the claimant filed comments on the draft staff analysis addressing one issue; namely the reimbursement of legal defense costs on claims filed by peace officer employees alleging a POBAR violation under Government Code section 3309.5. (Exhibit I.) The staff analysis on this issue is provided below under Section IV. (B), Administrative Appeal.

Staff has also modified the claimant's proposed parameters and guidelines, as reflected by underline and strikeout, to conform the parameters and guidelines to the test claim legislation and the Commission's Statement of Decision (See page 21). These modifications are discussed below.

Section IV. "Reimbursable Activities," Subdivision (A), "Administrative Activities"[1]

The claimant's proposed parameters and guidelines include the following administrative activities:

> "1. Developing or updating policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
>
> 2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
>
> 3. Maintenance of the systems to conduct the mandated activities.
>
> 4. Providing direct supervision over the agency staff performing the mandated activities."

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBAR cases."

Staff has also modified the claimant's proposed parameters and guidelines by striking the proposed activity of "providing direct supervision over the agency staff performing the mandated activities." If a claimant is requesting reimbursement for an employee providing direct supervision regarding the mandated activities, the claimant simply has to comply with Section V., Claim Preparation and Submission, and submit supporting documentation to the Controller's Office identifying the employee, describing the reimbursable activities performed, and the actual time devoted to the mandated activity. Thus, adding a separate component in Section IV. for employee supervision is duplicative and unnecessary.

Finally, staff has designated the administrative activities as on-going activities. Due to a lack of specificity in the test claim legislation, hundreds of court cases have been, and continue to be issued. The case law has provided new interpretations of the legislation and clarified the responsibilities of local agencies. Thus, staff finds that it is reasonably necessary for local agencies to update their internal policies and procedures, and train their employees on an on-going basis.

Thus, staff's modifications to Section IV. (A), are as follows:

> "A. Administrative Activities <u>(On-going Activities)</u>
>
> 1. Developing or updating <u>internal</u> policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
>
> 2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

[1] See page 22, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

3. ~~Maintenance of the systems to conduct the mandated activities.~~ Updating the status report of the POBAR cases.

~~4. Providing direct supervision over the agency staff performing the mandated activities.~~"

Section IV. "Reimbursable Activities, Subdivision (B), "Administrative Appeal"[2]

The Commission's Statement of Decision includes a list of activities the Commission found to be reimbursable under article XIII B, section 6 of the California Constitution. The first activity listed in the Statement of Decision states the following:

"Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests *are not* affected (i.e.; the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee."

The claimant's proposed parameters and guidelines includes the language provided above, but also adds the following italicized phrase: "Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, *together with the defense of same in any court proceeding*." Thus, the claimant is requesting attorneys' fees, witness fees, and all associated court costs in defense of its case.

The Department of Finance contends that legal defense costs are not reimbursable. They state the following:

> "While providing the opportunity for and the conduct of an administrative appeal was included in the Commission's Statement of Decision, there is no reference to the defense of same in any court proceeding. It is not clear to us that the Commission's approval of the costs of an administrative appeal in its decision necessarily extends to or encompasses judicial review. Unless the claimant can establish a nexus between the two processes, we believe that it is not appropriate to include the costs of the latter in these parameters and guidelines."

In response, the claimant cites Government Code section 3309.5, a statute included in the test claim legislation, to assert that the test claim legislation gives the superior court original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations.

The claimant also states that "although at first blush it would seem that only those actions involving a violation by the public entity of the officer's rights under POBAR would be subject to judicial review, that is not what has occurred in practice." The claimant, citing

[2] See pages 22-23, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

the case of *Fukuda* v. *City of Angels*[3], contends that the courts have expanded the judicial review of POBAR cases to an independent review of the validity of the final administrative decision issuing the disciplinary action. The claimant therefore asserts that reimbursement should be required for all costs related to defending the agency's final administrative decision in court.

The analysis regarding legal defense costs is provided below.

Legal Defense Costs Relating to the Agency's Final Administrative Decision

The claimant first contends that defending a lawsuit attacking the validity of the final administrative decision issuing a disciplinary action is a reimbursable state mandated activity.

