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RECEIVED
April 16, 2025
Commission on State Mandates

April 16, 2025

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

Re: Rebuttal to the Department of Finance
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745, subd. (j)(3)
County of Los Angeles, Claimant

Dear Director Gmur:

The County of Santa Clara ("County") files the following rebuttal to the Commission on State Mandates ("Commission") in response to the Department of Finance ("DOF"), which commented on test claim 24-TC-02 ("Test Claim"), concerning discrimination in criminal procedure. The Test Claim asserts that the AB 256, which added subdivision (j)(3) to section 745 of the Penal Code, imposes an unfunded mandate on counties and thus requires subvention pursuant to article XIII B, section 6 of the California Constitution ("Section 6"). In addition to the arguments made here, the County joins the arguments made by the County of Los Angeles, both in its Test Claim and its rebuttal to DOF.

DISCUSSION

The Department of Finance ("DOF") contends that the Commission on State Mandates ("Commission") should deny the County of Los Angeles's test claim in its

entirety because AB 256 is subject to subdivision (g) of Government Code section 17556 such that the "commission shall not find costs mandated by the state." (Comment of DOF, at p. 1-2.) Subdivision (g) exempts from reimbursement statutes that "create[] a new crime or infraction, eliminate[] a crime or infraction, or change[] 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." The County of Santa Clara ("County") files this rebuttal in response to DOF.

A. Setting aside only its treatment of the death penalty, AB 256 is not excepted by subdivision (g) of Government Code section 17556 because it does not create or eliminate a crime or infraction or change the penalty of a crime or infraction.

The Racial Justice Act ("RJA") prohibits the State from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. (Pen. Code, § 745, subd. (a).) With AB 256, incarcerated petitioners are authorized to bring forward retroactive claims under the RJA by writs of habeas corpus, regardless of when their dispositions or judgments became final. (*Id*., § 745, subd. (j)(3).)

The Legislature enacted the RJA "with the express intent 'to eliminate racial bias from California's criminal justice system' and 'to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.'" (*Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, 123 [quoting Assem. Bill No. 2542 (2019–2020 Reg. Sess.) § 2, subd. (i)].) In so doing, the Legislature emphasized the need to root out *implicit* bias that may have unwittingly affected the decisions to arrest, charge, prosecute, or sentence an individual. (See Assem. Bill No. 2542, *supra,* § 2, subd. (i); *Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 ["[T]he primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias."].)

When incarcerated individuals wanted to challenge such exercises of implicit bias in the past, it was "nearly impossible to establish" the burden of proof—purposeful discrimination—required to support an equal protection claim under the federal Constitution. (See Assem. Bill No. 2452, *supra*, § 2, subd. (c); *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 22; see also *Gonzales v. Superior Court* (2024) 108 Cal.App.5th Supp. 36, 56 ["The expressed purpose and scope of the RJA [is] to provide a broader relief for racial discrimination in the criminal justice system than is available under federal equal protection principles"].) Instead of requiring a showing of purposeful discrimination, Penal Code section 745, subdivision (a), identifies four new categories of

conduct which, if proved, are sufficient to establish an RJA violation.[1] (*Young v. Superior Court* (2022) 79 Cal.App.5th 138, 147.) Moreover, the RJA recognizes that bias may infect criminal proceedings at nearly every inflection point—from a law enforcement officer's decision to stop and arrest a person, to a district attorney's decision to file charges, to a court's decision to impose a particular sentence in a criminal case. (See Judge R. Couzens, California Racial Justice Act of 2020 (Apr. 2024) at p. 8 ["The prohibition is sufficiently broad to refer to conduct before, during, or after the defendant's trial and sentencing"].).

Rather than change any crime or penalty by operation of law, the RJA provides relief from the State's abuses. Bias on the basis of race, ethnicity, and national origin has never been an element of a crime or infraction, nor has such bias ever been lawfully considered in imposing a penalty. Indeed, "the intent of the Legislature [was] 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." (Assem. Bill No. 2542, *supra*, § 2, subd. (i).)

