



June 17, 2025

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Fernando Lemus
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Criminal Procedure: Discrimination, 24-TC-02
Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections
745 and 1473
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments: Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on July 8, 2025**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Hearing: This matter is set for hearing on **Friday, September 26, 2025** at 10:00 a.m. The Proposed Decision will be issued on or about September 12, 2025.

If you plan to address the Commission on this item, please notify the Commission Office not later than noon on the Tuesday prior to the hearing, **September 23, 2025**. Please also include the names of the people who will be speaking for inclusion on the witness list and the names and emails addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Very truly yours,



Juliana F. Gmur
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Penal Code Sections 745 and 1473

Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

The Test Claim alleges new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f) as amended by Statutes 2022, Chapter 739, sections 2 and 3.5, effective January 1, 2023, the Racial Justice Act for All. The test claim statute extended the Racial Justice Act of 2020 (RJA), which prohibited the State from seeking or obtaining a criminal conviction, judgment, or sentence on the basis of race, ethnicity, or national origin prospectively *on or after* January 1, 2021, by making the relief retroactive. The test claim statute allows those persons whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice to file habeas corpus proceedings to collaterally attack their criminal convictions, judgments, and sentences on the basis of racial discrimination and further requires the county to provide counsel to represent indigent habeas corpus petitioners on their petition alleging a violation of the Racial Justice Act, when appointed by the court.¹

For the reasons stated in the analysis, staff finds the test claim statute imposes a reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to provide counsel to these indigent habeas corpus petitioners when appointed by the court and recommends the Commission approve this Test Claim.

¹ Penal Code sections 745(j) and 1473(f). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

Procedural History

The claimant filed the Test Claim on December 19, 2024.² The Department of Finance (Finance) filed comments on the Test Claim on March 18, 2025.³ The Solano County Office of the Public Defender filed comments on March 17, 2025.⁴ The Contra Costa Office of the Public Defender,⁵ the Ella Baker Center for Human Rights,⁶ and the Monterey County Office of the Public Defender⁷ filed comments on March 19, 2025. The County of Ventura Office of the Public Defender⁸ and the University of San Francisco Racial Justice Clinic⁹ filed comments on March 20, 2025. The Alameda County Public Defender filed late comments on March 21, 2025.¹⁰ The County of Santa Clara filed comments on April 16, 2025.¹¹ The claimant filed rebuttal comments on April 17, 2025.¹² The California State Association of Counties filed comments on May 5, 2025.¹³

Commission staff issued the Draft Proposed Decision on June 17, 2025.¹⁴

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the

² Exhibit A, Test Claim.

³ Exhibit B, Finance’s Comments on the Test Claim.

⁴ Exhibit D, Solano County Office of the Public Defender’s Comments on the Test Claim.

⁵ Exhibit E, Contra Costa Office of the Public Defender’s Comments on the Test Claim.

⁶ Exhibit F, Ella Baker Center for Human Rights’ Comments on the Test Claim.

⁷ Exhibit G, Monterey County Office of the Public Defender’s Comments on the Test Claim.

⁸ Exhibit H, County of Ventura Office of the Public Defender’s Comments on the Test Claim.

⁹ Exhibit I, University of San Francisco Racial Justice Clinic’s Comments on the Test Claim.

¹⁰ Exhibit J, Alameda County Public Defender’s Late Comments on the Test Claim.

¹¹ Exhibit K, County of Santa Clara’s Comments on the Test Claim.

¹² Exhibit C, Claimant’s Rebuttal Comments.

¹³ Exhibit L, California State Association of Counties’ Comments on the Test Claim.

¹⁴ Exhibit M, Draft Proposed Decision.

opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁵

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) requires test claims “be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days. Government Code section 17557(e) requires: “A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that year.”	<i>Yes, timely filed –</i> The test claim statute was effective on January 1, 2023, and became operative on January 1, 2024. The Test Claim was filed on December 19, 2024, which is within 12 months of first incurring costs. ¹⁶ Because the Test Claim was filed on December 19, 2024, the potential period of reimbursement began on July 1, 2023.
Do Penal Code sections 745(j)(3) and 1473(f) as	Under prior law (the Racial Justice Act (RJA) of 2020),	Yes. The test claim statute imposes a state-mandated

¹⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁶ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

Issue	Description	Staff Recommendation
<p>amended by the test claim statute impose a state-mandated new program or higher level of service on counties?</p>	<p>Penal Code section 745(a), prohibited racial discrimination in criminal prosecutions and sentencing from January 1, 2021, forward. Adult and juvenile defendants charged or sentenced with a crime, were authorized to file motions or petitions for writ of habeas corpus alleging a violation of section 745(a) and seek remedies prospectively beginning January 1, 2021.¹⁷ For judgments entered <i>on or after</i> January 1, 2021, under Penal Code section 1473(f), “the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.”</p> <p>The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.¹⁸ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons</p>	<p>new program or higher level of service on counties to perform the following activity: Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered <i>before</i> January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.</p> <p>This activity is new. There is no pre-existing duty to provide counsel for postconviction habeas corpus petitions.</p> <p>The test claim statute’s requirement is mandatory on counties. County public defenders are the first to be assigned as counsel under the “exclusive” process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel “shall” be</p>

¹⁷ Penal Code section 745(j), as added by Statutes 2020, chapter 317 [“This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021.”]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 [“Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021.”].

¹⁸ Statutes 2022, chapter 739 (AB 256).

Issue	Description	Staff Recommendation
	<p>currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, <i>“regardless of when the judgment or disposition became final”</i> and, thus, applies to criminal judgments entered <i>before</i> January 1, 2021.¹⁹ The appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.²⁰</p> <p>The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered <i>before</i> January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code</p>	<p>appointed for 745(a) petitions.</p> <p>The mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.²² The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.²³</p>

¹⁹ Penal Code section 745(j)(3), as amended by the test claim statute.

²⁰ Penal Code section 1473(f), as amended by the test claim statute.

²² Penal Code section 987.2.

²³ Statutes 2020, chapter 317, section 2.

Issue	Description	Staff Recommendation
	sections 745(j)(3) and 1473(f). ²¹	
Do Penal Code sections 745(j)(3) and 1473(f) as amended by the test claim statute impose costs mandated by the state, or does the exception in Government Code section 17556(g) apply to deny the Test Claim?		<p>Yes, there are costs mandated by the state.</p> <p>No, Government Code section 17556(g) does not apply to deny the Test Claim. The test claim statute does not create or eliminate a crime and does not change a penalty for a crime. The test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly.²⁴ The purpose of the RJA is <i>not</i> to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.²⁵</p>

Staff Analysis

This Test Claim addresses Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, the Racial Justice Act for All.²⁶

²¹ Exhibit A, Test Claim, pages 10-11.

²⁴ Penal Code section 1473(f), as added by Statutes 2020, chapter 317.

²⁵ Statutes 2020, chapter 317 (AB 2542), section 2(i).

²⁶ Statutes 2022, chapter 739 (AB 2542). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

Existing law, the Racial Justice Act (RJA), prohibits the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.²⁷ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.²⁸ To enforce the RJA's prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of four types of violations specified.²⁹ For a post-judgment petition, the judge will evaluate whether it alleges any facts that would establish a violation.³⁰ If so, or on the State Public Defender's request, it "shall" appoint counsel to a petitioner.³¹ The newly appointed counsel may amend the petition.³² The judge then determines if the petition makes a prima facie case.³³ If there is a prima facie case, the claim continues and the petitioner may request discovery.³⁴ Next, the court "shall" hold a hearing.³⁵ The court "shall make findings on the record."³⁶ If a judgment had been entered and a violation is found, the court "shall," under the RJA, vacate the conviction and sentence and find both or either

²⁷ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4).

²⁸ Penal Code section 745(j), as added by Statutes 2020, chapter 317 ["This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021."]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 ["Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021."].

²⁹ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

³⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³¹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

³⁴ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

³⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

³⁶ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

legally invalid, as specified.³⁷ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.³⁸ The RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered *on or after* January 1, 2021.³⁹

The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.⁴⁰ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, “regardless of their judgment date” (and, thus, *before* January 1, 2021), and the appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.⁴¹

The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute.⁴²

The Test Claim was timely filed.⁴³ Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.⁴⁴

Staff finds that the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement. The new requirement for the appointed counsel’s

³⁷ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

³⁸ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

³⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁴⁰ Statutes 2022, chapter 739 (AB 256).

⁴¹ Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

⁴² Exhibit A, Test Claim, pages 10-11.

⁴³ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

⁴⁴ Government Code section 17557(e).

representation will continue until the end of the evidentiary hearing required under Penal Code section 1473.

Staff further finds the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court. County public defenders are the first to be assigned as counsel under the “exclusive” process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel “shall” be appointed for 745(a) petitions.

Staff finds that the mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.⁴⁵ The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.⁴⁶

Finally, staff finds there are costs mandated by the state and that none of the exceptions in Government Code section 17556 apply.⁴⁷ The test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Rather, the test claim statute’s habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly.⁴⁸ The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.⁴⁹

Accordingly, staff recommends that the Commission approve this Test Claim and find that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a

⁴⁵ Penal Code section 987.2.

⁴⁶ Statutes 2020, chapter 317, section 2.

⁴⁷ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, paragraphs 8-10).

⁴⁸ Penal Code section 1473(f) (later renumbered as section 1473(e)).

⁴⁹ Statutes 2020, chapter 317 (AB 2542), section 2(i).

violation of the RJA under Penal Code section 745(a), when appointed by the court.

