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Commission on
State Mandates

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LATE FILING

March 13, 2019

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

Response to Test Claim 17-TC-29, Youth Offender Parole Hearings

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed Test Claim 17-TC-29 submitted to the Commission on State Mandates (Commission) by the County of San Diego (County). The Test Claim alleges state-mandated, reimbursable costs associated with Chapter 312, Statutes of 2013 (SB 260), Chapter 471, Statutes of 2015 (SB 261), and Chapter 684, Statutes of 2017 (SB 394).

Finance asserts the Claimant's alleged costs were incurred as a result of court-made law. The Commission should therefore reject this Test Claim in its entirety pursuant Government Code section 17556(b).

Examination of the Test Claim should first consider two relevant United States Supreme Court rulings that preceded SB 260, SB 261, and SB 394. In *Graham v. Florida* 560 U.S. 48 (2010) the Court ruled it is unconstitutional to sentence juveniles to life without the possibility of parole (LWOP) for non-homicide offenses. In *Miller v. Alabama* 567 U.S. 460 (2012) the Court ruled it is unconstitutional to impose a mandatory LWOP sentence on a juvenile who commits homicide.

Subsequent to these rulings, in 2012 the California Supreme Court decided *People v. Caballero* (2012) 55 Cal.4th 262, where the defendant was appealing his prison sentence of 110 years-to-life for three attempted murders he committed as a juvenile. The Court ruled the sentence was equivalent to LWOP in violation of the *Graham* ruling, because the defendant was ineligible for parole for 110 years. The Court ruled the defendant must receive a resentencing that would consider matters including, but not limited to, his age when he committed his crimes, whether he was a direct perpetrator or an aider or abettor, and his physical and mental development. The Court stated in a footnote to its ruling that "(w)e urge the Legislature to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity."

In response, the state enacted SB 260 in 2013. This bill amended Penal Code sections 3041, 3046, and 4801, and added Penal Code section 3501 to establish the following youth offender parole hearing eligibility timelines for persons sentenced for crimes committed as juveniles:

- During the 15th year, if the person is serving a determinate sentence.

- During the 20th year, if the person is serving a sentence less than 25-years-to-life.
- During the 25th year, if the person is serving a sentence of 25-years-to-life.

SB 260 did not apply to persons serving an LWOP sentence.

SB 260 states in Penal Code section 4801(c) that when the Board of Parole Hearings considers the parole suitability of persons covered by the bill's provisions, "...the board...shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."

The state enacted SB 261 in 2015, which amended Penal Code sections 3501 and 4801 to extend eligibility for youth offender parole hearings to persons who committed their controlling offense before the age of 23. The state then enacted SB 394 in 2017, which amended Penal Code section 3501 to extend eligibility for youth offender parole hearings to persons sentenced to LWOP for a controlling offense committed before the age of 18, after they have served 25 years of their sentence. In 2017 the state also enacted AB 1308 (Chapter 675, Statute of 2017), which amended Penal Code section 3501 to extend eligibility for youth offender parole hearings to persons who committed their controlling offense before the age of 26. We note Claimant ascribes certain costs associated with AB 1308 to SB 394 (i.e. the \$6,344 allegedly incurred in relation to a youth offender parole hearing held for Defendant Five, who was 23 when he committed his controlling offense, as stated in Section 6 of the Test Claim.)

In 2016 the California Supreme Court decided the case *People v. Franklin* (2016) 63 Cal.4th 261. The defendant was sentenced, pursuant to mandatory sentencing guidelines, to a prison term of 50-years-to-life for a murder he committed when 16 years old. The defendant's sentence was handed down in 2011, prior to the statutes at issue in this Test Claim. The defendant appealed, claiming that his sentence was equivalent to LWOP in violation of *Miller* because he was ineligible for parole for 50 years.

In *Franklin* the Court ruled that SB 260 mooted the defendant's constitutional challenge, because he is eligible for parole after serving 25 years and is therefore not serving a de facto life sentence. The Court stated that "Penal Code sections 3051 and 4801 – recently enacted by the Legislature to bring juvenile sentencing in conformity with *Miller*, *Graham*, and *Caballero* – moot Franklin's constitutional claim."

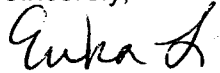
The Court also observed in *Franklin* that SB 260 requires the Board of Parole Hearings to "give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner" during their hearings. The Court therefore remanded the matter to the trial court "for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing."

As a consequence of *Franklin*, offenders eligible for youth offender parole hearings under SB 260, SB 261, and SB 394 must now be provided a "*Franklin* hearing", if they were not allowed by the trial court to put evidence on the record concerning the influence of youth-related factors that will eventually be considered by the Board of Parole Hearings.

This Test Claim seeks reimbursement of \$27,811.94 in costs allegedly incurred by the San Diego County Office of the Public Defender in 2016-17 and 2017-18 to prepare for and attend *Franklin* hearings for five offenders.

The cases and the statutory text make clear 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. Because Claimant's alleged costs were incurred as a result of court-made law, the Commission should reject this Test Claim in its entirety pursuant Government Code section 17556(b). This provision states that the Commission shall not find costs mandated by the state for a statute "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."

Sincerely,

A handwritten signature in black ink, appearing to read "Erika Li", written in a cursive style.

ERIKA LI

Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 15, 2019, I served the:

- **Finance's Late Comments on the Test Claim filed March 13, 2019**
- **Notice of Change of Representation filed March 12, 2019**

Youth Offender Parole Hearings, 17-TC-29

Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260) and Statutes 2017, Chapters 675 and 684 (AB 1308 and 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 March 15, 2019 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/13/19

Claim Number: 17-TC-29

Matter: Youth Offender Parole Hearings

Claimant: County of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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