



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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**RECEIVED**  
August 14, 2020  
**Commission on  
State Mandates**

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CHIEF DEPUTY AUDITOR-CONTROLLER

ASSISTANT AUDITOR-CONTROLLERS

**PETER HUGHES  
KAREN LOQUET  
CONNIE YEE**

August 14, 2020

**Via Drop Box**

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

Dear Ms. Halsey:

**RESPONSE TO THE COMMISSION ON STATE MANDATE'S  
DRAFT PROPOSED DECISION ON  
SB 1437 TEST CLAIM FILED ON DECEMBER 31, 2019  
19-TC-02**

The County of Los Angeles ("Claimant") submits its response to the Commission on State Mandate's Draft Proposed Decision on the *SB 1437, Accomplice Liability for Felony Murder* Test Claim.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at [flemus@auditor.lacounty.gov](mailto:flemus@auditor.lacounty.gov).

Very truly yours,

Arlene Barrera  
Auditor-Controller

AB:OV:CY:EB:EW:FL

Attachment

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**RESPONSE TO THE COMMISSION ON STATE MANDATE'S  
DRAFT PROPOSED DECISION ON  
SB 1437 TEST CLAIM FILED ON DECEMBER 31, 2019  
19-TC-02**

The Claimant respectfully disagrees with the Commission on State Mandate's draft proposed decision to deny Test Claim 19-TC-02. First, the Commission's assertion that the Test Claim is not reimbursable because it eliminated a crime is without merit. Senate Bill (SB) 1437 amended Penal Code sections 188 and 189 to limit the application of two legal theories, the felony-murder rule and the natural and probable consequences doctrine; it did not eliminate any crime according to Government Code section 175560(g). Furthermore, SB 1437 added Penal Code section 1170.95, which sets forth a new post-conviction proceeding that allows convicted individuals to petition the court to vacate their murder convictions and be resentenced on the remaining counts. The Commission incorrectly asserts that Penal Code section 1170.95 invokes a right to counsel, although neither case law nor the Constitution recognizes a right to counsel in post-conviction proceedings. As such, SB 1437 imposes a reimbursable State mandate on the County and, therefore, the Test Claim should be granted.

**There is No Right to Counsel in the Post-Conviction Proceeding Created By Penal Code Section 1170.95.**

The Commission's draft proposed decision to deny reimbursement in these post-conviction proceedings is without constitutional authority and defies precedent. The Commission's proposed decision relies on the petitioner's constitutional right to counsel in denying Los Angeles County's claim. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4<sup>th</sup> 805, 815 *citing Gideon v. Wainwright* (1963) 372 U.S. 335.) Los Angeles County acknowledges the right to counsel and does not seek reimbursement for costs associated with the prosecution and defense during a case that is not yet final; in other words, a pending criminal proceeding where a person has yet to be convicted. However, the Commission arrives at the conclusion that the right to counsel applies to post-conviction proceedings under Penal Code section 1170.95 and, thus, concludes that the Test Claim fails because the Test Claim statutes do not impose additional costs within the meaning of Article XIII B, Section 6 of the California Constitution. However, the Commission fails to cite any authority for the right to counsel for individuals whose cases have long concluded and are now considered final and who choose to file a petition under Penal Code section 1170.95.

The Legislature passed SB 1437 and thereby created a post-conviction proceeding with a petition process that allows convicted individuals whose cases were long considered final to request the court to vacate the murder convictions and to resentence the petitioners on the remaining counts. Under this new petition process, a person convicted of felony murder or murder under a natural and probable consequences theory may petition the sentencing court to vacate the murder conviction and resentence the person on any remaining counts if certain conditions are met (Penal Code Section 1170.95(a)). If the petitioner makes a prima facie showing of entitlement to relief, the court must appoint counsel upon request, issue an order to show cause and, absent a waiver and

stipulation by the parties, hold a hearing to determine whether to vacate the murder conviction, recall the sentence, and resentence the petitioner. (Penal Code [§ 1170.95, subds. \(c\) & \(d\)\(1\).](#))

