



# County of San Diego

THOMAS E. MONTGOMERY  
COUNTY COUNSEL

OFFICE OF COUNTY COUNSEL  
1600 PACIFIC HIGHWAY, ROOM 355, SAN DIEGO, CA 92101  
(619) 531-4860 Fax (619) 531-6005

**RECEIVED**  
May 15, 2019  
**Commission on  
State Mandates**

STEPHANIE KARNAVAS  
SENIOR DEPUTY  
Direct Dial: (619) 531-5834  
E-Mail: stephanie.karnavas@sdcounty.ca.gov

April 4, 2019

Via Drop Box

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RE: Comments in Response to the Commission’s Draft Proposed Decision,  
and the Department of Finance’s March 13, 2019 Response to  
Test Claim 17-TC-29**

*Youth Offender Parole Hearings, 17-TC-29*  
Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter  
312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter  
675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)  
County of San Diego, Claimant

Dear Ms. Halsey:

The Claimants provide the following comments in response to the Commission’s Draft Proposed Decision and the Department of Finance’s (“DOF”) March 13, 2019 Response to Test Claim 17-TC-29:

The Test Claim Statutes Impose State Mandated Activities on the Claimants

In its draft decision, the Commission contends that the test claim statutes do not impose any requirements on local agencies, but rather claims that all responsibilities created by the statutes are assigned to the Board of Parole Hearings (“BPH”).

The Commission’s position ignores the California Supreme Court’s *interpretation of the statutes* as articulated in *People v. Franklin*, which indicates an offender must be given the opportunity to “make an accurate record of the juvenile offender’s characteristics and circumstances *at the time of the offense* so that the Board [of Parole Hearings], *years later, may properly discharge its obligation* to ‘give great weight to’ youth-related factors (§ 4801, subd. (c)) in determining whether the offender is ‘fit to rejoin society’ . . .”<sup>1</sup> The Court explained:

---

<sup>1</sup> *People v. Franklin*, 63 Cal. 4th 261, 284 (2016).

In directing the Board to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner” (§ 4801, subd. (c)), *the statutes also contemplate that information regarding the juvenile offender's characteristics and circumstances at the time of the offense will be available at a youth offender parole hearing to facilitate the Board's consideration.* For example, section 3051, subdivision (f)(2) provides that “[f]amily members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime ... may submit statements for review by the board.” Assembling such statements “about the individual before the crime” is typically a task more easily done at or near the time of the juvenile's offense rather than decades later when memories have faded, records may have been lost or destroyed, or family or community members may have relocated or passed away. (*Ibid.*) In addition, section 3051, subdivision (f)(1) provides that any “psychological evaluations and risk assessment instruments” used by the Board in assessing growth and maturity “shall take into consideration ... any subsequent growth and increased maturity of the individual.” *Consideration of “subsequent growth and increased maturity” implies the availability of information about the offender when he was a juvenile.* (*Ibid.*)<sup>2</sup>

In short, *Franklin* makes clear that the BPH *could not discharge its obligations* under the test claim statutes without imposing the newly mandated activities on the Claimants. While the Commission rightly notes that the BPH is required to provide state-appointed counsel to inmates at youth offender parole hearings, it does not claim that state-appointed counsel would handle the presentation of youth-related factors at the hearing in the trial court at or around the time of sentencing. Rather, it is undisputed that responsibility for work-up and the presentation of evidence at those hearings lies squarely with county prosecutors and defense counsel.<sup>3</sup>

In its draft decision, the Commission also concludes that the “requirement to make a record at sentencing hearings for YOPH eligible offenders does not stem from the language of the test claim statutes, but rather from a mandate of the courts.”

California Government Code section 17556 states, in relevant part:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

\* \* \*

(b) The statute or executive order affirmed for the *state a mandate that has been declared existing law or regulation by action of the courts.* This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

---

<sup>2</sup> *Id.* at 283-84 (emphasis added).

<sup>3</sup> *Id.* at 284.