The claimant cites the *Fukuda* case. The *Fukuda* case involves an administrative mandamus proceeding under Code of Civil Procedure section 1094.5 brought by a police officer against his employer following the employer's final decision to discharge the plaintiff. A writ of mandamus proceeding under Code of Civil Procedure section 1094.5 is available to review "any final administrative order or decision made as the result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." Thus, the plaintiff in *Fukuda* was attacking the validity of the employer's final decision of discharge.

The plaintiff in *Fukuda*, however, did *not* allege any POBAR violations. In fact, the test claim legislation is not even mentioned in the case. The plaintiff was simply contesting the final disciplinary action taken by the employer. Thus, staff finds that the *Fukuda* case is not relevant here.

Moreover, local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even *before* POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision.[4] A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action *even in the absence of POBAR*. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable a state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an

[3] *Fukuda* v. *City of Angels* (1999) 20 Cal.4th 805. (Exhibit J.)

[4] Code of Civil Procedure section 1094.5 was originally added by the Legislature in 1945 (Stats. 1945, ch. 358). (Exhibit K)

interrogation and following the receipt of an adverse comment. Section 3309.5 was specifically designed to allow a peace officer to pursue a remedy immediately in the courts *during* the investigation and not require that the officer wait until after an administrative appeal.[5] Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

Government Code section 3309.5 states the following:

> "(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.
>
> (b) The superior court shall have initial jurisdiction over *any* proceeding brought by any public safety officer against any public safety department *for alleged violations of this chapter*.
>
> (c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer." (Emphasis added.)

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 imposes reimbursable state mandated activities.[6]

On June 20, 2000, staff issued a draft analysis on the claimant's proposed parameters and guidelines concluding that legal defense costs resulting directly from section 3309.5 cannot be included in the parameters and guidelines because the Commission has not made a finding that section 3309.5 constitutes a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

On July 5, 2000, the claimant filed a response to the draft staff analysis contending that the staff analysis regarding legal defense costs under Government Code section 3309.5 is wrong. The claimant contends that the issue of litigation of POBAR rights has been a "thread" through the entire test claim process. The claimant also states that defense costs under section 3309.5 should be included in the parameters and guidelines since the Statement of Decision defines the scope of the mandate and the parameters and guidelines define the activities. The claimant states the following:

> "Attached to the original test claim as filed are all of the statutes upon which the test claim was based. On [page 372 of the test claim], is contained Chapter 405, Statutes of 1979, which added Government Code section 3309.5 to POBAR. Reference to this statute is had on the face sheet of the test claim [page number omitted] as well as on the face page of the narrative of the test claim [page number omitted].

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[5] See, *Mounger* v. *Gates* (1987) 193 Cal.App.3d 1248, 1256. (Exhibit L)

[6] Exhibit M, Test claim filings submitted by the claimant; Exhibit N, August 26, 1999 Hearing Transcript (test claim hearing); and Exhibit O, November 30, 1999 Hearing Transcript (SOD hearing).

> Secondly, the issue of litigation of POBAR rights has been a thread going through the entire test claim process. Your staff has analyzed at depth numerous cases involving POBAR, particularly in connection with the scope of the mandate, and to what extent POBAR exceeds the requirements of *Skelly* v. *State Personnel Board* [citation omitted]. In fact, the first 312 pages of the test claim is devoted to litigation concerning *Skelly* and POBAR.
>
> The issue of litigation concerning POBAR was raised by Ms. Dee Contreras at the hearing on the test claim in this matter. Furthermore, the record on the test claim is replete with references concerning litigation over POBAR rights. (See Comments to Draft Staff Analysis received by the Commission on August 6, 1999, commencing at page 9.)
>
> Thus, even prior to Claimant's submission of Draft Parameters and Guidelines, the issue of litigation over POBAR rights was clearly submitted and in issue."

Staff disagrees with the claimant.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following:

- What *activities* were required under prior law or executive order, and
- *What new program or higher level of service is required under the statute or executive order* alleged to contain or impact a mandate, and
- Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be *required under the statutes or executive orders that contain the mandate or increased level of service*." (Emphasis added.) The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the Commission has not made a finding that Government Code section 3309.5 imposes a reimbursable state mandate.