Conclusion

Staff concludes that Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, impose a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to approve the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Penal Code Sections 745 and 1473

Statutes 2022, Chapter 739, Sections 2
and 3.5 (AB 256), Effective
January 1, 2023

Filed on December 19, 2024

County of Los Angeles, Claimant

Case No.: 24-TC-02

Criminal Procedure: Discrimination

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 26, 2025)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 26, 2025. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	

Summary of the Findings

This Test Claim addresses Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, the Racial Justice Act for All.⁵⁰

Existing law, the Racial Justice Act (RJA), prohibits the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.⁵¹ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.⁵² To enforce the RJA's prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of four types of violations specified.⁵³ For a post-judgment petition, the judge will evaluate whether it alleges any facts that would establish a violation.⁵⁴ If so, or on the State Public Defender's request, it "shall" appoint counsel to a petitioner.⁵⁵ The newly appointed counsel may amend the petition.⁵⁶ The judge then determines if the petition makes a prima facie case.⁵⁷ If there is a prima facie case, the claim continues and the petitioner

⁵⁰ Statutes 2022, chapter 739 (AB 2542). Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1.

⁵¹ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4).

⁵² Penal Code section 745(j), as added by Statutes 2020, chapter 317 ["This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021."]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 ["Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021."].

⁵³ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

⁵⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁶ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁵⁷ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

may request discovery.⁵⁸ Next, the court “shall” hold a hearing.⁵⁹ The court “shall make findings on the record.”⁶⁰ If a judgment had been entered and a violation is found, the court “shall,” under the RJA, vacate the conviction and sentence and find both or either legally invalid, as specified.⁶¹ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.⁶² The RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered *on or after* January 1, 2021.⁶³

The 2022 test claim statute, effective January 1, 2023, applies the RJA retroactively.⁶⁴ Starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, “regardless of their judgment date” (and, thus, *before* January 1, 2021), and the appointment of counsel is required when the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.⁶⁵

The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “[c]ommencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute.⁶⁶

⁵⁸ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

⁵⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

⁶⁰ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁶¹ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

⁶² Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

⁶³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

⁶⁴ Statutes 2022, chapter 739 (AB 256).

⁶⁵ Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

⁶⁶ Exhibit A, Test Claim, pages 10-11.

The Test Claim was timely filed.⁶⁷ Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.⁶⁸

The Commission finds that the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement. The new requirement for the appointed counsel's representation will continue until the end of the evidentiary hearing required under Penal Code section 1473.

The Commission further finds the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court. County public defenders are the first to be assigned as counsel under the "exclusive" process in Penal Code section 987.2. Penal Code section 1473(f) states that counsel "shall" be appointed for 745(a) petitions.

The Commission finds that the mandated activity imposes a new program or higher level of service. Providing court-appointed counsel to indigent litigants is a unique county function.⁶⁹ The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution.⁷⁰

Finally, the Commission finds there are costs mandated by the state and that none of the exceptions in Government Code section 17556 apply.⁷¹ The test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Rather, the test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either

⁶⁷ Government Code section 17551(c); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

⁶⁸ Government Code section 17557(e).

⁶⁹ Penal Code section 987.2.

⁷⁰ Statutes 2020, chapter 317, section 2.

⁷¹ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, paragraphs 8-10).

intentionally or implicitly.⁷² The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself.⁷³

Accordingly, the Commission approves this Test Claim and finds that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), when appointed by the court.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 01/01/2023 | Penal Code sections 745 and 1473, as amended by Statutes 2022, chapter 739 (AB 256), sections 2 and 3.5, became effective. |
| 01/01/2024 | Penal Code section 1473(f) was renumbered as section 1473(e) with no change in language, by Statutes 2023, chapter 381 (SB 97), section 1. |
| 12/19/2024 | The claimant filed the Test Claim and revised it on March 27, 2025. ⁷⁴ |
| 03/12/2025 | Commission staff issued Request for Clarification of Pleading and Second Notice of Incomplete Test Claim. |
| 03/17/2025 | Solano County Office of the Public Defender filed comments on the Test Claim. ⁷⁵ |
| 03/18/2025 | Department of Finance (Finance) filed comments on the Test Claim. ⁷⁶ |
| 03/19/2025 | Contra Costa Office of the Public Defender filed comments on the Test Claim. ⁷⁷ |

⁷² Penal Code section 1473(f).

⁷³ Statutes 2020, chapter 317 (AB 2542), section 2(i).

⁷⁴ Exhibit A, Test Claim.

⁷⁵ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim.

⁷⁶ Exhibit B, Finance's Comments on the Test Claim.

⁷⁷ Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim.

03/19/2025 Ella Baker Center for Human Rights filed comments on the Test Claim.⁷⁸

03/19/2025 Monterey County Office of the Public Defender filed comments on the Test Claim.⁷⁹

03/20/2025 County of Ventura Office of the Public Defender filed comments on the Test Claim.⁸⁰

03/20/2025 University of San Francisco Racial Justice Clinic filed comments on the Test Claim.⁸¹

03/21/2025 Alameda County Public Defender filed late comments on the Test Claim.⁸²

03/27/2025 The claimant filed Response to Request for Clarification of Pleading and Second Notice of Incomplete Test Claim.⁸³

04/04/2025 Commission staff issued Second Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.

04/16/2025 County of Santa Clara filed comments on the Test Claim.⁸⁴

04/17/2025 The claimant filed rebuttal comments on the Test Claim.⁸⁵

05/05/2025 California State Association of Counties filed comments on the Test Claim.⁸⁶

06/17/2025 Commission staff issued the Draft Proposed Decision.⁸⁷

⁷⁸ Exhibit F, Ella Baker Center for Human Rights' Comments on the Test Claim.

⁷⁹ Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim.

⁸⁰ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim.

⁸¹ Exhibit I, University of San Francisco Racial Justice Clinic's Comments on the Test Claim.

⁸² Exhibit J, Alameda County Public Defender's Late Comments on the Test Claim.

⁸³ Exhibit A, Test Claim.

⁸⁴ Exhibit K, County of Santa Clara's Comments on the Test Claim.

⁸⁵ Exhibit C, Claimant's Rebuttal Comments.

⁸⁶ Exhibit L, California State Association of Counties' Comments on the Test Claim.

⁸⁷ Exhibit M, Draft Proposed Decision.

II. Background

A. Prior Law: The Racial Justice Act (RJA) of 2020 (AB 2542)

The Racial Justice Act (RJA),⁸⁸ effective January 1, 2021, added section 745 to the Penal Code and amended Penal Code sections 1473 and 1473.7 to prohibit the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.⁸⁹ The RJA established motion and habeas corpus procedures to allow adult and juvenile defendants charged or sentenced with a crime, to allege violations and seek remedies prospectively only, beginning January 1, 2021.⁹⁰ Beginning on that date, if trial is pending, an RJA violation can be alleged by motion filed by the defendant.⁹¹ If the case is post-judgment, an RJA violation can be alleged by an incarcerated petitioner through a petition for habeas corpus “if judgment was entered on or after January 1, 2021.”⁹² Those no longer incarcerated can also make a motion to vacate a conviction or sentence on the ground that the conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of subdivision (a) of Section 745.⁹³

To enforce the RJA’s prohibition of both explicit and implicit racial discrimination, an RJA violation is established by a preponderance of the evidence of *any* of the following:

- (1) The 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) During 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,

⁸⁸ Statutes 2020, chapter 317 (AB 2542).

⁸⁹ Statutes 2020, chapter 317, sections 3.5, 5, and 6; Penal Code section 745(a), (h)(4), as added by Statutes 2020, chapter 317.

⁹⁰ Penal Code section 745(j), as added by Statutes 2020, chapter 317 [“This section applies only prospectively in cases in which judgment has not been entered prior to January 1, 2021.”]; Penal Code section 1473(f), as amended by Statutes 2020, chapter 317 [“Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745 if judgment was entered on or after January 1, 2021.”].

⁹¹ Penal Code section 745(b) and (c), as added by Statutes 2020, chapter 317.

⁹² Penal Code sections 745(b) and 1473(f), as added and amended by Statutes 2020, chapter 317.

⁹³ Penal Code sections 745(b) and 1473.7(a)(3), (c), as added and amended by Statutes 2020, chapter 317.

whether or not purposeful. This paragraph does not apply if the person speaking is describing language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses 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.

(4)(A) 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 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.

(B) 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 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.⁹⁴

A useful summary of the four above “pathways” to an RJA violation was produced by the Office of the State Public Defender.⁹⁵ In short, the first two pathways prohibit racially discriminatory conduct by law enforcement, legal professionals, and jurors, both inside and outside the courtroom. The second two pathways prohibit racially discriminatory actions in charging and sentencing, which can be based on statistical evidence. Any one of the four constitutes an RJA violation.

The Legislature’s findings and declarations identify the purpose of the RJA is to root out racism in criminal justice proceedings. Accordingly, courts give “considerable weight”⁹⁶ to the Legislature’s extensive social justice findings, which are excerpted as follows:

- “Discrimination undermines public confidence in the fairness of the state's system of justice and deprives Californians of equal justice under law.”⁹⁷

⁹⁴ Penal Code section 745(a), as added by Statutes 2020, chapter 317.

⁹⁵ Exhibit X (1), *Racial Justice Retroactivity*, AB 256, Office of the State Public Defender, pages 3-4.

⁹⁶ *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 157.

⁹⁷ Statutes 2020, chapter 317, section 2(a).