The *Franklin* Court's determination that an offender be given an opportunity, in the trial court, to make a record of information that will be relevant to the offender's eventual YOPH, was not the Court's "declaration" of existing law – it was the Court's *interpretation of the statutes* enacted by the Legislature. In other words, the origin of the obligations imposed on the Claimants is the test claim statutes, not some independent judicial declaration of the law.

No Case Supports the Extension of Constitutional Protections Awarded to Juveniles to Offenders Between the Ages of 18 and 25

Citing United States Supreme Court cases *Graham v. Florida*<sup>4</sup> and *Miller v. Alabama*,<sup>5</sup> and the opinion of the California Supreme Court in *People v. Caballero*,<sup>6</sup> the DOF asserts that that "SB 260, SB 261, and SB 394 create a youth offender parole hearing mechanism for certain individuals to affirm what the courts had declared to be existing law."

As an initial matter, none of these cases required the California Legislature to enact the youth offender parole statutes at issue in this claim. The Legislature could have, alternatively, developed a new sentencing scheme for juvenile offenders that addressed the constitutional issues articulated by these cases.

More important, however, the DOF fails to address the fact none of these cases, or any other cited by the DOF or the Commission, extend any special protections to offenders over the age of 18. By extending the YOPH statutes and the attendant "*Franklin* hearing" necessary for the BPH to comply with its obligations under those statutes to offenders between the ages of 18 and 25, the California Legislature imposes costs on Claimants that exceed any obligations that might be argued to arise from the cases pertaining to the sentencing of juveniles.

Respectfully submitted,

THOMAS E. MONTGOMERY, County Counsel

By



STEPHANIE KARNAVAS, Senior Deputy

14-90097

---

<sup>4</sup> *Graham v. Florida*, 560 U.S. 48 (2010).

<sup>5</sup> *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>6</sup> *People v. Caballero*, 55 Cal. 4th 262 (2012).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 16, 2019, I served the:

- **Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision filed May 16, 2019**
- **Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision filed May 15, 2019**

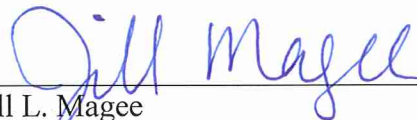
*Youth Offender Parole Hearings, 17-TC-29*

Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)

County of San Diego, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 16, 2019 at Sacramento, California.



Jill L. Magee

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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/22/19

**Claim Number:** 17-TC-29

**Matter:** Youth Offender Parole Hearings

**Claimant:** County of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

**Suedy Alfaro**, Senior Deputy County Counsel, *County of San Diego*  
1600 Pacific Highway, Room 355, San Diego, CA 92101  
Phone: (619) 531-5044  
Suedy.Alfaro@sdcounty.ca.gov

**Socorro Aquino**, *State Controller's Office*  
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-7522  
SAquino@sco.ca.gov

**Harmeet Barkschat**, *Mandate Resource Services, LLC*  
5325 Elkhorn Blvd. #307, Sacramento, CA 95842  
Phone: (916) 727-1350  
harmeet@calsdrc.com

**Lacey Baysinger**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0254  
lbaysinger@sco.ca.gov

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831  
Phone: (916) 203-3608  
allanburdick@gmail.com

**J. Bradley Burgess**, *MGT of America*  
895 La Sierra Drive, Sacramento, CA 95864  
Phone: (916)595-2646  
Bburgess@mgtamer.com

**Evelyn Calderon-Yee**, Bureau Chief, *State Controller's Office*

Local Government Programs and Services, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-5919  
ECalderonYee@sco.ca.gov

**Gwendolyn Carlos**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 323-0706  
gcarlos@sco.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630  
Phone: (916) 939-7901  
achinnrcs@aol.com

**Carolyn Chu**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8326  
Carolyn.Chu@lao.ca.gov

**Anita Dagan**, Manager, Local Reimbursement Section, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 324-4112  
Adagan@sco.ca.gov

**Raj Dixit**, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
raj.dixit@csm.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-3274  
susan.geanacou@dof.ca.gov