The claimant's test claim filing includes section 3309.5 on the face sheet as a statute alleged to contain a mandate. The first page of the test claim narrative includes a sentence stating the following: "Chapter 405/79 added section 3309.5, making it unlawful to violate this act, thereby relieving the officer of any requirement to exhaust administrative remedies before seeking 'appropriate injunctive or other extraordinary relief' before superior court if violations are alleged."[7]

However, the test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations. Instead, the claimant's test claim filing limits the discussion of these issues to Government Code sections 3303 and 3304. These sections address the administrative appeal and interrogation rights under POBAR.

On September 5, 1997, the claimant filed supplemental comments clarifying the test claim. Again, the claimant's comments addressed Government Code sections 3303 and 3304. The claimant also addressed sections 3305, and 3306, which relate to the rights following the receipt of an adverse comment. Section 3309.5 was not mentioned in the claimant's supplemental comments.[8]

The claimant contends that its comments on the test claim draft staff analysis, beginning on page 9, is replete with references concerning litigation over POBAR rights. However, the cases cited in these comments do not address Government Code section 3309.5. Rather, the case law cited by the claimant defines the phrase "transfer for purposes of punishment", a punitive action entitling the employee to an administrative appeal under POBAR.[9]

The claimant also contends that the issue of litigation was raised during the test claim hearing. Staff agrees there was testimony relating to case law involving an employee's pre-existing due process rights. There was also testimony on case law relating to the POBAR rights regarding the administrative appeal, interrogation of an officer, and the receipt of adverse comments. However, there was no testimony addressing Government Code section 3309.5.[10]

In short, the claimant never alleged during the test claim phase, and the Commission did not find that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

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[7] Exhibit M, Bates page 192.

[8] Exhibit M, Bates page 232.

[9] Exhibit M, Bates page 244.

[10] Exhibit N.

1998 Amendment to Government Code Section 3304

Staff has also included the Commission's recognition that Government Code section 3304 was amended in 1998 (Stats. 1998, ch. 748) to limit the right to an administrative appeal to the chief of police and those employees who have successfully completed probation. (See Exhibit A, Statement of Decision, page 10.) The amendments became effective on January 1, 1999. Thus, claimants are eligible for reimbursement for providing the opportunity for an administrative appeal to probationary and at-will employees, except the chief of police, only until December 31, 1998.

Thus, staff has modified Section IV. (B) as follows:

"B. ~~On-Going Activities~~ Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

   ~~1.~~ Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, ~~together with the defense of same in any court proceeding~~ (Gov. Code, § 3304, subd. (b)):

   - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
   - Transfer of permanent, probationary and at-will employees for purposes of punishment;
   - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
   - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

   Included in the foregoing~~, but not limited thereto,~~ are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

   Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

   - Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
   - Transfer of permanent employees for purposes of punishment;
   - Denial of promotion for permanent employees for reasons other than merit; and

- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body."

Section IV. "Reimbursable Activities, Subdivision (C), "Interrogations"[11]

The Commission found that several activities required by the test claim legislation involving the interrogation of a peace officer constituted reimbursable state mandated activities. (See the Commission's Statement of Decision, pages 25 and 26.)

The claimant contends that all of the interrogation activities found by the Commission to be reimbursable apply not only to the peace officer employee under investigation, but also to civilian and peace officer witnesses. For example, the claimant states the following:

> "Government Code Section 3303(g) does not distinguish between taping an officer who is a witness versus taping an officer who is the target of an investigation. The public safety officer, whether or not the target of the investigation, can bring his or her own recording device, and their right to record is independent of our right to record. Where it says *may* be recorded, it in essence requires recording, and doesn't differentiate between interrogation of witnesses and interrogation as the targeted employee. However, because of the fact that 'witness' peace officers may subsequently become targets as a result of their heightened standard of conduct, peace officer witnesses must be taped as well. Finally, if you tape all of the peace officers involved in an investigation and do not tape civilian witnesses as well, you do not have a complete record."[12]

Government Code section 3303, which addresses investigations and interrogations, expressly states in the first paragraph that the rights granted with regard to interrogations apply only when a peace officer is under investigation that could lead to punitive action. The first paragraph of section 3303 states in pertinent part the following:

> "*When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action* [defined in the test claim legislation as dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], the interrogation shall be conducted under the following conditions." (Emphasis added.)