Los Angeles County acknowledges the right to counsel and does not seek reimbursement for costs associated with the prosecution and defense during a case that is not yet final; in other words, a pending criminal proceeding where a person has yet to be convicted. However, the Penal Code amendments from SB 1437 compel the counties to provide representation to individuals in these new post-conviction proceedings, although no such right to counsel exists. It is important to note that the changes made by SB 1437 applies to individuals whose cases are not yet final as well as to those convicted individuals whose cases have been finalized. *People v. Martinez* 31 Cal.App.5<sup>th</sup> 719, 727. The right to counsel “applies at all critical stages of a ***criminal proceeding*** (emphasis added) in which the substantial rights of a defendant are at stake.” (*Mempa v. Rhay* (1967) 389 U.S. 128, 134: and Government Code Section 27706.) Clearly, individuals whose cases are not yet final have a right to counsel as they are still engaged with the trial court in a criminal proceeding. However, those convicted individuals are in a different procedural posture where there is no Constitutional right to counsel.

Many of the petitions filed under Penal Code section 1170.95 in Los Angeles County are initiated by prisoners whose court cases have concluded. The County asserts that these costs are reimbursable since the statute has added duties beyond what is required by the Constitution, as there is no right to counsel in post-conviction proceedings. Penal Code section 1170.95 imposes costs mandated by the State since public defenders and district attorneys are now obligated under this new statute to provide post-conviction representation and a post-conviction proceeding, respectively. The U.S. Supreme Court has stated that “the right to appointed counsel extends to the first appeal of right, and no further.” *Pennsylvania v. Finley* (1987) 487 U.S. 551, 555. Most importantly, the Court declined to extend the right to counsel to post-conviction proceedings. *Id.* Criminal proceedings have concluded and convictions are final “when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.” [Caspari v. Bohlen, 510 U.S. 383, 390, 114 S.Ct. 948, 127 L.Ed.2d 236 \(1994\)](#). See also [Clay v. United States, 537 U.S. 522, 527, 123 S.Ct. 1072, 155 L.Ed.2d 88 \(2003\)](#).

Furthermore, a recent California Court of Appeal ruling bolsters the County’s position that the process created by Penal Code 1170.95 is in fact a post-conviction proceeding. In *People v. Johns* (2020) 50 Cal.App.5<sup>th</sup> 46, the district attorney sought to invalidate SB 1437 as violating the victim’s right to the finality of criminal convictions under Marsy’s Law. In making this argument, the district attorney was asserting that Penal Code section 1170.95 proceedings sought to revisit murder convictions and sentences and that Marsy’s Law precluded the Legislature from passing any post-conviction proceeding absent a two-thirds majority of each house of the Legislature. The *Johns* Court rejected this assertion and refused to interpret Marsy’s law so broadly as to find that voters intended to impede the Legislature from creating new *post-conviction* proceedings. *Id.* at 69. (emphasis added)

What the Commission describes as “requirements” on the County are clearly additional burdens imposed by the California Legislature on local government by imposing new duties on county district attorneys and public defenders during these post-conviction proceedings. Los Angeles County has faced significant increased burdens participating in these post-conviction hearings and seeks reimbursement for these additional costs. (See *Declaration of Brock Lunsford, Declaration of Harvey Sherman, and Declaration of Sung Lee.*)

**SB 1437 Did Not Eliminate A Crime But Assuming Arguendo it Did, the Test Claim is Still An Unfunded State Mandate Under Article XIII, Section 6 of the California Constitution**

Contrary to the Draft Proposed Decision, SB 1437 did not eliminate a crime or an infraction. The Test Claim statute modified Penal Code sections 188 and 189 by limiting the application of the felony-murder rule under which a defendant could be convicted of first-degree murder, and it eliminated the natural and probable consequences theory as it pertains to murder. Felony murder and natural and probable consequences are not crimes; they are theories under which a defendant could be found guilty for the crime of murder. If a theory could be deemed a crime, then jurors would have to unanimously agree on the theory – but this is not the case. “It is settled, however that ‘in a prosecution for first degree murder it is not necessary that all jurors agree on one or more of several theories proposed by the prosecution; it is sufficient that each juror is convinced beyond a reasonable doubt that the defendant is guilty of first-degree murder as that offense is defined by statute.’” (*People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1024, internal citations omitted.) Finally, SB 1437 did not change the penalty for murder. It remains the same as it did prior to SB 1437 and is found in Penal Code section 190.