DOF nonetheless contends that 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." (DOF, at p. 2.) It further contends that the mere "authority to change sentences represents a change in the penalty for a crime or infraction." (*Ibid*.) However, this line of reasoning fails to recognize that the remedies available under AB 256 are intended to cure the results of the State's unlawful racial bias, not change the penalty for any crime or infraction that was unlawfully imposed in the first instance. Depending on the violation, the remedies may include not only resentencing but also vacating the conviction, finding that it is legally invalid, ordering new proceedings, or modifying the judgment to include a lesser included or lesser

[1] The four new categories of conduct are as follows: (1) "[t]he 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) "[d]uring 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, whether or not purposeful;" (3) "[t]he defendant 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 defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;" and (4) "[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 either (i) "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" or (ii) "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." (Pen. Code, § 745, subd. (a)(1)–(4).)

related offense. (Pen. Code, § 745, subd. (e)(2)(A).) These remedies are intended to erase the consequences of the State's violation by effectively placing the petitioner back in the position they would have been in but for the violation. The surest indication that AB 256 is not excepted by subdivision (g) of Government Code section 17556 is that the petitioner can be resentenced to the exact same penalty so long as the resentencing is not infected by a violation of the RJA.

Contrary to DOF's assertion, AB 256 does not operate to change any crimes or penalties other than the death penalty, and instead operates only to remove the missteps of the State. Indeed, AB 256 and the RJA do not impact how criminal defendants are sentenced for particular offenses; defendants convicted of assault, for example, continue to be sentenced the same as they were before the enactment of AB 256 and the RJA. In this regard, AB 256 operates differently from the test claim statutes at issue in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, which "'effectively reform[ed] the parole eligibility date of a [youth] offender's original sentence.'" (91 Cal.App.5th at p. 641 [quoting *People v. Franklin* (2016) 63 Cal.4th 261, 281].) Prior to the enactment of the test claim statutes at issue in that case, youth offenders were subject to the same lengthy prison sentences imposed on adult offenders, whereas after their enactment, the longest possible term of incarceration for most youth offenders before parole eligibility was 25 years. (*Id.*, at p. 640.) In contrast, the remedies available under AB 256 do not change the available penalties for any particular offenses (other than the death penalty) but are instead intended to correct missteps by the State, much like the remedies available to correct a *Brady* Rule violation (see *Brady v. Maryland* (1963) 373 U.S. 83) or a Fourth Amendment violation (see, e.g., *Miranda v. Arizona* (1966) 384 U.S. 436).

The exception to reimbursement in Government Code section 17756, subdivision (g), must be interpreted to apply narrowly, as it applies "only for that portion of the statute relating directly to the enforcement of the crime or infraction." (See Gov. Code, § 17756, subd. (g).) Only in death penalty cases does AB 256 change the penalty of a crime. Penal Code section 745, subdivision (e)(3), provides that the petitioner shall not be eligible for the death penalty if the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).) This change in the penalty of a crime is inapplicable to the overwhelmingly majority of habeas petitions brought under AB 256 as it affects only petitioners sentenced to death. Further, the Legislature's decision to expressly change the application of the death penalty demonstrates its intent to change one penalty while leaving unchanged all others. Accordingly, because AB 256 and the RJA change the penalty only where the petitioner is sentenced to death, only habeas petitions brought in such cases should be excluded from reimbursement.

B. Subdivision (g) of Government Code section 17556 unlawfully expands the grounds upon which the Commission "shall not finds costs mandated by the State."

When the voters adopted Proposition 4 of 1979 and added Section 6 of Article XIII B, they did so "to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources." (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Unfortunately, subdivision (g) of Government Code section 17556 conflicts with subdivision (a)(2) of Article XIII B of the California Constitution and unlawfully frustrates local entities' right to reimbursement. The Commission may not have the jurisdiction to adopt this argument. (See *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1302; Cal. Const., art. III, § 3.5.) So, the County thus reserves the ability to present this issue before the appropriate adjudicatory body.

Subdivision (g) of Government Code section 17556 narrows the right to reimbursement established by Section 6 of Article XIII B of the California Constitution. Whereas the statutory exception to reimbursement encompasses those mandates where a "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," the parallel constitutional exception to reimbursement attaches only to "[l]egislation defining a new crime or changing an existing definition of a crime." (Compare Gov. Code, § 17556, subd. (g) [emphasis added] with Cal. Const., art. XIII B, § 6, subd. (a)(2).)

