Hearing Date: December 4, 2026

ITEM 6

PROPOSED STATEWIDE COST ESTIMATE

$884,514 - $6,673,275
Initial Claim Period

Fiscal Years 2023-2024 and 2024-2025

$781,418 - $6,456,609 Plus the Implicit Price Deflator
Fiscal Year 2025-2026 and Following

Penal Code Sections 745(j)(3) and 1473(f), as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

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Exhibit A

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
980 Ninth Street, Suite 300
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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

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 B

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

February 18, 2026

Ms. Anne Kato
State Controller's Office
Local Government Programs and Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

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 and Parameters and Guidelines
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections 745 and 1473
County of Los Angeles, Claimant

Dear Ms. Kato and Mr. Lemus:

On February 13, 2026 the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-captioned matter.

Very truly yours,

Juliana F. Gmur,
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023 The period of reimbursement begins July 1, 2023.	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 February 13, 2026*) (*Served February 18, 2026*)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on February 13, 2026.

Juliana F. Gmur, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023 The period of reimbursement begins July 1, 2023.	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 February 13, 2026*) (*Served February 18, 2026*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on February 13, 2026. Fernando Lemus and Tiffany Walston appeared on behalf of the County of Los Angeles (claimant). Chris Hill and Kaily Yap 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
Deborah Gallegos, Representative of the State Controller	Yes
Karen Greene Ross, Public Member	Yes
Monica Jimenez, Representative of the State Treasurer, Vice Chairperson	Yes
Renee Nash, School District Board Member	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

I. Summary of the Mandate

These Parameters and Guidelines address new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

On September 26, 2025, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this Test Claim for the following reimbursable activities:

- 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.[1]

II. Procedural History

The Commission adopted the Test Claim Decision on September 26, 2025.[2] Commission staff issued the Draft Expedited Parameters and Guidelines on September 29, 2025.[3] On October 20, 2025, the State Controller's Office filed comments on the Draft Expedited Parameters and Guidelines recommending no changes.[4] Also on October 20, 2025, the County of Santa Clara, the County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney, City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney filed comments on the Draft Expedited Parameters and Guidelines.[5] The claimant did not file comments on the Draft Expedited Parameters and Guidelines.

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[1] Exhibit A, Test Claim Decision, page 41.

[2] Exhibit A, Test Claim Decision.

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

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

[5] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines; Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft

Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on November 25, 2025.[6] On December 15, 2025, the State Controller's Office filed comments on the Draft Proposed Decision and Parameters and Guidelines recommending no changes.[7] No other comments were filed.

III. Positions of the Parties and Interested Parties

A. County of Los Angeles

The claimant did not file comments on the Draft Expedited Parameters and Guidelines or the Draft Proposed Decision and Parameters and Guidelines.

B. State Controller

The Controller filed comments on the Draft Expedited Parameters and Guidelines and Draft Proposed Decision and Parameters and Guidelines recommending no changes.[8]

C. County of Santa Clara

The County of Santa Clara filed comments on the Draft Expedited Parameters and Guidelines, seeking reimbursement for further public defender costs.[9] Reimbursement for the following is requested as "reasonably necessary activities":

> (1) the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel; and (2) the costs of requesting court transcripts, as well as CDCR records.[10]

The County of Santa Clara filed no comments on the Draft Proposed Decision and Parameters and Guidelines.

Expedited Parameters and Guidelines; Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines.

[6] Exhibit K, Draft Proposed Decision and Parameters and Guidelines.

[7] Exhibit L, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines, pages 1-11.

[8] Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines, page 1; Exhibit L, Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

[9] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

[10] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 5.

D. County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney, City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney

Six county district attorney offices filed comments on the Draft Expedited Parameters and Guidelines, advocating that some or all their activities responding to Racial Justice Act (RJA) habeas corpus petitions be reimbursed as "reasonably necessary activities" to the state-mandated program.[11] Two offices advocated reimbursing district attorney activities responsive to RJA petition discovery *only*.[12] Four offices advocated reimbursing *all* responsive activities.[13]

However, these six county offices filed no comments on the Draft Proposed Decision and Parameters and Guidelines.

1. District Attorney Reimbursement Requests for Activities Responding to RJA Discovery Motions *Only*

The County of Contra Costa Office of the District Attorney and County of Sonoma Office of the District Attorney request reimbursement for responding to RJA discovery motions. They identically request the following as "reasonably necessary activities" to the state-mandated program, to "appropriately respond to these new discovery mandates"[14]:

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[11] Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

[12] Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-4.