Assuming that SB 1437 eliminated a crime, which the County contends it did not, the post-conviction proceeding created in Penal Code 1170.95 does not directly relate to the enforcement of any crime. Government Code section 17556(g) provides that the Commission “shall not find costs mandated by the state” when the “statute or executive order 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 directly relating to the enforcement of the crime or infraction.” The Commission’s interpretation of Government Code section 17556(g) ignores the latter part of this exception, which makes clear that it is only applicable to the *portion of the statute directly relating to the enforcement of the crime or infraction*. The post-conviction proceeding created under Penal Code section 1170.95 is separate and apart from the pre-conviction enforcement for the crime of murder.

Penal Code section 1170.95 is a novel, legislatively created post-conviction remedy designed to allow defendants whose cases are final and whose appellate rights have expired to petition the court for a hearing to vacate their conviction for murder and be resentenced on any remaining counts. It is not a simple motion for resentencing, rather it is a complicated post-conviction procedure more akin to the civil commitment proceedings under the Sexually Violent Predators Act. It is a multi-stage proceeding, involving an initial review to determine the facial sufficiency of the petition and two additional court reviews before an order to show cause may issue. “The nature and scope

of section 1170.95, subdivision (c)'s second prima facie review, made following a round of briefing by the prosecutor and counsel for petitioner, is equivalent to the familiar decision-making process before issuance of an order to show cause in habeas corpus proceedings, which typically follows an informal response to the habeas petition by the Attorney General and a reply to the informal response by the petitioner.” (*People v. Verdugo* (2020) 44 Cal.App.5<sup>th</sup> 320, review granted.) All of this amounts to a post-conviction fact-finding analysis to determine if an individual is entitled to relief. It has absolutely nothing to do with enforcement of the prohibition against murder.

### **CONCLUSION**

The County urges the Commission to reverse its Draft Proposed Decision in light of the above-stated arguments and authority, and find that the Test Claim imposes a reimbursable State mandate on the County within the meaning of Article XIII B, section 6 of the California Constitution without exception.

DECLARATION OF BROCK LUNSFORD  
IN SUPPORT OF COUNTY OF LOS ANGELES COUNTY TEST CLAIM  
ACCOMPLICE LIABILITY FOR FELONY MURDER, 19-TC-02

Stats 2018 – Chapter 1015 § 4 (SB 1437)

Penal Code section 1170.95

I, BROCK LUNSFORD, declare as follows:

1. I make this declaration based upon my own personal knowledge, except for matters expressly set forth herein on information and belief, and as to those matters I believe them to be true, and if called upon to testify, I could and would competently testify to the matters set forth herein.
2. I am a member of the Bar of the State of California. I have been licensed to practice law in California since 1999.
3. I have been employed by the Law Offices of the Los Angeles County District Attorney since 2000. I am currently the Deputy-in-Charge of the Murder Resentencing Unit. I have worked as a Deputy District Attorney continuously since 2000 as a trial attorney and as a supervising attorney.
4. I have read and I am familiar with Penal Code section 1170.95 which was added to the Penal Code by SB 1437 (Stats. 2018, ch. 1015 § 4), effective January 1, 2019.
5. In December 2018, I was approached by District Attorney management to serve as our office's contact person regarding SB 1437 and Penal Code section 1170.95.
6. In December 2018, I was asked to put together several different options regarding how the District Attorney's Office could handle the likely influx of petitions filed pursuant to Penal Code section 1170.95.
7. After January 1, 2019, I was responsible for receiving and forwarding 1170.95 petitions received by our office. I also worked with a paralegal in our office to

create a database to track the 1170.95 petitions for all of Los Angeles County. That database is still for utilized for the same purpose.