Thus, based on the language of section 3303, staff finds that the rights granted by POBAR, including the right to tape an interrogation, do *not* extend to civilian witnesses.

However, staff agrees with the claimant that POBAR rights under Government Code section 3303 do attach when a peace officer is interrogated as a witness to an incident since

[11] See pages 23-25, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

[12] Exhibit I.

the officer's own actions regarding the incident can result in punitive action. The claimant provides the following example:

> For example, an actual case situation occurred wherein there was an allegation that an officer failed to handle a particular call properly, that there was the possibility of excessive force was used and the individual was in the hospital. Given the seriousness of the allegations, we commenced speaking with the witnesses immediately. Everyone involved except the complainant, from the officer who was alleged to have used excessive force, as well as his sergeant, was a peace officer covered by POBR. When the sergeant, who was thought to be a witness, came in for questioning, he was informed that the subject of the questioning was one of his subordinate officers. However, in the course of discussions with the sergeant, it became apparent that he failed to file a required form when a person is hospitalized or injured. In Sacramento City, when someone is injured, the sergeant is required to file a form which is an alert to indicate that the arrestee has been hospitalized. In this situation, as you walk through the incident, we became apprized that the sergeant failed to file the required form."
>
> "……."
>
> "In the normal due process case, the employee would have uttered statements which indicated that he did not file the appropriate form, you could ask him whether or not he had filed the form, and the issue would be over. However, with POBR, you have to give the sergeant, who was previously called as a witness, a copy of the transcript of his prior testimony as he is entitled to it since he was interrogated on the matter previously in the officer's case. Since you never know when a witness may end up being the subject of discipline, not only do you have to more carefully prepare each case, but you may also have to tape record each peace officer's testimony should the eventuality occur that the witness becomes the target of an investigation. This is just an example of why there needs to be more and thorough preparation."
>
> "As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation."[13]

Thus, staff has added the following paragraph to Section IV. (C) of the proposed parameters and guidelines:

> "Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to

[13] Exhibit I, pages 2 and 3.

dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)"

Staff has also added the following paragraph, which was included on page 12 of the Commission's Statement of Decision and expressed in Government Code section 3303, subdivision (i):

> "Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)"

Section IV. (C) (1) and (2), Compensation and Timing of an Interrogation, Interrogation Notice

The Commission's Statement of Decision includes the following reimbursable activity:

> "Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

The claimant's proposed parameters and guidelines restates the activity as expressed in the Statement of Decision, but also adds "the review of the necessity for the questioning and responses given" as a reimbursable component. The claimant's proposed parameters and guidelines state the following:

> "Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
>
> "Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel." (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity "to review the necessity for the questioning and responses given" to determine if the activity was consistent with, and/or reasonably related to, the Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBAR because Government Code section 3303, subdivision (c),

requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

> "It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBR rights. In the normal due process case involving an employee who is not entitled to POBR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBR matters, you can explore other areas in the questioning as they arise, which allows for a much more free-form questioning process."
>
> "In contrast, however, with employees covered by POBR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated."[14]

The claimant further states the following:

> "As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . ."
>
> "Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBR make that more difficult as indicated above."[15]

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by

[14] Exhibit F, pages 1 and 2.

[15] *Id*. at page 3.

the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

Nevertheless, Government Code section 3303, subdivision (c), does impose a new requirement on local agencies to provide the peace officer with notice identifying the nature of the investigation prior to the interrogation. The Commission found that the notice requirement constituted a reimbursable state mandated activity under article XIII B, section 6 of the California Constitution. Accordingly, staff finds that the activity of reviewing agency complaints or other documents to prepare the notice of interrogation is a reasonable method of complying with Government Code section 3303, subdivision (c).

Based on the foregoing, staff has modified Section IV. (C) as follows:

> "1. ~~Conducting an interrogation of a peace officer while the officer is on duty, or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
>
> Included in the foregoing~~, but not limited thereto,~~ is the ~~review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof~~; preparation and review of overtime compensation requests~~; review of proceedings by counsel~~.
>
> 2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
>
> Included in the foregoing~~, but not limited thereto,~~ is the review of agency complaints or other documents to prepare the notice of interrogation; ~~the nature of the interrogation~~; ~~review by counsel;~~ determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; ~~and~~ preparation ~~and presentation to officer~~ of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer."