[13] Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

[14] Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 2.

> Preparation activities undertaken by the District Attorney's Office, including extraction, review, and synthesis of case data and evidence necessary to comply with the statutory requirements imposed by the mandate;
>
> and
>
> Personnel costs borne by the District Attorney's Office, to appropriately respond to habeas petitioner's claims for discovery, which are necessary to comply with the statutory requirements imposed by the mandate.[15]

The County of Contra Costa Office of the District Attorney attached a court order signed by Judge Julia Campins on September 24, 2025, addressing the district attorney's delayed discovery response to an RJA petition.[16] Contra Costa states that "[d]ue to the absence of data synthesis systems to efficiently access and compile this type of information, Petitioner has not received the information necessary to proceed with his habeas petition."[17]

The Sonoma County District Attorney's Office has incurred additional legal obligations and costs due to RJA claims, including discovery comprised of potentially "decades of case-specific data on cases unrelated to petitioner's, but sharing either 'offense type' or 'charge.'"[18] The data is "*historical*" and located in "decades worth of archived, paper case files" that must be "manually collected."[19] Work also includes review of the record and case file, expert consultation and analysis, preparation of briefs and legal argument, and court appearances and hearings, for which the county has "not received any local, State, or federal funding specific to the implementation of AB 256, and has not received any grant funding" as an offset.[20]

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[15] Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 2-3; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

[16] Exhibit E, Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 4-12.

[17] Exhibit E, Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 1.

[18] County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 3 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney).

[19] County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 3 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney), emphasis in original.

[20] County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 3-4 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney).

2. District Attorney Reimbursement Requests for *All* Activities Responding to RJA Petitions

The City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney request that *all* district attorney activities responding to RJA petitions be reimbursable as "reasonably necessary activities" to the state-mandated program.

The City and County of San Francisco Office of the District Attorney seeks reimbursement for the following as "reasonably necessary activities" to the state-mandated program:

> case review; discovery (including motion work, court hearings, processing, and production); and evidentiary hearings (including pre-hearing discovery, expert witnesses, briefing, and transcripts).[21]

The San Francisco District Attorney has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct or indirect costs related to AB 256.[22]

The City and County of San Francisco Office of the District Attorney also notes recent legislation on RJA discovery. "On October 13, 2025, Governor Newsom signed AB 1071, which amends subdivision (d) of section 745 to allow a defendant or petitioner to file a motion for discovery of all evidence relevant to a potential violation of subdivision (a) of section 745. Thus, with the concurrent amendment to section 1473, this discovery motion provision will now also apply to indigent habeas corpus petitioners."[23]

The County of Marin seeks reimbursement for the following as "reasonably necessary activities" to the state-mandated program:

> 1) discovery under the RJA [Racial Justice Act], 2) review of the record and case files, 3) expert consultation and analysis, 4) preparation of briefs and legal argument including a review of data and expert conclusions, and 5) court appearances/hearings.[24]

The County of Marin outlines the legal responsibilities in responding to RJA petitions as responding to discovery under the RJA, reviewing the record and case file, engaging

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[21] Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 4.

[22] Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 5-6 (Declaration of Allison Garbutt Macbeth, Division Chief of the Special Litigation and Post Conviction Division).

[23] Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[24] Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, page 4.

with expert consultation and analysis, preparing briefs and legal argument, including reviewing data and expert conclusions, and making court appearances and attending hearings, and declares that the District Attorney of Marin has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct and indirect costs related to AB 256.[25]

The County of Marin notes three additional concerns. Like the City and County of San Francisco Office of the District Attorney, Marin expresses concern about the recent passage of AB 1071, but acknowledges that it is "not the current subject of this test claim."[26] Secondly, it states that, from 2023 forward, it will also have work to perform under Penal Code section 745(j) subdivisions (2), (4), and (5),[27] despite that the Test Claim Decision addresses only section 745(j)(3).[28] Lastly, Marin argues that "the test claim should not be limited to claims made by 'indigent habeas corpus petitioners' only; it should apply to petitioners and claimants who make a motion or file a petition under subdivision (j)(3) of Section 745."[29]

The County of Sacramento Office of the District Attorney seeks reimbursement for the following as "reasonably necessary activities" to the state-mandated program:

- Discovery
- Litigation of substantive claims
- One-time and ongoing expert costs[30]

The County of Sacramento outlines the legal responsibilities in responding to RJA petitions as discovery, litigation of substantive claims, and one-time and ongoing expert costs, which includes having retained "the services of a data analytics firm to engage in large-scale data retrieval, verification, and empirical analysis to evaluate whether similarly situated individuals receive similar charging decisions, convictions, and sentences."[31] Also, Sacramento has not received any local, state, or federal funding

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[25] Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 6-7 (Declaration of Dori Ahana, Chief Deputy District Attorney).