- “We cannot simply accept the stark reality that race pervades our system of justice. Rather, we must acknowledge and seek to remedy that reality and create a fair system of justice that upholds our democratic ideals.”⁹⁸
- “Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it nevertheless persists because courts generally only address racial bias in its most extreme and blatant forms. More and more judges in California and across the country are recognizing that current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system.”⁹⁹
- “Current legal precedent often results in courts sanctioning racism in criminal trials. Existing precedent countenances racially biased testimony, including expert testimony, and arguments in criminal trials.”¹⁰⁰
- “Existing precedent tolerates the use of racially incendiary or racially coded language, images, and racial stereotypes in criminal trials.”¹⁰¹
- “Existing precedent also accepts racial disparities in our criminal justice system as inevitable.”¹⁰²

The Legislature’s findings cite *McCleskey v. Kemp* (1987) 481 U.S. 279, 295-99, 312, a Georgia case in which a majority decision of the U.S. Supreme Court rejected a statistical approach to proving racial discrimination and reaffirmed the federal “purposeful discrimination” standard for proving racial discrimination in criminal prosecution.¹⁰³ The *McCleskey* decision is summarized as follows:

In *McCleskey*, a death penalty case, habeas corpus petitioner Warren McCleskey challenged his conviction and sentence on Eighth and Fourteenth Amendment grounds, arguing that statistical evidence showed defendants in Georgia who killed white victims were 4.3 times more likely to receive the death penalty than defendants charged with killing blacks. (*McCleskey, supra*, 481 U.S. at p. 287.) He relied on the findings of a statistics expert, Professor David Baldus, who examined 2,000 murder cases throughout the State of Georgia and performed a multiple regression analysis that excluded 230 nonracial explanations for the discriminatory pattern his study confirmed. (*Id.* at pp. 286–288.) The Baldus study showed that prosecutors were most likely to seek the death penalty in a case involving a white victim. Specifically, Georgia

⁹⁸ Statutes 2020, chapter 317, section 2(b).

⁹⁹ Statutes 2020, chapter 317, section 2(c).

¹⁰⁰ Statutes 2020, chapter 317, section 2(d).

¹⁰¹ Statutes 2020, chapter 317, section 2(e).

¹⁰² Statutes 2020, chapter 317, section 2(f).

¹⁰³ *McCleskey v. Kemp* (1987) 481 U.S. 279, 292-293.

prosecutors requested the death penalty in 70 percent of cases involving black defendants and white victims; 32 percent of cases involving white defendants and white victims; 15 percent of cases involving black defendants and black victims; and 19 percent of cases involving white defendants and black victims. (*Id.* at p. 287.) And racial factors were most likely to play a role in capital sentencing in cases that presented the greatest degree of jury discretion. (*Id.* at p. 287, fn. 5.)

The high court accepted the validity of Baldus's findings (*McCleskey, supra*, 481 U.S. at p. 291, fn. 7), but characterized them as evidencing nothing more than a “discrepancy that appears to correlate with race” (*id.* at p. 312). Pointing to the absence of evidence that the State of Georgia enacted its death penalty statute with a racially discriminatory purpose, the court, by a five-to-four vote, declined to find a constitutional defect. (*Id.* at pp. 292–296, 298–299.) The court observed that discretion—as exercised by prosecutors as well as by juries—can work in a defendant's favor as well as against him (*id.* at p. 312 [“ ‘the power to be lenient [also] is the power to discriminate’ ”]), and explained that the jury is a criminal defendant's fundamental bulwark against “ ‘race or color prejudice’ ” (*id.* at p. 310). The court also pointed to *Batson v. Kentucky, supra*, 476 U.S. 79—notably, another focus of our Legislature's criticism in passing the Racial Justice Act [fn. omitted]—to show its own “ ‘unceasing efforts’ to eradicate racial prejudice from our criminal justice system.” (*McCleskey, supra*, 481 U.S. at p. 309.) Taking Warren McCleskey's statistical approach to proving racial discrimination to the full measure of its logic, the court explained, “other claims could apply with equally logical force to statistical disparities that correlate with the race or sex of other actors in the criminal justice system.” (*Id.* at p. 317.) These kinds of statistics-based arguments were “best presented to the legislative bodies,” the court decided. (*Id.* at p. 319.)

Justice Brennan, in dissent, opined that “[t]he statistical evidence in this case ... relentlessly documents the risk that McCleskey's sentence was influenced by racial considerations.” (*McCleskey, supra*, 481 U.S. at p. 328 (dis. opn.)). As Justice Brennan saw it, “This evidence shows that there is a better than even chance in Georgia that race will influence the decision to impose the death penalty: a majority of defendants in white-victim crimes would not have been sentenced to die if their victims had been black.” (*Ibid.*) Given the history of officially sanctioned racial bias in Georgia's criminal justice system, Justice Brennan argued that McCleskey's statistics could not be ignored. (*Id.* at pp. 332–334 (dis. opn.)). What the majority characterized as “ ‘unceasing efforts’ ” to “eradicate” racial discrimination in the criminal justice system (*McCleskey*, at p. 309), Justice Brennan saw as “honorable steps” but merely evidence of the persistence of the underlying problem (*id.* at pp. 333, 344 (dis. opn.)). In a rejoinder quoted by the Legislature in its findings accompanying the Racial Justice Act, Justice Brennan observed that the

majority's "fear ... McCleskey's claim would open the door to widespread challenges to all aspects of criminal sentencing" suggested a "fear of too much justice." (*Id.* at p. 339 (dis. opn.).)¹⁰⁴

As stated above, Justice Brennan criticized the federal standard in his dissent in the *McCleskey* case as a "fear of too much justice."¹⁰⁵ Through the RJA, California rejects the *McCleskey* "purposeful [or intentional] discrimination" standard and allows a showing of discrimination based on implicit bias as follows:¹⁰⁶

- "In California in 2020, we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California, both prospectively and retroactively."¹⁰⁷
- "Examples of the racism that pervades the criminal justice system are too numerous to list."¹⁰⁸
- "It is the intent of the Legislature to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California. Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is 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. It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them."¹⁰⁹
- "It is the further intent of the Legislature to provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional discrimination. It is the further intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence,

¹⁰⁴ *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 151-153.

¹⁰⁵ *McCleskey v. Kemp* (1987) 481 U.S. 279, 339 (Brennan, J., dissenting).

¹⁰⁶ *Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828 ["Indeed, the primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias."].

¹⁰⁷ Statutes 2020, chapter 317, section 2(g).

¹⁰⁸ Statutes 2020, chapter 317, section 2(h).

¹⁰⁹ Statutes 2020, chapter 317, section 2(i).

regarding potential discrimination in seeking or obtaining convictions or imposing sentences.”¹¹⁰

An RJA claim begins when a defendant or petitioner files an RJA motion or petition. For post-judgment petitions, the judge will evaluate whether it alleges any facts that would establish a violation of section 745(a).¹¹¹ If so, or on the State Public Defender’s request, it will appoint counsel to a petitioner.¹¹² The newly appointed counsel may amend the petition.¹¹³ The judge then determines if the petition makes a prima facie case.¹¹⁴ A prima facie showing under the RJA simply requires that the facts alleged, if true, “establish that there is a substantial likelihood that a violation” occurred.¹¹⁵ A “substantial likelihood” means “more than a mere possibility, but less than a standard of more likely than not.”¹¹⁶ If there is no prima facie case, the petition will be summarily denied with reasons stated on the record.¹¹⁷

If there is a prima facie case, the claim continues and the petitioner may request discovery.¹¹⁸ Because the state may possess or control the relevant evidence, a defendant or petitioner with a prima facie showing may move for disclosure of all potentially relevant information in the state’s possession or control and the court “shall” order the records released.¹¹⁹ And rather than having to meet the rigorous standards of federal case law to obtain discovery by presenting evidence of discriminatory effect and

¹¹⁰ Statutes 2020, chapter 317, section 2(j).

¹¹¹ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹³ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁵ Penal Code section 745(h)(2), as added by Statutes 2020, chapter 317; *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 19-25; 23-24 [“At the prima facie stage of a Racial Justice Act motion, by contrast, the trial court must consider whether the motion and its supporting evidence state facts that, “*if true*, establish that there is a substantial likelihood that a violation” occurred (§ 745, subd. (h)(2), italics added), and should not weigh the evidence or make credibility determinations, except in the rare case where the record “irrefutably establishes” that a defendant’s allegations are false.”].

¹¹⁶ Penal Code section 745(h)(2), as added by Statutes 2020, chapter 317.

¹¹⁷ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹¹⁸ Penal Code section 745(d), as added by Statutes 2020, chapter 317; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1071.

¹¹⁹ Penal Code section 745(d), as added by Statutes 2020, chapter 317.

intent,¹²⁰ the RJA's standard for compelling discovery in section 745(d) is relaxed to "good cause." "Good cause" in section 745(d) means "a plausible case, based on specific facts, that any of the four enumerated violations of section 745, subdivision (a) *could or might have occurred*."¹²¹ The bottom line is that claims of racially biased prosecutions can now be commenced and pursued much more easily in California than under federal law.