Section IV. (C) (3), (4), and (5), Tape Recording and Transcription of the Interrogation

Government Code section 3303, subdivision (g), states the following:

> "The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation."

The Commission found that Government Code section 3303, subdivision (g), imposed the following reimbursable state mandated activities (see pages 25 and 26 of the Statement of Decision):

- Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
  (a) The further proceeding is not a disciplinary action;
  (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal doe not harm the employee's reputation or ability to find future employment);
  (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
  (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
  (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):
  (a) When the investigation *does not* result in disciplinary action; and
  (b) When the investigation results in:
    - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
    - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
    - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
    - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

The claimant's proposed parameters and guidelines combine these activities into one paragraph:

> "Producing transcribed of any notes made by a stenographer or tape recording at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential,

when requested by the officer, *whether or not the investigation results in any disciplinary action*. (Gov. Code, § 3303, subd. (g)).

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies." (Emphasis added.)

Staff finds that the claimant's proposed paragraph, which authorizes reimbursement for the cost of transcription and tape recording *whether or not the investigation results in any disciplinary action,* is inconsistent with the Commission's Statement of Decision.

First, the proposed paragraph implies, and the claimant requests, reimbursement for taping *all* interrogations. However, the Commission found that reimbursement is required for tape recording the interrogation *only when* the employee tapes the interrogation.

The Commission also limited the right to reimbursement for the costs of providing the employee with access to the tape or transcription of the notes when: (1) the investigation did not result in disciplinary action; and 2) when the disciplinary action did not involve a pre-existing due process right to such materials.

Thus, staff has modified the claimant's proposed parameters and guidelines to accurately reflect the Commission's Statement of Decision.

The claimant also contends that the cost of transcribing the tape recordings of an interrogation is reasonably necessary to comply with the mandate. The claimant contends that "the tape is meaningless without a transcription."[16] Staff agrees and has included this component in Section IV. (C) (3) of the parameters and guidelines.

Thus, staff has modified Section IV. (C) as follows:

"3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

a) The further proceeding is not a disciplinary action;

b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

[16] Exhibit F.

e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

4.5. Producing transcribed copies of any notes made by a stenographer ~~or tape recording~~ at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, ~~whether or not the investigation results in any disciplinary action~~ in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing~~, but not limited thereto,~~ is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; ~~cost of tape copying, tape and storage~~; cost of ~~transcription,~~ processing, service and retention of copies."

Section IV. "Reimbursable Activities, Subdivision (D), "Adverse Comment"[17]

Government Code sections 3305 and 3306 provide peace officers with procedural rights to receive notice, and review and respond to an adverse comment entered in the officer's personnel file.

The Commission found that Government Code sections 3305 and 3306 constitute a partial reimbursable state mandated program for those activities not previously required by the due process clause and/or statutory law. (See pages 26 through 28 of the Statement of Decision.)

The claimant's proposed parameters and guidelines contains the same activities listed in the Commission's Statement of Decision regarding adverse comments, and also includes the following paragraph:

> "Included in the foregoing, but not limited thereto, are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment;

[17] See pages 25-27, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; *officer's time in response to adverse comment*; review of response to adverse comment, attaching same to adverse comment and filing." (Emphasis added.)

As indicated in the above paragraph, the claimant is requesting reimbursement for the officer's time in response to the adverse comment. Staff disagrees with this request.

Government Code section 3306, which addresses the officer's response to an adverse comment, states the following:

> "A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment."

The Commission found that section 3306 requires the local agency to provide an opportunity to respond to the adverse comment within 30 days. (See page 19 of the Statement of Decision.) However, the Commission never found, and the statute does not require, that the officer file a response. Rather, the decision to file a response to the adverse comment is left up to the individual officer.

Therefore, staff finds that compensating local agencies for the officer's time in responding to an adverse comment is not mandated by the state and is, thus, not eligible for reimbursement. Accordingly, staff modified Section IV. (D) of the proposed parameters and guidelines by striking out the words "officer's time in response to adverse comment."