8. I attended meetings with representatives from the Los Angeles County Public Defender's Office, the Los Angeles County Alternate Public Defender's Office, the Los Angeles County Bar Association I.C.D.A. Program, the Los Angeles County Superior Court, and the Los Angeles County Court Clerk's Office. These meetings were designed to address questions about the handling and processing of 1170.95 petitions.
9. I participated in organizational meetings and teleconferences within my office to develop methodologies and responses for personnel within the District Attorney's office as they handle various aspects of the 1170.95 petition process.
10. The new 1170.95 process includes receiving a petition from various sources; obtaining critical documents such as trial transcripts, jury instructions, jury verdicts, jury questions, and Court of Appeal opinions from the Superior Court, the Court of Appeal and the Attorney General's office; reviewing these critical documents which can exceed 1,000 pages for a single case; filing Responses to the petition; utilizing District Attorney Investigators to locate victim's family; utilizing District Attorney Victim Advocates to contact victim's family; meeting with victim's family to discuss this new process and explain that the murder conviction that occurred long ago could now be overturned due to the new law; litigating factual and legal issues in the Superior Court.
11. Since Penal Code section 1170.95 includes a provision in subsection (d)(3), "The prosecutor and the petition may rely on the record of conviction or offer new or additional evidence to meet their respective burdens," it is likely that the entire case may need to be reviewed and reinvestigated and a proceeding much like a new trial may be necessary.
12. This process is followed by members of the District Attorney's Office who

originally tried the murder case and are still available to handle the 1170.95 petition. This process is also followed by members of the Murder Resentencing Unit.

13. In March 2019, in response to the rapidly increasing number of 1170.95 petitions, the District Attorney's Office created the Murder Resentencing Unit to handle many of the 1170.95 petitions within our office.
14. The Murder Resentencing Unit includes one deputy in charge, six experienced deputy district attorneys, four paralegals and one LOSA II. The personnel in this unit work on 1170.95 petitions on a full-time basis.
15. In March 2019, I was named the Deputy in Charge of the Murder Resentencing Unit. In this capacity, I supervise the six attorneys in the unit while also reviewing critical documents and writing responses to certain petitions. I work closely with the two paralegals in my unit to identify cases that require critical documents and then analyze those documents to determine the merits of the petitions. I work with attorneys both in my unit and not in my unit to acquire critical documents. I consult with attorneys in my unit and not in my unit to assist them with legal and strategic issues in their petitions. I also meet with members of the Executive Management in the District Attorney's Office to provide updates on current issues surrounding 1170.95 petitions and answer any questions they may have.
16. In March 2019, I provided office-wide training regarding the 1170.95 petition process and our intended plan of action.
17. The California Department of Corrections and Rehabilitation has identified 8,445 inmates who are serving sentences for murder who were committed from Los Angeles County.
18. The California Department of Corrections and Rehabilitation has identified 1,259 parolees who have already served their sentences for murder who were committed from Los Angeles County.



19. Based on those numbers, there are potentially 9,704 petitions that could be filed in Los Angeles County Superior Court pursuant to Penal Code section 1170.95 that would be handled by attorneys employed by the District Attorney's Office.
20. As of July 2020, the Los Angeles County District Attorney's Office has already received 2,036 petitions. The new law has only been effective for nineteen months.
21. The handling of these petitions is incredibly time consuming even for a petition that does not fall within the language of the new statute and is, thus, meritless.
22. I estimate that attorneys can spend at least 20 hours per case obtaining documents, reviewing voluminous records, writing responses, and litigating in court. Some cases require significantly more research and development time because time has resulted in loss of records that will be used to establish the firm basis for the petition. Some cases require significantly less time because the petition is facially meritless.