[26] Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[27] Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

[28] Exhibit A, Test Claim Decision, page 4.

[29] Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 2-3.

[30] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 3-4.

[31] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 6 (Declaration of Michael Blazina, Assistant District Attorney).

and does not have a fee authority to offset its increased direct and indirect costs for work related to AB 256.[32]

Like the City and County of San Francisco Office of the District Attorney and County of Marin, Sacramento expresses concern about the recent passage of AB 1071, stating it "will further expand the Sacramento County District Attorney's Office's duties under the RJA starting on January 1, 2026."[33]

The County of Sacramento adds that more discovery is required under the RJA than under previous statutes. Prior to the RJA and the test claim statute, "claims for post-conviction discovery were controlled by Penal Code section 1054.9."[34] And "[s]imilarly, requests for pre-trial discovery were controlled by Penal Code section 1054 *et. seq.*"[35]

Like the County of Marin, Sacramento also states that, from 2023 forward, it will also have work to perform under Penal Code section 745(j) subdivisions (2), (4), and (5),[36] despite that the Test Claim Decision addresses only section 745(j)(3).[37]

The County of Stanislaus Office of the District Attorney seeks reimbursement identical to the County of Marin for the following as "reasonably necessary activities" to the state-mandated program:

> 1) discovery under the RJA [Racial Justice Act], 2) review of the record and case files, 3) expert consultation and analysis, 4) preparation of briefs and legal argument including a review of data and expert conclusions, and 5) court appearances/hearings.[38]

The County of Stanislaus outlines the legal responsibilities in responding to RJA petitions as responding to discovery under the RJA, reviewing the record and case file, engaging with expert consultation and analysis, preparing briefs and legal argument, including reviewing data and expert conclusions, and making court appearances and attending hearings, and declares that the District Attorney of County of Stanislaus has

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[32] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 6 (Declaration of Michael Blazina, Assistant District Attorney).

[33] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 4.

[34] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 1.

[35] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 2.

[36] Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, page 4.

[37] Exhibit A, Test Claim Decision, page 4.

[38] Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 2-3.

not received any local, state, or federal funding and does not have a fee authority to offset its increased direct and indirect costs related to AB 256.[39]

IV. Discussion

Consistent with the Test Claim Decision, and in consideration of comments as analyzed below, the Parameters and Guidelines state the following:

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

Any 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 that 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 December 19, 2024, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

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

According 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." As the Commission's regulation states:

> (d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. "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.[40]

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[39] Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 4-5 (Declaration of Mark L. Zahner, Assistant District Attorney).

[40] California Code of Regulations, title 2, section 1183.7(d).

In accordance with the Government Code and the Commission's regulations, any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state-mandate.[41] Reimbursement is not required for activities that go beyond the scope of the approved state-mandated program.

Section IV. of the Parameters and Guidelines identifies the reimbursable state-mandated activity approved by the Commission as follows:

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

- 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.

Several counties request additional reimbursement for "reasonably necessary" activities for both the public defender and district attorney offices. As explained below, the majority of these requests go beyond the scope of the mandate and are not eligible for reimbursement. In addition, one request is unnecessary as the costs are already provided for in the Parameters and Guidelines.

1. Costs Incurred by the Public Defender's Office to Request Court Transcripts or CDCR Records Are Reimbursable as Direct Costs, but Costs Incurred for Public Defender Activities Performed Prior to or Irrespective of the Appointment by the Court Go Beyond the Scope of the Mandate and Are Not Eligible for Reimbursement.