**Dillon Gibbons**, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814  
Phone: (916) 442-7887  
dillong@csda.net

**Lucia Gonzalez**, County Counsel, *County of Los Angeles*

500 West Temple Street, 648 Kenneth Hahn Hall of Administration, Los Angeles, CA 90012-2713  
Phone: (213) 974-1811  
lgonzalez@counsel.lacounty.gov

**Heather Halsey**, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
heather.halsey@csm.ca.gov

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274  
Chris.Hill@dof.ca.gov

**Edward Jewik**, *County of Los Angeles*  
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012  
Phone: (213) 974-8564  
ejewik@auditor.lacounty.gov

**Stephanie Karnavas**, Senior Deputy County Counsel, *County of San Diego*  
**Claimant Representative**  
1600 Pacific Highway, Room 355, San Diego, CA 92101  
Phone: (619) 531-5834  
Stephanie.Karnavas@sdcounty.ca.gov

**Anita Kerezsi**, *AK & Company*  
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446  
Phone: (805) 239-7994  
akcompanysb90@gmail.com

**Lisa Kurokawa**, Bureau Chief for Audits, *State Controller's Office*  
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 327-3138  
lkurokawa@sco.ca.gov

**Kim-Anh Le**, Deputy Controller, *County of San Mateo*  
555 County Center, 4th Floor, Redwood City, CA 94063  
Phone: (650) 599-1104  
kle@smcgov.org

**Erika Li**, Program Budget Manager, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
erika.li@dof.ca.gov

**Jill Magee**, Program Analyst, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Jill.Magee@csm.ca.gov

**Michelle Mendoza**, *MAXIMUS*  
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403  
Phone: (949) 440-0845  
michellemendoza@maximus.com

**Meredith Miller**, Director of SB90 Services, *MAXIMUS*  
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670  
Phone: (972) 490-9990  
meredithcmiller@maximus.com

**Lourdes Morales**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8320  
Lourdes.Morales@LAO.CA.GOV

**Geoffrey Neill**, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500  
gneill@counties.org

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Craig Osaki**, Deputy in Charge, *Los Angeles County Public Defender's Office*  
9425 Penfield Avenue #2700, Chatsworth, CA 91311  
Phone: (213) 974-2811  
cosaki@pubdef.lacounty.gov

**Arthur Palkowitz**, *Artiano Shinoff*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122  
apalkowitz@as7law.com

**Jai Prasad**, *County of San Bernardino*  
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018  
Phone: (909) 386-8854  
jai.prasad@atc.sbcounty.gov

**Mark Rewolinski**, *MAXIMUS*  
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236  
Phone: (949) 440-0845  
markrewolinski@maximus.com

**Brian Rutledge**, Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Brian.Rutledge@dof.ca.gov

**Tracy Sandoval**, *County of San Diego*  
**Claimant Contact**  
1600 Pacific Highway, Room 166, San Diego, CA 92101  
Phone: (619) 531-5413  
tracy.sandoval@sdcounty.ca.gov

**Theresa Schweitzer**, *City of Newport Beach*  
100 Civic Center Drive, Newport Beach, CA 92660  
Phone: (949) 644-3140  
tschweitzer@newportbeachca.gov

**Jennifer Shaffer**, Executive Officer, *Department of Corrections*  
Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812  
Phone: (916) 445-4072  
jennifer.shaffer@cdcr.ca.gov

**Carla Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
carla.shelton@csm.ca.gov

**Camille Shelton**, Chief Legal Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
camille.shelton@csm.ca.gov



**Natalie Sidarous**, Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: 916-445-8717

NSidarous@sco.ca.gov

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849

jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

DSpeciale@sco.ca.gov

**Joe Stephenshaw**, Director, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Joe.Stephenshaw@sen.ca.gov

**Tracy Sullivan**, Legislative Analyst, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500

tsullivan@counties.org

**Derk Symons**, Staff Finance Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Derk.Symons@dof.ca.gov

**Jolene Tollenaar**, *MGT of America*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

**Evelyn Tseng**, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3127

etseng@newportbeachca.gov

**Brian Uhler**, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328

Brian.Uhler@LAO.CA.GOV

**Renee Wellhouse**, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

**Hasmik Yaghobyan**, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov