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May 15, 2019

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Via Drop Box

Heather Halsey
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**Re: County of Los Angeles in Support of County of San Diego's
Response to Draft Proposed Decision
Youth Offender Parole Test Claim 17-TC-29**

Dear Ms. Halsey:

The County of Los Angeles requests that the Commission consider our letter in support of the San Diego's County's response to its Draft Proposed Decision. The Legislature has created a new program known as a youthful offender parole hearing that compels local agencies to provide a higher level of service in order to comply with State statutes. Local agencies are entitled to reimbursement under Article XIII B Section 6 of the California Constitution for the costs of State-mandated new programs or higher levels of service. In the instant case, SB 260, 261 and 394 created a new program and required that the State Board of Parole Hearings conduct a new type of parole hearing, a youthful offender parole hearing, for reviewing the suitability for parole of any eligible prisoner who was 25 or younger at the time of their controlling offense. These test claim statutes requires the Board of Parole Hearings to "give great weight" to youth related factors, however, the statutes were silent as to who would investigate and present these youth related factors.

The *California Supreme Court in People v. Franklin* (2016) 63 Cal. 4th 261, held that SB 260 contemplates that information regarding a youthful offender's characteristics and circumstances at the time of the offense will be available at the time of the parole hearing to facilitate consideration by the California Board of Parole Hearings. The court further noted that assembling

statements from family members, friends, and others as mentioned in Penal Code §3051(f)(2) is typically "a task more easily done at or near the time of the ...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." *Id.* at 283 The court also stated that while Penal Code §3051(f)(1) allows for the use of psychological evaluations and risk assessments, consideration of subsequent growth and maturity warrants the availability of information about the offense at or near the time of the offense. *Id.* at 284 The Franklin court explained that a trial court may hold a proceeding whereby documents, evaluations, or testimony may be presented so that the Board years later can properly discharge its obligation to give great weight to youth-related factors. As a result, the costs associated with investigating and presenting youth-related factors at the trial court for later consideration at a youthful offender parole hearing derives from a reimbursable State mandate.

In determining whether a mandate exists we first must look to Section 6 of Article XIII B of the California Constitution and the plain language of the Test Claim statutes for its purpose and intent. The concern which prompted the inclusion of section 6 of Article XIII B was the perceived attempt by the State to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the State believed should be extended to the public. *County of Los Angeles v. State of California*, (1987) 43 Cal. App. 3d 46. Given this stated purpose, courts have been willing to extend and broaden the scope of mandates beyond what is expressly written. In *Long Beach Unified School District. v. State of California*, the court expanded mandates to include executive orders. The court examined the increased financial burdens being shifted to local government, not the form in which those burdens appeared. *Long Beach Unified School District. v. State of California*, (1990) 225 Cal. App. 3d 155.

In the instant case, the stated purpose of the test claim statutes is to "create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established."¹ Although the test claim statutes require the Parole Board to consider youth-related factors, the statutes do not state who is responsible for collecting and investigating these factors so that they can later be presented at a hearing. The Commission contends that there is no mandate because the test claim statutes do not expressly impose any requirement upon local government. Clearly, the Legislature contemplated that

¹ Statutes 2013, chapter 312, section 1.

someone would gather the information in Penal Code Sections 3051(f)(1) and (f)(2) at or near the time of the offense so that a proper assessment can be made as to the individual's growth and maturity decades later. The Proposed Decision ignores the practical realities of the parole process. The Board of Parole's duty to "give great weight" to youthful factors is impossible to execute if no one is responsible for investigating and presenting those factors at or near the time of the offense. The Commission's proposed decision naturally implies that State appointed counsel, not the local agency, would provide youthful factors to the Board. However, it is evident that a State parole attorney is not appointed until a decade or more after the time of the offense and sentencing. If the intent of the Legislature is to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release be established, the Commission's proposed decision would defeat the stated purpose of the statute.

In *People v. Franklin* (2016) 63 Cal.4th 261, the California Supreme Court stated that the (test claim) statutes "contemplate that information regarding the ...offender's characteristics and circumstances at the time of the offense (emphasis added) will be available at a youth offender parole hearing to facilitate the Board's consideration." The court further noted that "assembling statements from family members, friends, and others as mentioned in Penal Code §3051(f)(2) is typically a task more easily done at or near the time of the...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." *Id.* The Franklin court explained that a trial court may hold a proceeding whereby documents, evaluations or testimony may be presented so that the Board years later can properly discharge its statutory obligation to give great weight to youth-related factors. From a practical standpoint, the State-appointed attorney, who is appointed many years later, would not be in a position to present such information. On page 40 of its Draft Proposed Decision, the Commission conceded that prosecution and defense counsel are now effectively required to make such a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination."² It is evident from the Franklin decision that the source of the requirement to provide a thorough and meaningful youthful parole offender hearing comes from the statutes themselves which contemplate local agency involvement at the sentencing stage.


² Commission on State Mandates Draft Proposed Decision, Youth Offender Parole Hearings, 17-TC-29, Letter dated March 25, 2019.

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In order to effectuate the legislative purpose of these youth offender parole hearings, the local agency is required to investigate and present evidence of youthful factors at the trial court. Years later the State appointed attorney will be in a position to utilize the information preserved in the record and provide evidence of growth and maturity for the Board's consideration. Respectfully, the Commission's analysis results in a quagmire where the State creates a youthful offender parole process to consider factors that must be collected at the time of the offense, but no one is required to collect these factors. In the end, local agencies will be required to comply with the program by assuring that youthful factors are collected at or near the time of sentencing – a task they were not required to do prior to this legislation. This increased financial burden being shifted to local government is exactly that which the Constitution prohibits – State legislation that creates a program that will be administered by local agencies. The County of Los Angeles joins the County of San Diego and respectfully requests that the Commission reconsider its Draft Proposed Decision in light of the aforementioned.

Very truly yours,

MARY C. WICKHAM
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By 
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cc: Hasmik Yaghobyan, Auditor Controller
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On 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**

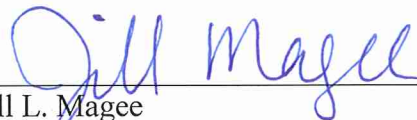
Youth Offender Parole Hearings, 17-TC-29

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

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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

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