The County of Santa Clara requests adding reimbursement for the following as "reasonably necessary activities" performed by public defenders:

> "(1) the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel; and (2) the costs of requesting court transcripts, as well as CDCR records."[42]

Santa Clara's second request is already provided for in the Parameters and Guidelines and therefore need not be further addressed as a "reasonably necessary activity." Section V.A.1-3 reimburses the direct costs of salaries and benefits, materials and supplies, and contracted services to represent indigent habeas corpus petitioners on

[41] Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

[42] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 5.

their RJA petition.[43] The activity of requesting transcripts and records is an employee activity paid through salary and benefits. The costs of the court transcripts and CDCR records themselves are likewise already provided for as material costs and contract payments.

Santa Clara's first request, however, is not eligible for reimbursement because it exceeds the scope of the mandate by requesting reimbursement for expenses incurred by public defenders *before* the state mandate begins. Santa Clara's request for reimbursement "prior to, and irrespective of, official appointment as habeas counsel,"[44] plainly exceeds the state-mandated program. Pursuant to Penal Code section 1473(f), as amended by the test claim statute, the state mandate is to provide counsel to the indigent habeas corpus petitioners "when appointed by the court."[45] This appointment specifically occurs after the inmate files a petition for writ of habeas corpus (including a statement that they cannot afford counsel) and after the judge finds that the petition has alleged facts that would establish a violation or the State Public Defender requests that counsel be appointed.[46]

Santa Clara argues that public defenders have an ethical obligation if they "become aware of a potential Racial Justice Act claim — for example, through their prior representation of a client at trial or their knowledge of bias in local policing, prosecution, and sentencing practices — [and] must either advise their client of the course to follow to obtain relief or take other appropriate action."[47] Santa Clara cites to this language from the court:

> As discussed in the body of this opinion, noncapital appellate counsel in this state who are aware of a basis for collateral relief should not await the outcome of the appeal to determine if grounds for collateral relief exist. While they have no obligation to conduct an investigation to discover if facts outside the record on appeal would support a petition for habeas corpus or other challenge to the judgment, if they learn of such facts in the course of their representation they have an ethical obligation to advise their client of the course to follow to obtain relief, or to take other appropriate action.[48]

However, while the actions described by the county may stem from an attorney's existing obligation as counsel for a criminal defendant, those actions go beyond the

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[43] Exhibit B, Draft Expedited Parameters and Guidelines, page 7.

[44] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 5.

[45] Exhibit A, Test Claim Decision, page 41.

[46] Penal Code section 1473(f) (later renumbered as 1473(e)).

[47] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 3.

[48] Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 3; *In re Clark* (1993) 5 Cal.4th 750, 784, footnote 20.

scope of the mandate. As the Test Claim Decision states, there is no pre-existing right to post-conviction counsel under federal or state law.[49] The state-mandated right to counsel exists here *only* under the terms of the test claim statute, and the mandate begins when the court appoints counsel.[50]

Santa Clara also points to a summarized statement of California law that a habeas petition's filing date is "measured from the time the petitioner *or counsel* knew, or reasonably should have known, of the information," but the cases underlying this general principle are death penalty cases and long pre-date the test claim statute.[51] When addressing timeliness, the Racial Justice Act refers only to what the petitioner knew, not their counsel.[52] Pursuant to Penal Code section 1473(f) as amended by the 2022 test claim statute, the state-mandated program begins when *new* counsel is appointed and is not affected by lack of communication between public defenders and their past clients.

Finally, the Commission considered a similar argument in *Sex Offenders Registration: Petitions for Termination*, 21-TC-03. There, the Department of Justice created informational literature for sex offenders suggesting they may contact their local public defender regarding the new system available to terminate their registration, but the DOJ's informational literature did not "create a reimbursable state mandate."[53] Similarly here, the fact that public defenders may choose under existing ethical obligations to advise former clients before the appointment of counsel by the court, these costs are not mandated by the test claim statute and are not reasonably necessary to carry out the mandated program. Penal Code sections 1473(f) identifies that the mandate begins when "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." Actions of the public defender before the appointment of counsel go beyond the scope of the mandate and do not trigger the right to reimbursement.

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[49] Exhibit A, Test Claim Decision, pages 30-31.

[50] *Bemore v. Superior Court* (2025) 108 Cal.App.5th 1125, 1146 ("Although 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."); Penal Code section 1473(f), as amended by Statutes 2022, chapter 739 (later renumbered as 1473(e)).

[51] *Walker v. Martin* (2011) 562 U.S. 307, 312, emphasis added.

[52] Penal Code sections 1473(e) (referring to evidence "that could not have been previously known by the petitioner") and 745(c).