*I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.*

*I declare the foregoing to be true and correct under penalty of perjury.*

Executed this 29th of July 2020, at Los Angeles, California.



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Brock Lunsford

## SECTION 6

### DECLARATION OF HARVEY SHERMAN

#### ACCOMPLICE LIABILITY FOR FELONY MURDER

**Senate Bill 1437: Chapter 1015, Statutes of 2018  
Amending Sections 188 and 189 of the Penal Code  
Adding Section 1170.95 to the Penal Code, Relating to Felony Murder**

I, HARVEY SHERMAN, declare under the penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I have been employed by the Law Offices of the Los Angeles County Public Defender since 1994. I served as the Deputy-in-Charge of Public Integrity Assurance Section from January 8, 2019 through May 26, 2020. The Public Integrity Assurance Section was tasked with managing and litigating all Public Defender Penal Code section 1170.95 petitions. I have worked as a Deputy Public Defender continuously since 1994 as a trial attorney, a litigation support attorney, and as a supervising attorney.
2. I have read and I am familiar with Penal Code section 1170.95, the specific section of the subject legislation containing the mandated activities. This section which was added to the Penal Code by SB 1437 (Stats. 2018, ch. 1015 § 4), became effective on January 1, 2019.
3. In October of 2018, I was approached by Public Defender management to implement a plan to identify cases and supervise a team of attorneys to handle the likely influx of cases falling within the scope of the Penal Code section 1170.95.
4. After the passage of SB 1437, I requested additional information from the California Department of Corrections and Rehabilitation for data related to sentenced and paroled individuals who were convicted of murder in the County of Los Angeles. That request was then expanded in coordination with the California Public Defenders Association to include all counties.
5. I participated in organizational meetings and teleconferences to develop methodologies and forms to assist inmates and parolees through a new petition process.
6. This new process includes filing a petition in the Superior Court, obtaining critical documents, filing replies to prosecution responses, meeting with clients who are serving life sentences in state prison, reviewing and detailing trial transcripts, jury instructions, jury verdicts, jury questions, and Court of Appeal opinions, litigating factual and legal issues in the superior court.

7. The reviewing, writing, and litigation are more closely akin to developing a writ of habeas corpus.
8. Since Penal Code section 1170.95 includes a provision in subsection (d)(3), "The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens," it is likely that the entire case would need to be reinvestigated and a proceeding more like a new trial may be necessary.
9. The newly-mandated activities include:
  - a. Preparation for and attendance at the sentencing hearing by indigent defense counsel and staff. In preparing for and appearing at the sentencing hearing, counsel may now be required to review discovery, read transcripts, interview the defendant, retain experts, utilize investigators, review reports prepared by experts and investigators and draft legal briefs for presentation to the court;
  - b. Assignment of investigators to locate and interview anyone that can provide new evidence not previously identified prior to the trial or plea;
  - c. Retention and utilization of experts, which may include, without limitation:
    - i. False and fabricated statement experts to provide opinion evidence regarding the coercive effect and voluntariness of statements made by petitioners in parole hearings;
    - ii. Forensic experts to test or retest physical evidence that was not tested;
    - iii. A gang expert for those clients that may be entrenched in gang life; and
    - iv. Ballistics experts to examine and/or retest gun, casing, and bullet evidence.
    - v. Psychological experts to evaluate and opine regarding the intellectual capabilities and maturity of clients in relation to the "reckless indifference" balancing to be done by the court.
  - d. Attendance and participation of counsel in training necessary or a competent representation of the clients.
10. The California Department of Corrections and Rehabilitation identified 8,445 inmates who are serving sentences for murder who were committed from Los Angeles County.
11. The California Department of Corrections and Rehabilitation identified 1,259 parolees who have already served their sentences for murder who were committed from Los Angeles County.