Section VI. "Supporting Data"[18]

The State Controller's Office requests that language be included to validate the quantity of work performed for the costs claimed. The Controller's Office requests eligible claimants to identify the following:

> "Number of cases in process at the beginning of the fiscal year ___
> Number of new cases added during the fiscal year ___
> Number of cases completed or closed during the fiscal year ___
> Number of cases in process at the end of the fiscal year ___"

Staff has included this language in Section VI. Supporting Data.

Other Non-substantive, Clarifying Modifications

Staff made other non-substantive, clarifying modifications to the remainder of the claimant's proposed parameters and guidelines. Changes were also made to Sections V. and IX. to conform the language to other parameters and guidelines adopted by the Commission.

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

F/mandates/4499/FINPGs
Document Date: July 14, 2000

[18] See page 28, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES

AS MODIFIED BY STAFF

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR)~~, Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174 and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675~~.

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts[19] when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On ~~August 26, 1999,~~ November 30, 1999, the Commission adopted its Statement of Decision ~~found~~ that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts ~~which~~ that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section

[19] Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor ~~including overtime~~, supplies and services, training and travel ~~for law enforcement, human resources, legal counsel and other departments or contract services~~ for the performance of the following activities~~,~~ are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

3. ~~Maintenance of the systems to conduct the mandated activities.~~ Updating the status of the POBAR cases.

~~4. Providing direct supervision over the agency staff performing the mandated activities.~~

B. ~~On-Going Activities~~ Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

~~1.~~ Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, ~~together with the defense of same in any court proceeding~~ (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing~~, but not limited thereto,~~ are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical

services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police

   Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

   - Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
   - Transfer of permanent employees for purposes of punishment;
   - Denial of promotion for permanent employees for reasons other than merit; and
   - Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

~~2.~~ 1. ~~Conducting an interrogation of a peace officer while the officer is on duty, or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

   Included in the foregoing~~, but not limited thereto,~~ is the ~~review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof~~; preparation and review of overtime compensation requests~~; review of proceedings by counsel~~.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing~~, but not limited thereto,~~ is the review of agency complaints or other documents to prepare the notice of interrogation; ~~the nature of the interrogation~~; ~~review by counsel;~~ determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; ~~and~~ preparation ~~and presentation to officer~~ of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

   Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

   a) The further proceeding is not a disciplinary action;

   b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

   c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

   d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

   e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

   Included in the foregoing is the cost of tape copying.

~~4.~~5. Producing transcribed copies of any notes made by a stenographer ~~or tape recording~~ at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, ~~whether or not the investigation results in any disciplinary action~~ in the following circumstances (Gov. Code, § 3303, subd. (g)):

   a) When the investigation does not result in disciplinary action; and

   b) When the investigation results in:

   - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
   - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
   - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or

- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing~~, but not limited thereto,~~ is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; ~~cost of tape copying, tape and storage~~; cost of ~~transcription,~~ processing, service and retention of copies.

D. Adverse Comment

~~5.~~ Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:

- Providing notice of the adverse comment: and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

<u>Cities and Special Districts</u>

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing~~, but not limited thereto,~~ are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; ~~officer's time in response to adverse comment~~; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

   Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

   Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

   ~~Identify the expenditures that are a direct cost of this mandate.~~ Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

   Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

   The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, ~~expenses~~ and per diem.

B. Indirect Costs

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

<u>All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.</u>

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

~~IX. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE~~

~~The State Controller's Office is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years' reimbursement claims by mail to the Commission on State Mandates, at 1300 I Street, Suite 950, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate that will be the basis for the appropriation to be made by the Legislature for this program.~~

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 And filed December 21, 1995; By the City of Sacramento, Claimant.	NO. CSM – 4499 **ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12** (Adopted on July 27, 2000)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

_____

PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts[1] when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial

[1] Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

   Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

   - Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
   - Transfer of permanent employees for purposes of punishment;
   - Denial of promotion for permanent employees for reasons other than merit; and
   - Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

   Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

   Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

   Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

   a) The further proceeding is not a disciplinary action;

   b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

   c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

   d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

   e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

   Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

   a) When the investigation does not result in disciplinary action; and

   b) When the investigation results in:

   - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
   - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
   - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
   - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

   Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:

- Providing notice of the adverse comment: and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

   Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

   Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

   Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

   Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

   Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.

Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

   The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

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An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.