[53] Commission on State Mandates, Test Claim Decision on *Sex Offenders Registration: Petitions for Termination*, 21-TC-03, adopted October 27, 2023, https://csm.ca.gov/decisions/21-TC-03-102723.pdf (accessed on October 23, 2025), page 31.

Accordingly, Santa Clara's second request for "the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel" go beyond the scope of the mandate are not eligible for reimbursement.

2. District Attorney Activities Responding to RJA Petitions Go Beyond the Scope of the Mandate and Are Not Eligible for Reimbursement.

Six district attorney offices request reimbursement for activities performed in response to an RJA petition, including responding to discovery, on the grounds that they are reasonably necessary to comply with the state-mandated program.[54]

The Commission finds that activities performed by the district attorney offices go beyond the scope of the mandate imposed on the public defender by Penal Code sections 1473(f) and745(j)(3), as amended by the 2022 test claim statute and are, therefore, not eligible for reimbursement.

As discussed above, "reasonably necessary activities" must be necessary for the performance *of the state-mandated program*, and any activity required by statutes, regulations, and other executive orders that were not pled in the Test Claim may only be used if the state-mandated program were rendered impossible without them.[55] Here, the district attorneys' RJA work is not a reasonably necessary activity to comply with the state-mandated program because the state-mandated program is limited to the mandated activities performed by the public defender.

The state-mandated program in this case is limited to counties providing public defender services pursuant to Penal Code sections 1473(f), which declares, in part, 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" and 745(j)(3), which declares, in part, that the right to bring an RJA petition exists "regardless of when the judgment or disposition became final", as amended by the 2022 test claim statute. These code sections do not require the district attorney to provide any services as respondents to an RJA petition or to defend the actions alleged in the RJA petition. Rather, the district attorney has general prosecutorial discretion bestowed and controlled by existing state

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[54] Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

[55] California Code of Regulations, title 2, section 1183.7(d).

law.[56] "The prosecutor has the responsibility to decide in the public interest whether to seek, oppose, accept, or challenge judicial actions and rulings. These decisions, too, go beyond safety and redress for an individual victim;…."[57]

In contrast, an example of the district attorneys being subject to a state-mandated program is found in *Sexually Violent Predators*, CSM-4509.[58] Where state law requires civil commitment proceedings following completion of a sentence for a sexually violent crime and imposes a legal duty on the county to handle those proceedings: "[t]he petition [for civil commitment] *shall* be filed, and the proceedings *shall* be handled, by either the district attorney or the county counsel of that county."[59] But district attorneys are not subject to any such state-mandated direction here, so their work in response to RJA petitions remains under their prosecutorial discretion to respond to the petition and in response to any court orders rather than a mandate from the state. Appropriations required to comply with mandates of the courts, "which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly" are not subject to the local government appropriations limit in article XIII B[60] and, are therefore, not entitled to reimbursement under article XIII B, section 6.[61]

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[56] *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."); California Constitution, article V, section 13 (State Attorney General supervises "every district attorney."); Government Code section 100(b); Government Code section 26500 ("The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."): *Dix v. Superior Court* (1991) 53 Cal.3d 442, 452 (public interest standing does not prevail "over the public prosecutor's exclusive discretion in the conduct of criminal cases").

[57] *Dix v. Superior Court* (1991) 53 Cal. 3d 442, 452.

[58] Commission on State Mandates, Test Claim Decision, *Sexually Violent Predators*, CSM-4509, adopted June 25, 1998, https://csm.ca.gov/decisions/doc96.pdf (accessed on October 24, 2025), pages 2-3.

[59] Welfare and Institutions Code section 6601(i), emphasis added; see generally Welfare and Institution Code sections 6601-6608.

[60] California Constitution, article XIII B, section 9(b).

[61] Courts have recognized that reimbursement under article XIII B, section 6 is not required when the expenditure of local costs is excluded from the constitutional spending limit because those costs are not shifted *by the state*. *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70-71; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 907; see also, *Redevelopment Agency of*

The Test Claim Decision accordingly addressed the state-mandated program on counties to provide public defender services *only*.[62] "The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance *of the state-mandated program*."[63] The request for reimbursement of district attorney activities is therefore beyond the scope of the state-mandated program.

Finally, any concerns expressed by the counties over AB 1071 (2025) are not relevant to these Parameters and Guidelines since the mandate is limited to Penal Code sections 745(j)(3) and 1473(f), as amended by the 2022 test claim statute.