12. A subset of these inmates and parolees are former Public Defender clients. The number of former clients is not possible to establish with certainty due to the lack of historically accurate date, other projects undertaken by the Public Defender tend to estimate representation at about 50% to 60% of the inmate and parolee population. Data related to Public Defender representation from 1996 through present and those identified through document review have thus far identified 1,834 possible petitioner that will require some form of review. Cases tried prior to 1996, will require archive review to determine the representation type and further review to identify cases that may fall within SB 1437. The Public Defender will need to continue efforts to identify Public Defender clients and then further screen individual cases for the application of SB 1437.
13. Since SB 1437 includes a provision requiring service on the Public Defender or the trial counsel, the Public Defender has received 898 copies of petitions. The clear majority of these petitioners were not former Public Defender clients. The processing of these petitions to identify clients is time consuming even for petitioner who will not be represented by the Public Defender.
14. Since January 1, 2019, all but four petitions have been filed by inmates and parolees representing themselves.
15. The Public Defender has assigned 330 cases for review and action since January 2, 2019. Nine (9) petitions have been granted after evidentiary hearings. Forty-five (45) petitions have been denied after a *prima facie* hearing. Two (6) petitions have been denied after evidentiary hearings. One-hundred two (128) petitions have been denied summarily.
16. I estimate that attorney preparation for hearings will take at least 25 hours per case, excluding visitation with clients and additional investigation hours. Some cases will require significantly more research and development time because time has resulted in loss of records that will be used to establish the firm basis for the petition.
17. I estimate that it will likely take 4 to 5 hours of research and review of cases tried prior to 1996 to establish the attorney type and gather documents pertaining to the eligibility.
18. Public Defender's Office is not aware of any legislatively determined mandate related to SB 1437, Chapter 1015, Statutes of 2018.
19. I have examined the SB 1437 test claim prepared by the Claimant and based on my personal knowledge, information, and belief, the costs incurred in this Test Claim were incurred to implement SB 1437. Based on my personal knowledge, information, and belief, I find such costs to be correctly computed and are "costs mandated by the State", as defined in Government Code §17514:

“. . . any increased costs which a local agency is required to incur after July

1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of § 6 of Article XIII B of the California Constitution.”

I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein.

I declare the foregoing to be true and correct under penalty of perjury.

Executed this 13<sup>th</sup> of August 2020, at Los Angeles, California.



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Harvey Sherman

## SECTION 6

### DECLARATION OF SUNG LEE

#### **ACCOMPLICE LIABILITY FOR FELONY MURDER**

**Senate Bill 1437: Chapter 1015, Statutes of 2018**

**Amending Sections 188 and 189 of the Penal Code**

**Adding Section 1170.95 to the Penal Code, Relating to Felony Murder**

I, Sung Lee, declare under the penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

- 1) I am a Departmental Finance Manager, who oversees and manages the Fiscal/Budget services for the Los Angeles County Public Defender's Office. I am responsible for the complete and timely recovery of costs mandated by the State.
- 2) SB 1437, Chapter 1015, Statutes of 2018, added Penal Code Section 1170.95. specifically, Penal Code § 1170.95 (a), (b), and (c), imposed the following state mandated activities and costs on the Public Defender:
  - (a) A person convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:
    - (1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.
    - (2) The petitioner was convicted of first degree or second-degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second-degree murder.
    - (3) The petitioner could not be convicted of first or second-degree murder because of changes to Section 188 or 189 made effective January 1, 2019.
  - (b) (1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

- (A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).
  - (B) The superior court case number and year of the petitioner's conviction.
  - (C) Whether the petitioner requests the appointment of counsel.
- (c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.
  - (d) Preparation for and attendance at the sentencing hearing by indigent defense counsel and staff. In preparing for and appearing at the sentencing hearing, counsel may be required to review discovery, read transcripts, interview the defendant, retain experts, utilize investigators, review reports prepared by experts and investigators and draft legal briefs for presentation to the court; and.
  - (e) Attendance and participation of counsel in training to be able to competently represent clients. (Penal Code § 1170.95 (c))
- 3) As a result, local agencies will incur cost from the mandated activity that will exceed \$1,000<sup>1</sup>.
  - 4) As a Departmental Finance Manager, I am familiar with the new activity and cost stemming from the alleged statutory mandate in SB 1437. The costs and the activities are accurately described in sections A, B, C, D, and E. FY 2018-2019 was the fiscal year the alleged mandate in SB 1437 was implemented and the Test Claim was filed for.
  - 5) I declare that I have prepared and have personal knowledge of the attached schedule of costs summarized in the attached Exhibit A. The actual cost of providing activities described in section (2) above was \$206,496 for FY 2018-19.

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<sup>1</sup> Government Code § 17564 (a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars (\$1,000).

- 6) Public Defender estimates that it will incur \$471,595 in increased cost of providing services to comply with the SB 1437 mandates in FY 2019-20. FY 2019-20 is the FY following the implementation of the mandate. The cost is summarized in the attached Exhibit B.
  
- 7) According to the Senate Committee on Appropriation: "CDCR<sup>2</sup> reports that a snapshot on December 31, 2017 showed 14,473 inmates were serving a term for the principal offense of first-degree murder and 7,299 were serving a term for the principal offense of second-degree murder. If 10 percent of this population, or 2,177 individuals would file a petition for resentencing under this bill, and it took the court an average of four hours to adjudicate a petition from receipt to final order, it would result in an additional workload costs to the court of about \$7.6 million<sup>3</sup>"  
  
Using the same terminology and number (2,177 individuals) of projected petitioners who would file a petition to the cost of representation, prosecution, and housing of the petitioners during the re-sentencing hearing, and applying the average cost per case for Public Defender, District Attorney, there would be a statewide cost estimate of \$18,153,459
  
- 8) Public Defender has not received any local, state, or federal funding and does not have a fee authority to offset its increased direct and indirect cost of providing mandated activities described in section (2) above in compliance with SB 1437. Public Defender has incurred actual cost of \$206,496 (Exhibit A) for FY 2018-19 and will incur an estimated cost of \$471,595 for FY 2019-2020 (Exhibit B).
  
- 9) Public Defender is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter<sup>4</sup>.
  
- 10) Public Defender is not aware of any legislatively determined mandate related to SB 1437, Chapter 1015, Statutes of 2018<sup>5</sup>.
  
- 11) I have examined the SB 1437 Test Claim prepared by the Claimant (County of Los Angeles) and based on my personal knowledge, information, and belief, the costs incurred in this test claim were incurred to implement SB 1437. Based on my personal knowledge, information, and belief, I find such costs to be correctly

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<sup>2</sup> California Department of Correction and rehabilitation

<sup>3</sup> SENATE COMMITTEE ON APPROPRIATION, May 14, 2018, FY 2017-2018 Regular Session, pages 4, ¶ 8

<sup>4</sup> Government Code §17553(b)(2)(B).

<sup>5</sup> Government Code § 17573.



computed and are "costs mandated by the State", as defined in Government Code §17514:

" . . . any increased costs which a local agency is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of § 6 of Article XIII B of the California Constitution."

I have personal knowledge of the foregoing facts and information presented in this Test Claim, and if so required, I could and would testify to the statements made herein. I declare the foregoing to be true and correct under penalty of perjury.

Executed this 13th day of August 2020 in Los Angeles, CA.



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Sung Lee  
Departmental Finance Manager  
Law Office of Public Defender  
County of Los Angeles

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On August 18, 2020, I served the:

- **Claimant's Comments on the Draft Proposed Decision filed August 14, 2020**

*Accomplice Liability for Felony Murder, 19-TC-02*

Penal Code Sections 188, 189, and 1170.95; Statutes 2018, Chapter 1015 (SB 1437)

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 August 18, 2020 at Sacramento, California.



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Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/4/20

**Claim Number:** 19-TC-02

**Matter:** Accomplice Liability for Felony Murder

**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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