Next, the court "shall" hold a hearing.¹²² Evidence may be presented at the hearing, including statistical evidence, aggregate data, expert testimony, sworn testimony of witnesses, and an independent expert the court may appoint.¹²³ The court "shall make findings on the record."¹²⁴ If a violation is found on a motion during trial, the court "shall impose a remedy" from a statutory list.¹²⁵ If a judgment has been entered, the court "shall," under the RJA, vacate the conviction and sentence and find both or either legally invalid, as specified.¹²⁶ The court would then either order new proceedings, modify the judgment, or modify the sentence, as specified.¹²⁷ No greater sentence may be imposed¹²⁸ and the death penalty may not be imposed.¹²⁹ Also, to ensure that RJA proceedings are distinct, any other constitutional or statutory remedies of the defendant are not foreclosed.¹³⁰

As indicated above, prior to the test claim statute, the RJA "applie[d] only prospectively in cases in which judgment has not been entered prior to January 1, 2021."¹³¹

¹²⁰ *United States v. Armstrong* (1996) 517 U.S. 456.

¹²¹ *Young v. Superior Ct. of Solano County* (2022) 79 Cal.App.5th 138, 144, emphasis added.

¹²² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317; Penal Code section 745(c), as added by Statutes 2020, chapter 317.

¹²³ Penal Code section 745(c)(1), as added by Statutes 2020, chapter 317.

¹²⁴ Penal Code section 745(c)(3), as added by Statutes 2020, chapter 317; Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹²⁵ Penal Code section 745(e), as added by Statutes 2020, chapter 317.

¹²⁶ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁷ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁸ Penal Code section 745(e)(2)(A) - (B), as added by Statutes 2020, chapter 317.

¹²⁹ Penal Code section 745(e)(3), as added by Statutes 2020, chapter 317; see also *People v. McDaniel* (2021) 12 Cal.5th 97, 141, as modified on denial of rehearing ["Several amici curiae, including Governor Gavin Newsom, advance views of history and social context that link capital punishment with racism."].

¹³⁰ Penal Code section 745(e)(4), as added by Statutes 2020, chapter 317.

¹³¹ Penal Code section 745(j), as added by Statutes 2020, chapter 317.

Accordingly, the RJA required the appointment of counsel for habeas corpus petitioners whose judgments were entered on or after January 1, 2021.¹³²

B. The Test Claim Statute, the Racial Justice for All Act of 2022 (AB 256), Made the RJA Retroactive and Applicable to a New Class of Habeas Corpus Petitioners Whose Judgments Were Entered Before January 1, 2021.

In 2022, the Legislature passed the Racial Justice Act for All, effective January 1, 2023, to apply the RJA retroactively.¹³³ The claimant seeks reimbursement for costs incurred by the county Public Defender’s Office when appointed by the court “commencing January 1, 2024,” to represent those petitioners whose criminal judgments have been entered *before* January 1, 2021 (“regardless of when the judgment or disposition became final”) and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice in accordance with Penal Code sections 745(j)(3) and 1473(f) (which was later renumbered as section 1473(e)).¹³⁴

Penal Code section 745(j)(3), as amended by the test claim statute, now states the following about the code section’s application:

Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, *regardless of when the judgment or disposition became final*.¹³⁵

Penal Code section 1473(f), as amended by the test claim statute (and later renumbered as section 1473(e))¹³⁶, states the following:

Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, *if that section applies based on the date of judgment as provided in subdivision (j) of Section 745*. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the

¹³² Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317.

¹³³ Statutes 2022, chapter 739 (AB 256).

¹³⁴ Exhibit A, Test Claim, pages 10-11; Statutes 2023, chapter 381 (SB 97).

¹³⁵ Emphasis added.

¹³⁶ Statutes 2023, chapter 381 (SB 97).

petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. *The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.* Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.¹³⁷

The Assembly Committee on Appropriations citing the Department of Justice, estimates that 100,000 claims could be filed under the RJA as amended by the test claim statute.¹³⁸ According to an article titled "California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa," it is estimated that 90,000 incarcerated persons may have claims under the RJA as amended by the test claim statute:

As of Jan. 1, people who are currently and formerly incarcerated are now able to challenge their convictions using the RJA. Minsker said more than three-quarters of the state's prison population — about 90,000 people — could have viable claims. If implemented, she said, the law could help end mass incarceration in California.¹³⁹

As indicated above, starting January 1, 2024, habeas corpus petitions may be pursued by all persons currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, regardless of their judgment date.

An example of the test claim statute's retroactivity application is provided in *Bemore v. Superior Court*, a case brought by Terry Bemore, a prisoner convicted in 1985. Mr. Bemore made an RJA claim, and the court wrote: "Section 1473(e) is clear, and all parties agree that it requires the trial court to appoint counsel to represent Bemore in

¹³⁷ Emphasis added.

¹³⁸ Exhibit X (4), Assembly Committee on Appropriations, April 14, 2021, AB 256 as Amended March 16, 2021, page 1.

¹³⁹ Exhibit X (5), California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa, Annelise Finney, February 13, 2024, page 9.

postconviction RJA habeas proceedings in accordance with the authority cited above.”¹⁴⁰ *Bemore* further explains that “[Penal Code] section 987.2 contains the provisions that govern the selection of appointed counsel to pursue noncapital, postconviction RJA claims in superior court.”¹⁴¹ Penal Code “section 987.2(e) directs trial courts to ‘first utilize’ the services of the public defender to provide criminal defense services for indigent defendants.”¹⁴² If the courts must resort to assigning private counsel for the petitioner, the county must pay reasonable compensation for that service.¹⁴³

In addition to the original procedures for enforcement of section 745(a)’s prohibition of racial discrimination in prosecution, the test claim statute added a few modifications and clarifications. Judges shall disqualify themselves if a 745(a) motion is based on their conduct.¹⁴⁴ Timeliness of a motion at trial is required or the motion may be deemed waived.¹⁴⁵ Regarding evidence on motions, “out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.”¹⁴⁶ It is also further emphasized that “[t]he defendant does not need to prove intentional discrimination.”¹⁴⁷ The prosecution may obtain a protective order against disclosure of certain information if a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or another protective order.¹⁴⁸ The court may also modify the judgment to a lesser included or lesser related offense *if* the only violation found is under section 745(a)(3), which is the finding that a defendant was charged or convicted of a more serious offense than defendants of other races who engaged in similar conduct and were similarly situated.¹⁴⁹ It has also been clarified that the procedures apply to “adjudications to transfer a juvenile case to adult court.”¹⁵⁰ Lastly,

¹⁴⁰ *Bemore v. Superior Ct. of San Diego County* (2025) 108 Cal. App. 5th 1125, 1147.

¹⁴¹ *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

¹⁴² *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1152.

¹⁴³ Penal Code section 987.2(a) [“In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county”].

¹⁴⁴ Penal Code section 745(b), as amended by Statutes 2022, chapter 739.

¹⁴⁵ Penal Code section 745(c), as amended by Statutes 2022, chapter 739.

¹⁴⁶ Penal Code section 745(c)(1), as amended by Statutes 2022, chapter 739.

¹⁴⁷ Penal Code section 745(c)(2), as amended by Statutes 2022, chapter 739.

¹⁴⁸ Penal Code section 745(d), as amended by Statutes 2022, chapter 739.

¹⁴⁹ Penal Code section 745(e)(2)(A), as amended by Statutes 2022, chapter 739.

¹⁵⁰ Penal Code section 745(f), as amended by Statutes 2022, chapter 739.

definitions were clarified as to the phrases “more frequently sought or obtained,” “relevant factors,” and “similarly situated.”¹⁵¹

III. Positions of the Parties

A. County of Los Angeles

The claimant asserts the test claim statute imposes a reimbursable state-mandated program. The claimant states in the Test Claim:

Defendants do not have a constitutional right to court-appointed counsel in post-conviction proceedings, unless a State or federal statute specifies otherwise. AB 256 now requires the Public Defender to represent State prisoners that allege a racially biased prosecution. The petitions contemplated by the Racial Justice Act for All, and specifically PC § 745(j)(3), involve State prisoners who have already been convicted and sentenced.¹⁵²

Attached to the Test Claim is the Declaration of Elizabeth Lashley-Haynes, a Deputy Public Defender for Los Angeles County and senior attorney for the Public Defender’s Racial Justice Act Unit, signed December 9, 2024.¹⁵³ Ms. Haynes declares that Penal Code section 745(j)(3) and section 1473(e) (originally numbered section 1473(f)) newly require legal representation for RJA habeas corpus petitioners with pre-January 1, 2021, judgments.¹⁵⁴

The claimant asserts that before the test claim statute was enacted, individuals serving state prison sentences were not eligible to file RJA petitions.¹⁵⁵ Accordingly, the claimant states, public defenders were not required to represent them.¹⁵⁶

The claimant asserts that the test claim statute imposes new mandated activities upon county public defenders. Specifically, “the courts appoint the Public Defender to provide representation to petitioners claiming that race, ethnicity, or national origin bias occurred

¹⁵¹ Penal Code section 745(h), as amended by Statutes 2022, chapter 739.

¹⁵² Exhibit A, Test Claim, page 10.

¹⁵³ Exhibit A, Test Claim, pages 17-18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney).

¹⁵⁴ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraphs 2, 4, and 5).

¹⁵⁵ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 3).

¹⁵⁶ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 4).

in their case.”¹⁵⁷ This, the claimant states, necessitates conflict checks, investigation of the petitioner’s claims, retrieval and review of records, communication with the petitioner in prison, drafting and filing of writs or motions, court appearances, and documentation of files.¹⁵⁸

The claimant declares it first incurred costs under the test claim statute on January 1, 2024, in the amount of \$155,667 for FY 2023-2024.¹⁵⁹ It estimates costs of \$657,000 for FY 2024-2025¹⁶⁰ and a statewide cost estimate of \$2,190,000 for the same fiscal year.¹⁶¹ The claimant calculated this statewide cost estimate by using a statistic from the Vera Institute of Justice that 30% of the state prison population came from Los Angeles County in 2021.¹⁶² The claimant declares it has received no funds from any state, federal, or other non-local agency for the program, and that its general funds must be used.¹⁶³

The claimant asserts that the test claim statute imposes requirements unique to local government because the services are provided by local agencies.¹⁶⁴ It additionally asserts that the test claim statute carries out state policy through mandated activities.¹⁶⁵

The claimant finally asserts that none of the “seven disclaimers” in Government Code section 17556 apply to excuse the state from reimbursement.¹⁶⁶

¹⁵⁷ Exhibit A, Test Claim, page 10.

¹⁵⁸ Exhibit A, Test Claim, page 10; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 6).

¹⁵⁹ Exhibit A, Test Claim, page 11; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraphs 7-8).

¹⁶⁰ Exhibit A, Test Claim, page 11; page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 9).

¹⁶¹ Exhibit A, Test Claim, page 11; page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 10).

¹⁶² Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 10, footnote 1).

¹⁶³ Exhibit A, Test Claim, page 11; page 18 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 11).

¹⁶⁴ Exhibit A, Test Claim, page 12.

¹⁶⁵ Exhibit A, Test Claim, page 13.

¹⁶⁶ Exhibit A, Test Claim, pages 13-14.

The claimant filed rebuttal comments on April 17, 2025.¹⁶⁷ In response to Finance’s comment that Government Code section 17556(g) should apply to deny the Test Claim, the claimant disagrees, stating that “AB 256 amended the Racial Justice Act (RJA) of 2020 to apply the RJA retroactively to ensure equal access to all.”¹⁶⁸ It states:

AB 256 offers a procedural remedy to challenge the existence of racial bias, but it does not change the penalty for crimes. ... Having a sentence changed is only a possible remedy and not a right or guarantee. ...

Additionally, imposing a new or lesser sentence is not an automatic function of an RJA violation.¹⁶⁹

The claimant further distinguishes this claim from the denied Test Claim *Youth Offender Parole Hearings*, 17-TC-29, addressed in *County of San Diego v. Commission on State Mandates*.¹⁷⁰ In *County of San Diego*, the Court of Appeal applied section 17556(g) because “parole flowed directly from the parolee’s underlying crime and was a direct consequence of a criminal conviction.”¹⁷¹ But here, the claimant asserts, “any remedy that a court imposes following an RJA violation is unrelated to the crime perpetrated by the convicted person. Rather, the remedy directly relates to eliminating discriminatory practices in the justice system.”¹⁷²

B. Department of Finance

Finance contends that the test claim statute does not impose a reimbursable state-mandated program under Government Code section 17556(g). Finance characterizes the test claim statute as follows:

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. This authority to change sentences represents a change in the penalty for a crime or infraction and therefore falls within an established exception to the requirement for state reimbursement. For this reason, Finance believes the Commission should deny this test claim in its entirety.¹⁷³

¹⁶⁷ Exhibit C, Claimant’s Rebuttal Comments.

¹⁶⁸ Exhibit C, Claimant’s Rebuttal Comments.

¹⁶⁹ Exhibit C, Claimant’s Rebuttal Comments.

¹⁷⁰ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

¹⁷¹ Exhibit C, Claimant’s Rebuttal Comments, citing *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

¹⁷² Exhibit C, Claimant’s Rebuttal Comments, citing Statutes 2020, chapter 317, section 2(i) (AB 2542).

¹⁷³ Exhibit B, Finance’s Comments on the Test Claim, page 2.

C. Interested Parties and Persons

1. County of Santa Clara

The county of Santa Clara is an interested party under section 1181.2(i) of the Commission's regulations and filed comments joining the claimant in its arguments and in rebuttal to Finance.¹⁷⁴ The county of Santa Clara makes four separate arguments in rebuttal to Finance: (1) that "the remedies available under AB 256 are intended to cure the results of the State's unlawful bias, not change the penalty for any crime or infraction that was unlawfully imposed in the first instance," (2) that if it is decided that the section 745(e)(3) death penalty provision is a "change in penalty" under Government Code 17556(g), then "only habeas petitions brought in [death penalty cases] should be excluded from reimbursement," (3) that Government Code section 17556(g) is unconstitutional as to the "change in penalty" clause of section 17556(g) on which Finance relies because that clause is not in Article XIII B, section 6(a)(2) and so voters did not authorize it, and (4) that there is no definition of a new crime or change to the definition of an existing crime.¹⁷⁵

2. Solano County Office of the Public Defender, Contra Costa Office of the Public Defender, Ella Baker Center for Human Rights, Monterey County Office of the Public Defender, County of Ventura Office of the Public Defender, University of San Francisco Racial Justice Clinic, and Alameda County Public Defender

Five county public defenders and three non-profit organizations (interested persons under section 1181.2(j) of the Commission's regulations) filed comments in support of the Test Claim.¹⁷⁶ Most of the comments were identical. The identical comments were originally stated by the Solano County Office of the Public Defender as follows:

¹⁷⁴ Exhibit K, County of Santa Clara's Comments on the Test Claim, page 1.

¹⁷⁵ Exhibit K, County of Santa Clara's Comments on the Test Claim, pages 3-6.

¹⁷⁶ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim; Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim; Exhibit F, Ella Baker Center for Human Rights' Comments on the Test Claim [The Ella Baker Center for Human Rights "works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color."]; Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim; Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim; Exhibit I, University of San Francisco Racial Justice Clinic's Comments on the Test Claim [The University of San Francisco (USF) Racial Justice Clinic "is dedicated to advocating for those who have suffered discrimination, marginalization, and oppression in the criminal legal system based on their race. Among its several projects, the clinic represents currently incarcerated Californians who are eligible for relief under the RJA."]; Exhibit J, Alameda County Public Defender's Late Comments on the Test Claim; Exhibit K, County of Santa Clara's Comments on the Test Claim; Exhibit L, California State Association of Counties' Comments on the Test Claim.

The enactment of AB 256 (2022, Kalra) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the new costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased the responsibilities from what the public defender's office has previously performed, as habeas petitions are not a type of litigation these offices had traditionally handled before.

Reimbursement for these new, additional costs is crucial to the effective implementation of RJA and AB 256. The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice" (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

The California Court of Appeal's recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB256: *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[:]" "In 2022, the RJA amended [Penal Code] section 1473 [– the statute codifying grounds and procedures for prosecuting a writ of habeas corpus –] to add subdivision(e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that ". . . [Penal Code s]ection 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender's office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be

rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties' ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court's responsibility to ensure fair and equitable administration of justice. We urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02.¹⁷⁷

These comments also discuss the increased workload as a result of the test claim statute. The Contra Costa Office of the Public Defender has "multiple attorneys representing clients on retroactive RJA claims, in addition to ancillary staff supporting their representation" and has "expended resources on gathering data for expert review of materials."¹⁷⁸ The Monterey County Office of the Public Defender adds that its "office has been appointed in numerous cases wherein the client is seeking 'retroactive relief' under the RJA" and that implementation of the test claim statute "has added significant financial strain on our office, similar to the burden the County of Los Angeles has faced."¹⁷⁹ The County of Ventura Office of the Public Defender is now "identifying and litigating claims involving the Racial Justice Act."¹⁸⁰ It "currently has four attorneys working on Racial Justice Act claims. Two attorneys are senior attorneys and two attorneys are Level III attorneys. One of the attorney's sole duty is to work on retroactive RJA claims."¹⁸¹

3. California State Association of Counties

The California State Association of Counties (CSAC) argues that Government Code section 17556(g) does not apply. It states that "the relevant provision of the Racial Justice Act for All [is] Penal Code section 745, subdivision (j)(3), [which] merely authorizes certain defendants to petition the court to challenge alleged racial, ethnic, or national origin bias in their California state convictions or sentences."¹⁸² CSAC further states:

¹⁷⁷ Exhibit D, Solano County Office of the Public Defender's Comments on the Test Claim, pages 1-2.

¹⁷⁸ Exhibit E, Contra Costa Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁷⁹ Exhibit G, Monterey County Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁸⁰ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 1.

¹⁸¹ Exhibit H, County of Ventura Office of the Public Defender's Comments on the Test Claim, page 2.

¹⁸² Exhibit L, California State Association of Counties' Comments on the Test Claim, page 1.

[T]he court has a number of options, including: denying the petition as unfounded; vacating the conviction and sentence and ordering new proceedings (which may or may not result in a different sentence); or vacating only the sentence and imposing a new sentence (which the statute states may not be longer than the original sentence but is silent on whether it could be the same).¹⁸³

Thus, vacating a sentence and imposing a new one, as Finance points out, is possible but not certain per CSAC, and therefore Government Code section 17556(g) does not apply. CSAC reasons that “the range of possible sentences for underlying crimes remains unchanged by the test claim statute, and any given defendant’s actual sentence may also remain unchanged after filing the petition authorized by the statute.”¹⁸⁴

CSAC also distinguishes *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625. CSAC asserts that *County of San Diego* “emphasized that the length of the imprisonment prior to parole eligibility [was] itself a substantive aspect of the sentence” and that the “court characterized [the change imposed by the test claim statutes there] as “guaranteeing” parole eligibility, “which altered defendants’ substantive punishments.”¹⁸⁵ Here, CSAC reasons:

[A]ll that is guaranteed to defendants is the ability to petition the court for consideration of their bias claims. Those claims may be rejected or may result in proceedings that impose the same sentence. There is nothing akin to the guarantee of a change to a substantive element of a punishment that was present in the *Franklin* proceedings test claim.¹⁸⁶

CSAC also asserts that Government Code 17556(g) is “constitutionally suspect.”¹⁸⁷ It points out that article XIII B, section 6 of the California Constitution exempts legislation defining a new crime or changing an existing definition of a crime” but not a change in

¹⁸³ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 1.

¹⁸⁴ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁵ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁶ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁷ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

penalty.¹⁸⁸ Considering this difference in language, “CSAC urges the Commission not to adopt an overly broad reading of Section 17556(g).”¹⁸⁹

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁹⁰ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁹¹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹⁹²
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹⁹³
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or

¹⁸⁸ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁸⁹ Exhibit L, California State Association of Counties’ Comments on the Test Claim, page 2.

¹⁹⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁹¹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹⁹² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56.

executive order and it increases the level of service provided to the public.¹⁹⁴

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁹⁵

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁹⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁹⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁹⁸

A. The Test Claim Is Timely Filed with a Potential Period of Reimbursement Beginning July 1, 2023.

A test claim must be filed within 12 months of the effective date of a statute or an executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.¹⁹⁹ The Commission’s regulations clarify that “within 12 months of incurring costs” means “within 12 months (365 days) of *first* incurring costs as a result of a statute or executive order, whichever is later.”²⁰⁰

The effective date of the test claim statute is January 1, 2023.²⁰¹ The claimant filed the Test Claim on December 19, 2024, more than 12 months after the effective date of the statute.²⁰²

The claimant contends that it first incurred costs on January 1, 2024, and submits a declaration signed under penalty of perjury from Elizabeth Lashley-Haynes, Los

¹⁹⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁹⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹⁹⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹⁹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁹⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

¹⁹⁹ Government Code section 17551(c).

²⁰⁰ California Code of Regulations, title 2, section 1183.1(c), emphasis added.

²⁰¹ California Constitution, article IV, section 8(c)(1); Government Code section 9600.

²⁰² Exhibit A, Test Claim.

Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, stating “[t]he Public Defender first incurred costs related to implementing the mandates in PC § 745(j)(3) on January 1, 2024.”²⁰³

Additionally, the operative date of Penal Code section 745(j)(3), which applies the RJA retroactively is January 1, 2024.²⁰⁴ Consistently, Penal Code section 1473(f) (later renumbered section 1473(e)) “applies based on the date of the judgment as provided in subdivision (j) of Section 745.”²⁰⁵ Given the operative date of January 1, 2024, and as the claimant declares under penalty of perjury that it first incurred costs on January 1, 2024, the Test Claim was timely filed within 12 months of first incurring costs on December 19, 2024.

While costs were first incurred by the claimant on January 1, 2024, the potential period of reimbursement formally begins on July 1, 2023. Government Code section 17557(e) provides that a Test Claim “shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because the claimant filed the Test Claim on December 19, 2024 (during FY 2024-2025), the potential period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.

B. The Test Claim Statute Imposes a Reimbursable State-Mandated Program on Counties.

1. Penal Code Sections 745(j)(3) and 1473(f), as Amended by the Test Claim Statute, Impose a New Requirement for County Attorneys Appointed by the Court to Represent Indigent Habeas Corpus Petitioners Whose Criminal Judgments Have Been Entered *Before* January 1, 2021, and Are Currently Serving a Sentence in State Prison or County Jail or Committed to the Division of Juvenile Justice, with Their Petition Alleging a Violation of the RJA under Penal Code Section 745(a).

Article XIII B, section 6 was adopted to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government’s annual spending limit. Thus, article XIII B, section 6 requires a showing that a test claim statute or executive order mandates *new* activities and associated costs compared to the prior year.²⁰⁶

²⁰³ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, Los Angeles County Deputy Public Defender IV and RJA Unit Senior Attorney, paragraph 7).

²⁰⁴ Penal Code section 745(j)(3), as amended by Statutes 2022, chapter 751.

²⁰⁵ Penal Code section 1473(e), as amended by Statutes 2022, chapter 751, and as relocated from 1473(f) to 1473(e) with no change in language by Statutes 2023, chapter 381, section 1.

²⁰⁶ California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v.*

To make the RJA retroactive, Penal Code sections 745(j)(3) and 1473(f) (later renumbered as 1473(e)), as amended by the test claim statute, require, beginning January 1, 2024, the appointment of counsel for indigent habeas corpus petitioners whose judgments were entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail, or committed to the Division of Juvenile Justice, in their petition alleging a violation of the RJA under Penal Code section 745(a), which prohibits the state from obtaining a criminal conviction or imposing a sentence on the basis of race, ethnicity, or national origin.

Penal Code section 745(j)(3), reads, in relevant part:

This section applies as follows:

...

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.²⁰⁷

Before the test claim statute, section 745(j) said: “This section applies only prospectively in cases in which judgment *has not been entered prior to January 1, 2021*.”²⁰⁸ Thus, section 745(j)(3) as amended by the test claim statute newly requires the habeas corpus petition procedure to be made available retroactively to the class of indigent incarcerated petitioners with judgments entered before January 1, 2021.

In addition, Penal Code section 1473(f) requires the appointment of counsel on these petitions for writs of habeas corpus. Section 1473(f), as amended by the test claim statute and later renumbered to section 1473(e), reads:

Notwithstanding any other law, *a writ of habeas corpus may also be prosecuted after judgment has been entered* based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, *if that section applies based on the date of judgment as provided in subdivision (j) of Section 745*. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been

Honig (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

²⁰⁷ Penal Code section 745(j)(3).

²⁰⁸ Penal Code section 745(j), as added by Statutes 2020, chapter 317, emphasis added.

decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. *The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.* Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.²⁰⁹

Like section 745(j)(3), the predecessor to section 1473(f) was prospective only. The previous version of section 1473(f) stated that an RJA writ of habeas corpus could be filed "if judgment was entered *on or after January 1, 2021*."²¹⁰

Thus, sections 745(j)(3) and 1473(f) (later renumbered as section 1473(e)) newly allow the filing of RJA habeas corpus petitions from incarcerated petitioners whose judgments were entered *before* January 1, 2021, and newly require appointment of counsel to represent indigent petitioners when they allege facts that would establish a violation under section 745. Counties have no pre-existing duty (statutory or constitutional) to provide legal representation to the newly eligible indigent petitioners whose judgments were entered before January 1, 2021. No statute previously required this legal representation because the RJA did not exist until 2020, at which time it only required representation regarding judgments entered on or after January 1, 2021.

In addition, there was no pre-existing constitutional duty of representation because habeas corpus petitions are not criminal actions. Instead, they collaterally attack a prior criminal judgment and are considered civil in nature,²¹¹ and, thus, there is no

²⁰⁹ Emphasis added.

²¹⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2020, chapter 317, emphasis added.

²¹¹ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 ["A habeas corpus proceeding is not a criminal action. Rather, as relevant here, it is an independent, collateral challenge to an earlier, completed criminal prosecution."]; *In re Barnett* (2003) 31 Cal.4th 466, 474, citing *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556-557 and *In re Scott* (2003) 28 Cal.4th 783, 815.

constitutional right to the appointment of counsel at the public's expense. The U.S. Supreme Court has described collateral attacks on judgments as distinctly civil, with no right to counsel as in their criminal case:

Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature.²¹²

We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, see *Johnson v. Avery*, 393 U.S. 483, 488, 89 S.Ct. 747, 750, 21 L.Ed.2d 718 (1969), and we decline to so hold today. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.²¹³

States have no obligation to provide this avenue of relief, . . . , and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well.²¹⁴

Just as there is no federal constitutional duty to provide counsel on a postconviction collateral attack to a judgment, there is also no existing state constitutional duty. The California Supreme Court has said: "California likewise confers no constitutional right to counsel for seeking collateral relief from a judgment of conviction via state habeas corpus proceedings."²¹⁵

As one court of appeal recently stated, "[a]lthough there is no state or federal constitutional right to counsel to assist with a collateral attack on a criminal judgment, California confers a statutory right to counsel in postconviction proceedings under some circumstances," which the state has done here.²¹⁶

In addition to not requiring the appointment of counsel, existing federal law requires a petitioner to prove explicit or purposeful discrimination for a cause of action under the equal protection clause and does not allow a cause of action based on implicit discrimination, which is allowed by Penal Code section 745. In *McCleskey v. Kemp*, the U.S. Supreme Court concluded that a statistical showing that race likely influenced the imposition of the death penalty was insufficient to warrant reversal of the sentence because "to prevail under the Equal Protection Clause, [the defendant] must prove that the decisionmakers in *his* case acted with discriminatory purpose."²¹⁷ As seen in the legislative findings listed in the Background, the RJA sets higher civil standards by

²¹² *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556–57.

²¹³ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555.

²¹⁴ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

²¹⁵ *In re Barnett* (2003) 31 Cal.4th 466, 475.

²¹⁶ *Bemore v. Superior Court of San Diego County* (2025) 108 Cal.App.5th 1125, 1146.

²¹⁷ *McCleskey v. Kemp* (1987) 481 U.S. 279, 292.

recognizing implicit bias through statistical evidence. By recognizing and giving effect to implicit discrimination, the RJA “is the first of its kind in the country.”²¹⁸

Accordingly, the requirement in Penal Code sections 745(j)(3) and 1473(f), as amended by the test claim statute, to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), is a new requirement imposed by the state. Representation begins upon appointment by the court after the petition is filed. Pursuant to Penal Code section 1473(f) (later renumbered as section 1473(e)) the petition is filed first, without the help of appointed counsel and counsel is appointed by the court if the petitioner is indigent and the petition alleges facts establishing a violation of section 745(a) or the State Public Defender requests that counsel be appointed.

The test claim statute further describes the scope of the appointed counsel’s duties. The “[n]ewly appointed counsel may amend a petition filed before their appointment.”²¹⁹ The court shall then review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief.²²⁰ A “prima facie showing” means

that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not.²²¹

If the petition fails to meet the prima facie standard, the court will summarily deny the petition, stating the factual and legal basis for its conclusion on the record or issue a written order detailing the same.²²² A county public defender’s representation would end at this point because a denial at the prima facie stage is not appealable.²²³

²¹⁸ Exhibit X (5), California’s Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa, Annelise Finney, February 13, 2024, page 2; Exhibit X (2), The California Racial Justice Act of 2020, Explained, Hoang Pham, April 22, 2024, page 1; *Young v. Superior Court* (2022) 79 Cal.App.5th 138, 165 [“By endorsing statistics as an appropriate mode of proof and eliminating any requirement of showing discriminatory purpose, the Racial Justice Act revitalizes the venerable principle, recognized 135 years ago in *Yick Wo [v. Hopkins]* (1886) 118 U.S. 356] that we must offer a remedy where a facially neutral law is applied with discriminatory effect.”].

²¹⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁰ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²¹ Penal Code section 745(h)(2).

²²² Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²³ Penal Code section 1473(f) (later renumbered as section 1473(e)); *Maas v. Superior Court* (2016) 1 Cal.5th 962, 974; *In re Montgomery* (2024) 104 Cal.App.5th 1062, 1067.

If the petitioner makes a prima facie showing of a Penal Code section 745(a) violation, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause, and the appointed counsel is required to represent the petitioner at this hearing.²²⁴ The petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the petitioner's presence in court is needed.²²⁵

Appointed counsel may also file a motion seeking discovery of evidence relevant to the case and represent the petitioner during the hearing on any discovery motion.²²⁶ A motion filed under this section shall describe the type of records or information sought by the petitioner and upon a showing of good cause, the court shall order the records to be released.²²⁷

Appointed counsel's representation will continue until the end of the evidentiary hearing required under Penal Code section 1473. If the court finds that the conviction was obtained in violation of Penal Code section 745(a), the court shall vacate the conviction and the sentence, find that it is legally invalid, and order new criminal proceedings consistent with section 745(a).²²⁸ If the only violation is of section 745(a)(3) — that the petitioner 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 petitioner's race, ethnicity, or national origin in the county where the convictions were sought or obtained — the court may modify the judgment to a lesser included or lesser related offense, and on resentencing, the court shall not impose a new sentence greater than that previously imposed.²²⁹ If the only violation is that the *sentence* was sought, obtained, or imposed in violation of section 745(a), the court shall vacate the sentence, find it legally invalid, and impose a new sentence not greater than that previously imposed.²³⁰ The petitioner's appointed counsel's representation concludes once one of these remedies for postconviction relief, *if any*, is imposed.

2. The New Requirement Imposed by Penal Code Sections 745(j)(3) and 1473(f), as Amended by the Test Claim Statute, Is Mandated by the State.

A requirement is mandated by the state under article XIII B, section 6 of the California Constitution when the test claim statute legally compels local government to act.

²²⁴ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁵ Penal Code section 1473(f) (later renumbered as section 1473(e)).

²²⁶ Penal Code section 745(d).

²²⁷ Penal Code section 745(d).

²²⁸ Penal Code section 745(e)(2)(A).

²²⁹ Penal Code section 745(e)(2)(A).

²³⁰ Penal Code section 745(e)(2)(B).

Legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. (*Kern, supra*, 30 Cal.4th at p. 741, 134 Cal.Rptr.2d 237, 68 P.3d 1203; see *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174, 275 Cal.Rptr. 449 [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”].) Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has “a clear, present, and usually ministerial duty to act. ...”²³¹

Penal Code section 1473(f) (later renumbered as section 1473(e)) says that the court “*shall appoint counsel*” if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of section 745 or the State Public Defender requests counsel be appointed. The word “shall” has no express definition in the Penal Code. However, when construed in the context of the language and the legislative intent of the test claim statute, the word “shall” here is mandatory.²³²

The plain language of the test claim statute requires the court to appoint counsel *if* the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of section 745 or the State Public Defender requests counsel be appointed. The court has no discretion with the appointment of counsel when these facts are presented and, thus, the requirement to appoint counsel to represent the indigent petitioner is not imposed at the discretion of the court.²³³

Moreover, the courts have interpreted Penal Code section 1473(f) as “*requiring* the appointment of counsel to pursue an RJA petition.”²³⁴ The courts have further concluded that the “statutory language in section 1473(e) [as renumbered] makes it clear that RJA habeas petitioners are entitled to the appointment of counsel based on an assessment of whether the habeas petition alleges facts that would establish a violation of the RJA.”²³⁵ The courts have also found the word “shall” is mandatory in similar statutes requiring the appointment of counsel for capital defendant habeas

²³¹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

²³² *People v. Lara* (2010) 48 Cal.4th 216, 227.

²³³ Mandates imposed by the courts are not subject to reimbursement under article XIII B, section 6. (California Const., art. XIII B, section 9(b) [“appropriations subject to limitations” do not include “appropriations required to comply with mandates from the courts”].)

²³⁴ *People v. Wilson* (2024) 16 Cal.5th 874, 960, emphasis added.

²³⁵ *McIntosh v. Superior Court of San Diego County* (2025) 110 Cal.App.5th 33, 46.

corpus petitioners for purposes of post-conviction proceedings.²³⁶ When the Legislature uses the same language in a related statute, courts presume the Legislature intended the language to have the same meaning.²³⁷

Finally, if Penal Code section 1473(f) were not to be enforced, the purpose of the test claim statute to eliminate racism in criminal prosecution would be largely defeated.²³⁸ Without characterizing the appointment of counsel as mandatory, indigent inmates may be able to make claims of racial discrimination in the prosecution or sentencing of their crimes, but without the assistance necessary to be effective.

Therefore, the word “shall” in the test claim statute is mandatory and imposes a legally enforceable duty on the county to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, with their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

3. The New State-Mandated Requirement Imposed by Penal Code Sections 745(j)(3) and 1473(f) (Later Renumbered as Section 1473(e)) Is Unique to Local Government and Provides an Increased Level of Service to the Public and, Therefore, Constitutes a New Program or Higher Level of Service.

Article XIII B, section 6 requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” A new program or higher level of service has been defined as those “that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”²³⁹ Just one of these conditions need be met.²⁴⁰ In this Test Claim, both are met.

The test claim statute imposes unique requirements on counties that do not apply generally to all residents and entities in the state. Providing court-appointed counsel to indigent litigants is a unique county function.²⁴¹

²³⁶ *Redd v. Guerrero* (9th Cir. 2023) 84 F.4th 874, 893, reviewing Government Code section 68662.

²³⁷ *People v. Wells* (1996) 12 Cal.4th 979, 986.

²³⁸ Statutes 2020, chapter 317, section 2(i) and (j).

²³⁹ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537, citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

²⁴⁰ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

²⁴¹ Penal Code section 987.2.

The test claim statute also implements the state policy of erasing implicit and explicit racial discrimination in criminal prosecution. In addition to the extensive legislative findings cited in the Background, legislative history summarizes the state policy “to reckon with systemic racism and correct past injustices” and to perform “rooting-out of racism from our systems of justice.”²⁴² It also expresses state policy “to ensure everyone is afforded an equal opportunity to pursue justice” and “equal justice under the law.”²⁴³ In short, as stated in the uncodified portion of AB 256, “[i]t is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.”²⁴⁴

Thus, the Commission finds that the mandated activity required by the test claim statute imposes a new program or higher level of service.

4. The Test Claim Statute Results in Costs Mandated by the State Within the Meaning of Government Code Section 17514 and the Exceptions in Government Code Section 17556 Do Not Apply.

Government Code section 17514 defines “costs mandated by the state” as any increased costs which a local agency or school district is required to incur because of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) specifically requires that no claim or payment shall be made unless the claim exceeds \$1,000.

As indicated above, the new state-mandated activity requires counties to provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

The claimant has filed declarations signed under penalty of perjury identifying the following increased costs exceeding \$1,000 to comply with the test claim statute:

	FY 2023-2024	FY 2024-2025
Los Angeles County Public Defender	\$155,667 ²⁴⁵	\$657,000 estimated ²⁴⁶

²⁴² Exhibit X (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

²⁴³ Exhibit X (3) Assembly Committee on Public Safety, March 23, 2021, AB 256, as Amended March 16, 2021, pages 6, 12.

²⁴⁴ Statutes 2022, Chapter 739, section 1.

²⁴⁵ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, paragraph 8).

²⁴⁶ Exhibit A, Test Claim, page 17 (Declaration of Elizabeth Lashley-Haynes, paragraph 9).

	FY 2023-2024	FY 2024-2025
		\$2,190,000 estimated statewide ²⁴⁷

These figures represent costs of public defenders only, which are described per the claimant as costs of the following work:

Once the petitioner reaches out to the Public Defender and/or the court appoints the Public Defender to represent petitioners, the Public Defender must run conflict checks to ensure there is no ethical conflict in representing the petitioner.²⁴⁸ Once this process is completed and no conflict is found, the Public Defender must investigate the claims made by the petitioner, retrieve and review records, communicate with the petitioner in prison, draft and file writs or motions where appropriate, make court appearances, and document files.²⁴⁹

There is no evidence rebutting these declarations.

Finance argues, however, that the test claim statute “change[s] the penalty for a crime or infraction” under Government Code section 17556(g) and therefore the Test Claim must be denied entirely.²⁵⁰ The Commission disagrees.

The California Constitution declares that the Legislature need not fund mandates for “[l]egislation defining a new crime or changing an existing definition of a crime.”²⁵¹ Government Code section 17556(g) provides that the “commission shall not find costs mandated by the state, as defined in Section 17514,” if “[t]he 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.” County of Santa Clara and CSAC assert that the “changed the penalty” provision of section 17556(g) is unconstitutional.²⁵² In the Commission’s role, it must presume this statute constitutional.²⁵³

²⁴⁷ Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, paragraph 10).

²⁴⁸ Exhibit A, Test Claim, page 10, citing Declaration of Elizabeth Lashley-Haynes.

²⁴⁹ Exhibit A, Test Claim, page 18 (Declaration of Elizabeth Lashley-Haynes, paragraph 10).

²⁵⁰ Exhibit B, Finance’s Comments on the Test Claim.

²⁵¹ California Constitution, article XIII B, section 6(a)(2).

²⁵² Exhibit K, County of Santa Clara’s Comments on the Test Claim; Exhibit L, California State Association of Counties’ Comments on the Test Claim.

²⁵³ California Constitution, article III, section 3.5.

The Commission finds that the test claim statute does not create a new crime, eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply.

A habeas corpus proceeding is *not* a criminal action.²⁵⁴ A habeas corpus proceeding collaterally attacks a prior criminal proceeding and is distinctly independent from that criminal proceeding.²⁵⁵ As the U.S. Supreme Court has said, habeas corpus “is not part of the criminal proceeding itself.”²⁵⁶

A habeas corpus proceeding is a civil proceeding serving civil purposes only. California case law links this principle to Penal Code section 1473.²⁵⁷ And further setting it apart in practical consequence, a habeas proceeding does not give the petitioner the panoply of constitutional protections of a criminal trial, even in capital cases.²⁵⁸

²⁵⁴ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975 [“A habeas corpus proceeding is not a criminal action.”].

²⁵⁵ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975.

²⁵⁶ *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557.

²⁵⁷ *Maas v. Superior Court* (2016) 1 Cal.5th 962, 975; *In re Barnett* (2003) 31 Cal.4th 466, 474-475, citing *Pennsylvania v. Finley* (1987) 481 U.S. 551, 556-557 in context of a Penal Code section 1473 habeas corpus petition and citing *In re Scott* (2003) 29 Cal.4th 783 for same conclusion that such habeas proceedings for postconviction relief are “civil in nature”; *In re Scott* (2003) 29 Cal.4th 783, 815 [“We believe a habeas corpus proceeding like this one is civil in nature for these purposes. [Fn. Omitted.] The Legislature has labeled it a ‘Special Proceeding[] of a Criminal Nature’ (Pen.Code, pt. 2, tit. 12, ch. 1, before §§ 1473-1508), but the label is not dispositive. [citations.] It is not itself a criminal case, and it cannot result in added punishment for the petitioner. Rather, it is an independent action the defendant in the earlier criminal case institutes to challenge the results of that case. [citation.]”]; *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 256 [“Defendant ignores the fundamental difference between trial and post-trial proceedings. The constitutional protections designed to ensure a fair trial do not automatically attach to proceedings involving a collateral attack on the judgment. This point was reaffirmed in *Pennsylvania v. Finley* (1987) 481 U.S. 551, . . . , which held that neither due process nor equal protection required Pennsylvania to appoint counsel for indigent prisoners seeking post-conviction relief. [citation.] Relying upon the fundamental difference between trial and post-trial proceedings, specifically those involving collateral attack, the *Finley* court held: ‘Postconviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. . . .’”].

²⁵⁸ *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 256-258; [“*Finley* made the point that different proceedings implicate different constitutional considerations. Because the trial is the vehicle by which the state overcomes defendant’s presumption of innocence and deprives him of his freedom, the trial is circumscribed by the full panoply of constitutional protections.”].

The test claim statute's habeas procedures collaterally attack prior criminal proceedings where it is alleged that the state sought or obtained a criminal conviction or sentence on the basis of race, ethnicity, or national origin either intentionally or implicitly as provided in Penal Code section 745(a). That is, "a writ of habeas corpus may also be prosecuted *after* judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745."²⁵⁹ The purpose of the RJA is *not* to punish, but rather to remedy the harm to the integrity of the judicial system and to actively work to eradicate racial disparities within the criminal justice system itself:

The intent of the Legislature is 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. It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them.²⁶⁰

In this respect, the test claim statute is distinguishable from the test claim statute at issue in *County of San Diego v. Commission on State Mandates*, which addressed the application of the change in penalty exception in Government Code section 17556(g) to the *Youth Offender Parole Hearings* program.²⁶¹ The purpose of that program was to "establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity."²⁶² The legislation was enacted in response to a series of state and federal decisions collectively standing for the proposition that the cruel and unusual punishment clause of the Eighth Amendment prohibits the imposition of severe penalties on juvenile offenders, without at least some consideration to the distinctive characteristics of youth that render juvenile offenders less culpable than adult offenders.²⁶³ The court held that the Youth Offender Parole Hearing statutes fell within this statutory exception of Government Code section 17556(g) "because they changed the penalties for crimes perpetrated by eligible youth offenders."²⁶⁴

As a direct result of the Test Claim Statutes, most youth offenders are statutorily eligible for parole at a youth offender parole hearing conducted

²⁵⁹ Penal Code section 1473(f) (later renumbered as section 1473(e)), emphasis added.

²⁶⁰ Statutes 2020, chapter 317 (AB 2542), section 2(i).

²⁶¹ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625.

²⁶² *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 633.

²⁶³ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 631.

²⁶⁴ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640.

during the 15th, 20th, or 25th year of incarceration, depending on the term of incarceration included within the youth offender's original sentence. (Pen. Code, §§ 3046, subd. (c), 3051, subds. (b), (d), 4801, subd. (c).) In practice, this parole eligibility ensures that some youth offenders will be released from prison years earlier, and perhaps even decades earlier, than they otherwise would have been but-for the Test Claim Statutes.²⁶⁵

The court explained that “by changing the manner in which the original sentences operate, and guaranteeing youth offenders the chance to obtain release on parole, the Test Claim Statutes — by operation of law — alter the penalties for the crimes perpetrated by eligible youth offenders.”²⁶⁶ The court further explained the “Test Claim Statutes guarantee parole eligibility for qualified youth offenders. Parole is not a mere ‘procedural’ or ‘administrative’ facet of the criminal justice system.”²⁶⁷

This case is different. While a petitioner's original sentence might be vacated and it is possible for the penalty to be changed if the petition alleging racial bias under Penal Code section 745 is successful,²⁶⁸ that is not the purpose of the statute as stated in the legislative findings of the RJA and any change in the penalty is thus not directly related to the enforcement of crime as required by section 17556(g). The test claim statute creates a separate civil proceeding to address allegations of discrimination. Government correcting its own behavior through a civil proceeding is not directly linked to a defendant's conduct, but to the government's conduct, and thus the test claim statute does not relate directly to the enforcement of crime as required by Government Code section 17556(g).

This conclusion is further supported by prior decisions of the Commission. In *Post-Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, the Commission found a reimbursable state-mandated program in the required provision of indigent defense counsel on post-conviction motions for DNA testing under Penal Code section 1405. If DNA evidence could exonerate an inmate, an individual's previously existing penalty could, as here, change. But that potential for changed outcomes did not defeat the Test

²⁶⁵ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640-641.

²⁶⁶ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

²⁶⁷ *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 642.

²⁶⁸ For example, Penal Code section 745(e)(2)(B) provides that “After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.”

Claim. As here, the postconviction DNA testing motion was “a separate *civil* action and *not part of the original criminal action*.”²⁶⁹

Similarly, the Commission’s Decision in *Sexually Violent Predators*, CSM-4509 considered Welfare and Institutions Code section 6601, which created a process to evaluate inmates convicted of sexual offenses to determine if they should be civilly committed after release from prison. The inmate was entitled to appointed counsel at the probable cause hearing and at the civil trial, and this provision of counsel was determined reimbursable. Although each civil commitment had a clear connection to a crime, including enforcing against recurring crime, the test claim statutes were not affected by Government Code section 17556(g) because the activity required of counties was civil, not criminal.²⁷⁰

Thus, Government Code section 17556(g) does not apply here and the other exceptions in Government Code section 17556 are not applicable to this Test Claim.

Accordingly, the Commission finds that the test claim statute results in costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Penal Code sections 745(j)(3) and 1473(f) (later renumbered as section 1473(e)), as amended by Statutes 2022, chapter 739, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2023, requiring counties to perform the following new state-mandated activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered *before* January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.

²⁶⁹ Commission on State Mandates, Statement of Decision, *Post-Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, <https://www.csm.ca.gov/decisions/00tc21,01tc08sod.pdf> (accessed on June 6, 2025), page 2, emphasis added.

²⁷⁰ Commission on State Mandates, Statement of Decision, *Sexually Violent Predators*, CSM-4509, <https://csm.ca.gov/decisions/doc96.pdf> (accessed on June 6, 2025), page 9, fn. 7.

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 June 17, 2025, I served the:

- **Current Mailing List dated May 16, 2025**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued June 17, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5; Penal Code Sections 745 and 1473

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 June 17, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/16/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

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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