D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct and indirect costs that are eligible for reimbursement and includes the standard boilerplate language.

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

Section VII. addresses offsetting revenues and contains the following boilerplate 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.

F. The Remaining Sections of the Parameters and Guidelines

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, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

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the City of San Marcos v. Commission on State Mandates (1997) 55 Cal.App.4th 976, 986-987.

[62] Exhibit A, Test Claim Decision, page 19.

[63] Government Code section 17557(a), emphasis added.

PARAMETERS AND GUIDELINES[64]

Penal Code Sections 745(j)(3) and 1473(f), as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

Period of reimbursement begins July 1, 2023

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

On September 26, 2025, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this Test Claim for the following reimbursable activities:

- 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.[65]

II. ELIGIBLE CLAIMANTS

Any 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 that 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 December 19, 2024, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

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[64] 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.

[65] Exhibit A, Test Claim Decision, page 41.

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. 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:

- 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.

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 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, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include 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.[66]

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

[66] 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).)

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[67] 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

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

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 February 18, 2026, I served the:

- **Current Mailing List dated February 3, 2026**
- **Decision and Parameters and Guidelines adopted February 13, 2026**

  Criminal Procedure: Discrimination, 24-TC-02
  Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, 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 February 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: 2/3/26

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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Exhibit C

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

October 22, 2026

Ms. Anne Kato
State Controller's Office
Local Government Programs and Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

Mr. Fernando Lemus
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Statewide Cost Estimate, Schedule for Comments, and Notice of Hearing
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections 745 and 1473

Dear Ms. Kato and Mr. Lemus:

The Draft Proposed Statewide Cost Estimate for the above-captioned matter is enclosed for your review and comment.

Written Comments: Written comments may be filed on the Draft Proposed Statewide Cost Estimate by **November 2, 2026**. 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).)

Hearing: This matter is set for hearing on **Friday, December 4, 2026, in person at 10:00 a.m., at The Jesse M. Unruh State Office Building, 915 Capitol Mall, Room 121, The Boardroom, Sacramento, California, 95814 and via Zoom.**

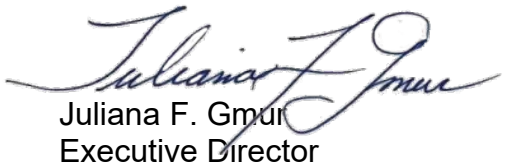
The Proposed Statewide Cost Estimate will be issued on or about November 20, 2026.

This matter is proposed for the Consent Calendar. Please let us know in advance if you oppose having this item placed on the Consent Calendar.

Please also notify Commission staff not later than noon on December 1, 2026, that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and the names and email addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom.

The last communication from Commission staff will be the Proposed Statewide Cost Estimate, which will be issued approximately two weeks prior to the hearing, and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

Very truly yours,



Juliana F. Gmur
Executive Director

Hearing Date: December 4, 2026

ITEM ___

DRAFT PROPOSED STATEWIDE COST ESTIMATE

$884,514 - $6,673,275
Initial Claim Period

Fiscal Years 2023-2024 and 2024-2025

$781,418 - $6,456,609 Plus the Implicit Price Deflator
Fiscal Year 2025-2026 and Following

Penal Code Sections 745(j)(3) and 1473(f), as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate by a vote of [vote count will be included in the adopted Statewide Cost Estimate] during a regularly scheduled hearing on December 4, 2026 as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Karen Greene Ross, Public Member	
Deborah Gallegos, Representative of the State Controller	
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 Office of Land Use and Climate Innovation	

STAFF ANALYSIS

Summary of the Mandate, Eligible Claimants, and Period of Reimbursement

This Statewide Cost Estimate addresses state-mandated activities arising from changes made to Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

The Commission adopted the Test Claim Decision on September 26, 2025,[1] and the Decision and Parameters and Guidelines on February 13, 2026, approving reimbursement beginning July 1, 2023, for any county, or city and county, whose costs

[1] Exhibit A, Test Claim Decision.

for this program are paid from proceeds of taxes and that incurs increased costs as a result of this mandate, is eligible to claim reimbursement.[2]

The initial reimbursement period is July 1, 2023 through June 30, 2025. Eligible claimants were required to file initial claims with the State Controller's Office (Controller) by September 16, 2026. Late initial reimbursement claims may be filed until September 16, 2027, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.[3]

Reimbursable Activities

The Commission approved the following reimbursable activity for this program:

- 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.[4]

Offsetting Revenues and Reimbursements

The Decision and Parameters and Guidelines specify that any offsetting revenues (i.e., funds that are not a claimant's proceeds of taxes), are required to be identified and deducted from the costs claimed, 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.

No offsetting revenues were claimed in the initial filings.

Statewide Cost Estimate

Staff reviewed 12 unaudited reimbursement claims submitted by seven county claimants, as compiled by the Controller. Staff developed the Statewide Cost Estimate based on the assumptions and methodology discussed herein.

Table 1. Initial Reimbursement Period Cost Estimate

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.	$761,244 - $6,307,443

[2] Exhibit B, Decision and Parameters and Guidelines.

[3] Government Code section 17561(d)(3).

[4] Exhibit A, Test Claim Decision, page 41.

Total Direct Costs	$761,244 - $6,307,443
Indirect Costs identified	$123,270 - $1,009,191
Offsetting Revenues or Other Reimbursements	-($0)
Subtotal	$884,514 - $7,316,634
10 Percent Late Filing Penalty	-($0 - $643,359)
Total Costs	**$884,514 - $6,673,275**

Table 2. Estimated Annual Costs for Fiscal Year 2025-2026 and Following

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.	$666,023 - $5,518,469
Total Direct Costs	$666,023 - $5,518,469
Indirect Costs identified	$115,395 - $938,140
Offsetting Revenue	-($0)
Subtotal	$781,418 - $6,456,609
Late Filing Penalty	-($0)
Total Costs	**$781,418 - $6,456,609**

Assumptions

1. The amount claimed for the initial period of reimbursement may be higher if late or amended claims are filed. Of the 58 eligible claimants, only seven—the Counties of Alameda, Los Angeles, Merced, Riverside, San Diego, San Joaquin, and Yolo—filed claims for the initial period of reimbursement from July 1, 2023 through June 30, 2025.
2. For purposes of calculating the high-end projection for the initial period of reimbursement of this Statewide Cost Estimate, it is presumed that no late or amended claims will be filed by the seven claimants. This Statewide Cost Estimate is based on the initial claims filed and the claims which the 51 eligible non-filer claimants could file late.
3. The costs for this case are driven by the number and complexity of Racial Justice Act cases filed. However, there is no statewide data on the number of Racial Justice Act cases filed by indigent habeas corpus petitioners whose criminal judgments were entered *before* January 1, 2021, and are currently serving a sentence, and the claimants have not provided a case count. Thus, the calculation of annual costs for 2025-2026 and following is based only on the 2024-2025 costs claimed as part of the initial claims.

4. Costs may be lower than projected if either no reimbursable costs were incurred or if costs of less than $1,000 were incurred by non-filers, in which case a late reimbursement claim cannot be filed.[5]
5. Costs may be lower if the Controller audits the claims and determines that costs were improperly claimed or were not supported or that other offsetting revenues (i.e., funds that are not the claimant's proceeds of taxes) were used by a claimant to pay for the reimbursement activities.

Methodology

A. Initial Reimbursement Period Cost Estimate

As explained below, the low-end statewide cost estimate represents the costs actually claimed. The high-end statewide cost estimate, in addition to indirect costs actually claimed, represents the costs actually claimed plus the costs that could be claimed in late claims. These estimates are based on 58 total eligible claimant counties.

The Activity consists of providing indigent counsel during court proceedings under Penal Code section 745, when court ordered, for certain petitioners alleging a violation of the Racial Justice Act. The Activity estimated claims are calculated by using the average costs claimed per filer county, multiplied by the eligible claimant counties that have not yet filed claims during the initial claiming period.

> Activity actual costs claimed [$761,244] / Number of filer counties [7] = Average Activity cost per county [$108,749]
>
> Average Activity cost per county [$108,749] x Number of non-filer counties [51] = Total estimated non-filer Activity costs [$5,546,199]
>
> Activity Actual costs claimed [$761,244] + Estimated non-filer Activity costs that could be claimed in late claims [$5,546,199] = Total potential Activity costs [$6,307,443]

Indirect Costs: The low-end of the range for indirect costs is those indirect costs actually claimed. The high-end, in addition to indirect costs actually claimed, assumes that all eligible claimants who have not yet filed claims will file claims for indirect costs at the same average rate actually claimed, which is calculated by dividing indirect costs claimed by direct costs claimed equals average indirect cost rate (as a percentage). Then multiply the average indirect cost rate by the estimated direct costs.