There is no indication that the voters through Proposition 4, or any relevant ballot initiative since, intended to include a change in penalties alongside the exception to defining new crimes or redefining existing crimes. The "same principles that govern statutory construction" also govern voter initiatives. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900.) Accordingly, where the "the Legislature certainly knows how to impose a penalty when it wants to," (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1107), so too do the voters (Compare Cal. Const., art. XIII B, § 6 with Prop. 36, as approved by voters, Gen. Elec. (Nov. 5, 2024) [distinguishing between crimes and penalties].). If the voters intended to except for reimbursement a change to penalties, that language would be in the California Constitution.

DOF's comments here and in response to previous test claims demonstrate how the expanded statutory language "lends itself to sweeping imposition of duties on local governments without reimbursement, contrary to the intent of Proposition 4." (*California School Boards Assn. v. State of California* (2009) 171 Cal.App.4th 1183, 1215.) Penalties involve an overlapping but still greater array of institutions, activities, and costs relative to those for crimes, so it is unlikely that the voters impliedly assumed that a constitutional exception applicable to crimes would apply interchangeably to penalties.

Local entities, therefore, are entitled to reimbursement even where a State mandate changes a penalty.

C. Reimbursement for AB 256 is not excepted by the California Constitution either because the legislation does not define a new crime or change an existing definition of a crime.

In asserting that AB 256 does not impose reimbursable costs on the Claimant, DOF focuses only on the statutory exception articulated by subdivision (g) of Government Code section 17556. (DOF, at pp. 1-2.) DOF does not and cannot argue that AB 256 needn't be reimbursed pursuant to subdivision (a)(2) of Section 6 of Article XIII B of the California Constitution ("Subdivision (a)(2)"), which concerns "[l]egislation defining a new crime or changing the existing definition of a crime."

As explained in greater detail above, AB 256 neither defines a new crime nor does it change the definition of any existing crime. AB 256 instead applies the RJA retroactively to prohibit the State from "seek[ing] or obtain[ing] a criminal conviction or seek[ing], obtain[ing], or impos[ing] a sentence on the basis of race, ethnicity, or national origin." (Pen. Code, § 745, subd. (a).) In other words, AB 256 does not subject a person acting on behalf of the State to any criminal charge. To be sure, "the intent of the Legislature [was] 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." (Assem. Bill No. 2542, *supra*, § 2, subd. (i).) The text and legislative intent for AB 256 demonstrate that the bill does not define a new crime or change the definition of an existing crime for those who violate the RJA.

AB 256 likewise does not operate on the crimes that formed the basis for the petitioner's charge, trial, and conviction. Nothing in the text of either the RJA or AB 256 acts on the definition of any crime. The only reference to a crime is contained in subdivision (g) of Penal Code section 745, which states that the "section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive." This provision does not alter any hate crime or introduce a new type of hate crime. Rather than define a new crime or change the definition of an existing crime, AB 256 remedies violations of the RJA in much the same way that other criminal procedure laws and doctrines address evidentiary violations, like those arising under the *Brady* Rule, or other constitutional violations, like those arising under the Fourth, Fifth, or Sixth Amendment to the United States Constitution, are cured by providing relief directly to the criminal defendant. Subdivision (e) of Penal Code section 745 enumerates the available remedies, none of which change any existing crimes. Thus, Subdivision (a)(2) does not except the entitlement to reimbursement pursuant to Section 6 of Article XIII B.

CONCLUSION

The County urges the Commission to adopt a decision approving the Test Claim. As the Claimant demonstrates, implementing the retroactive application of the RJA will require significant local government resources. These resources are crucial to ensuring "that race plays no role at all in seeking or obtaining convictions or in sentencing." (Assem. Bill No. 2542, *supra*, § 2, subd. (i).) With this rebuttal comment, the County respectfully disagrees with DOF and demonstrates that there is no basis upon which to apply either Subdivision (g) of Government Code section 17556 or Subdivision (a)(2) of Section 6 of Article XIII B.

Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Very truly yours,
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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 April 17, 2025, I served the:

- **Current Mailing List dated April 10, 2025**
- **County of Santa Clara's Rebuttal Comments filed April 16, 2025**

  Criminal Procedure: Discrimination, 24-TC-02
  Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745
  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 April 17, 2025 at Sacramento, California.

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/10/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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