> Indirect costs actually claimed [$123,270] / Direct costs actually claimed [$761,244] = Average indirect cost rate [16%].
>
> Average indirect cost rate [16%] x Estimated direct costs (sum of all estimated activity costs for the initial claim period) [$6,307,443] = High-end of the estimated indirect costs [$1,009,191].

[5] Government Code section 17564.

Offsetting Revenues: Both the low-end and the high-end are $0 because none of the initial claims compiled by the Controller reported offsetting revenues and thus, there is no basis upon which to predict offsetting revenues.

Late Filing Penalties: The low-end is $0 because none of the initial claims compiled by the Controller were assessed a late filing penalty. The high-end assumes that all non-filers will file claims for the initial period of reimbursement, which will be subject to a late filing penalty of ten percent of non-filer direct plus indirect costs.

Indirect Cost Rate [16%] x Estimated Non-filer Direct Costs [$5,546,199] = Estimated Non-filer Indirect Costs [$887,392].

Estimated Non-filer Direct Costs [$5,546,199] + Estimated Non-filer Indirect Costs [$887,392] = Estimated Non-filer Direct and Indirect Costs [$6,433,591]

Estimated Non-filer Direct and Indirect Costs [$6,433,591] x Late filing penalty [10%] = Estimated Non-filer Late Filing Penalties [$643,359].

Actual Late Filing Penalties [$0] + Estimated Non-filer Late Filing Penalties [$643,359] = High-End of Estimated Late Filing Penalties [$643,359].

B. Projected Annual Costs for Fiscal Year 2025-2026 and Following

This calculation is based on the claims filed for the second fiscal year of the initial claiming period, fiscal year 2024-2025. The low-end of the range assumes that the same claimants that filed reimbursement claims for the initial period of reimbursement will continue to file annual reimbursement claims. The high-end of the range assumes that all eligible claimants will file annual claims.

Activity actual costs claimed for fiscal year 2024-2025 [$666,023] / the number of filer counties [7] = average Activity cost per county [$95,146]

Average Activity cost per county [$95,146] x number of non-filer counties [51] = total estimated non-filer Activity costs [$4,852,446]

Activity actual costs claimed [$666,023] + estimated non-filer Activity costs that could be claimed in late claims [$4,852,446] = Total potential Activity costs [$5,518,469]

Indirect Costs: The low-end of the range for indirect costs is those indirect costs actually claimed during for the second fiscal year of the initial claiming period, fiscal year 2024-2025. The high-end, in addition to indirect costs actually claimed, assumes that all eligible claimants will file claims for indirect costs at the same average rate actually claimed during the second fiscal year of the initial claiming period, fiscal year 2024-2025.

Indirect costs actually claimed in fiscal year 2024-2025 [$115,395] / Direct costs actually claimed [$666,023] = Average indirect cost rate [17%].

Average indirect cost rate [17%] x Estimated direct costs (sum of all estimated activity costs for fiscal 2024-2025) [$5,518,469] = High-end of the estimated indirect costs [$938,140].

Offsetting Revenues: Both the low-end and the high-end are $0 because none of the initial claims compiled by the Controller reported offsetting revenues and thus, there is no basis upon which to predict offsetting revenues.

Late Filing Penalties: Both the low-end and the high-end are $0 because, in the future, these claims will be part of annual claiming. In addition, there is no basis upon which to predict the filing of late claims and a late filing penalty.

Draft Proposed Statewide Cost Estimate

On October 22, 2026, Commission staff issued the Draft Proposed Statewide Cost Estimate.[6]

Staff Recommendation

Staff recommends that the Commission adopt this Statewide Cost Estimate of $884,514 - $6,673,275 for the Initial Claim Period that began on July 1, 2023 and ends on June 30, 2025 and $781,418 - $6,456,609 plus the Implicit Price Deflator for fiscal year 2025-2026 and following.

[6] Exhibit C, Draft Proposed Statewide Cost Estimate.

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 22, 2026, I served the:

- **Current Mailing List dated September 14, 2026**
- **Draft Proposed Statewide Cost Estimate, Schedule for Comments, and Notice of Hearing issued October 22, 2026**

  Criminal Procedure: Discrimination, 24-TC-02
  Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, 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 October 22, 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: 9/14/26

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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