



November 25, 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 and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

Criminal Procedure: Discrimination, 24-TC-02

Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022,
Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

The Draft Proposed Decision and Parameters and Guidelines 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 December 16, 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.

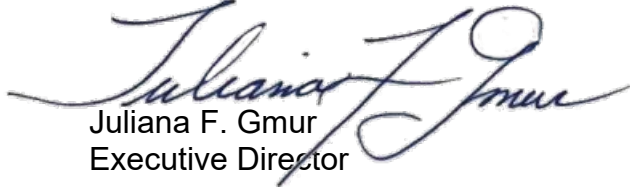
¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial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

Hearing: This matter is set for hearing on **Friday, February 13, 2026** at 10:00 a.m. The Proposed Decision will be issued on or about January 30, 2026.

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, **February 10, 2026**. 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 ____

DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022,
Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

Criminal Procedure: Discrimination

24-TC-02

Period of Reimbursement begins July 1, 2023

EXECUTIVE SUMMARY

I. Summary of the Mandate

These Parameters and Guidelines address new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

On September 26, 2025, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this Test Claim for the following reimbursable activities:

- 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.¹

II. Procedural History

The Commission adopted the Test Claim Decision on September 26, 2025.² Commission staff issued the Draft Expedited Parameters and Guidelines on September 29, 2025.³ On October 20, 2025, the State Controller's Office filed comments on the Draft Expedited Parameters and Guidelines recommending no changes.⁴ Also on October 20, 2025, the County of Santa Clara, the County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney,

¹ Exhibit A, Test Claim Decision, page 41.

² Exhibit A, Test Claim Decision.

³ Exhibit B, Draft Expedited Parameters and Guidelines.

⁴ Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines.

City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney filed comments on the Draft Expedited Parameters and Guidelines.⁵

Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on November 25, 2025.

III. Positions of the Parties and Interested Parties

A. County of Los Angeles

The claimant did not file comments on the Draft Expedited Parameters and Guidelines.

B. State Controller

The Controller filed comments on the Draft Expedited Parameters and Guidelines recommending no changes.⁶

C. County of Santa Clara

The County of Santa Clara filed comments on the Draft Expedited Parameters and Guidelines, seeking reimbursement for further public defender costs.⁷ Reimbursement for the following is requested as “reasonably necessary activities”:

(1) the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel; and (2) the costs of requesting court transcripts, as well as CDCR records.⁸

⁵ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines.

⁶ Exhibit C, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁷ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

⁸ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

D. County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney, City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney

These Counties request reimbursement, as reasonably necessary activities, to respond to Racial Justice Act (RJA) discovery motions and other actions in response or defense to an RJA petition.⁹

IV. Discussion

The proposed Parameters and Guidelines provide as follows:

A. Eligible Claimants (Section II. of the Parameters and Guidelines)

Any county, or city and county subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

B. Period of Reimbursement (Section III. of the Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on December 19, 2024, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

Section IV. of the Parameters and Guidelines identifies the mandated activities approved by the Commission:

- 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

⁹ Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

violation of the Racial Justice Act under Penal Code section 745(a), when appointed by the court.¹⁰

Several County Public Defender and District Attorney Offices request additional reimbursement for “reasonably necessary” activities for both the public defender and district attorney activities. “Reasonably necessary activities” must be necessary for the performance of *the state-mandated program*, and any activity required by statutes, regulations, and other executive orders that were not pled in the Test Claim may only be used if the state-mandated program were rendered impossible without them.¹¹ Activities that go beyond the scope of the mandate are not eligible for reimbursement.

One Public Defender’s Office requested reimbursement for the costs of requesting court transcripts, as well as CDCR records.¹² These are direct costs of the mandated program and are already provided for in Section V.A.1-3 of the Parameters and Guidelines as salary and benefits and materials and supplies. Thus, no changes to the Parameters and Guidelines are needed to address this request.

The County of Santa Clara, on behalf of its Public Defender’s Office, also requested reimbursement for the costs associated with investigating the Racial Justice Act claim and preparing the petition “prior to, and irrespective of, official appointment as habeas counsel.”¹³ However, any activity “prior to, and irrespective of, official appointment as habeas counsel” plainly exceeds the scope of the mandate on counties to provide counsel “when appointed by the court.”¹⁴ The test claim statute, Penal Code sections 1473(f), identifies that the mandate begins when “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.” Although public defenders may choose under their *existing* ethical obligations to advise former clients before the appointment of counsel by the court pursuant to section 1473(f), these costs are not mandated by the test claim statute and are not reasonably necessary to carry out the mandated program. As the Test Claim Decision states, there is no pre-existing right to post-conviction counsel under federal or state law.¹⁵ The state-mandated right to counsel exists here *only* under the terms of the test claim statute, and the mandate begins when the court appoints counsel.¹⁶

¹⁰ Exhibit A, Test Claim Decision, page 41.

¹¹ California Code of Regulations, title 2, section 1183.7(d).

¹² Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, page 5.

¹³ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, page 5.

¹⁴ Exhibit A, Test Claim Decision, page 41.

¹⁵ Exhibit A, Test Claim Decision, pages 30-31.

¹⁶ *Bemore v. Superior Court* (2025) 108 Cal.App.5th 1125, 1146 (“Although there is no state or federal constitutional right to counsel to assist with a collateral attack on a

Six District Attorney Offices request reimbursement for:

- responding to RJA discovery; and
- all work in response to RJA petitions¹⁷

Staff finds that these requests are not reasonably necessary to comply with the mandate. The state-mandated program in this case is limited to counties providing public defender services pursuant to Penal Code sections 1473(f), which declares, in part, 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” and 745(j)(3), which declares, in part, that the right to bring an RJA petition exists “regardless of when the judgment or disposition became final”, as amended by the 2022 test claim statute. These code sections do not require the district attorney to provide any services as respondents to an RJA petition or to defend the actions alleged in the RJA petition. Rather, the district attorney has general prosecutorial discretion bestowed and controlled by existing state law.¹⁸ The work of the district attorneys in response to RJA petitions remains under their prosecutorial discretion to respond to the petition and in response to any court orders made in the case, rather than from a mandate of the state. Appropriations required to comply with orders or mandates of the courts, “which, without discretion, require an expenditure for additional services or which unavoidably make the

criminal judgment, California confers a statutory right to counsel in postconviction proceedings under some circumstances.”); Penal Code section 1473(f), as amended by Statutes 2022, chapter 739 (later renumbered as 1473(e)).

¹⁷ Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

¹⁸ *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 745 (“The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”); California Constitution, article V, section 13 (State Attorney General supervises “every district attorney.”); Government Code section 100(b); Government Code section 26500 (“The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.”); *Dix v. Superior Court* (1991) 53 Cal.3d 442, 452 (public interest standing does not prevail “over the public prosecutor’s exclusive discretion in the conduct of criminal cases”).

provision of existing services more costly” are not subject to the local government appropriations limit in article XIII B¹⁹ and, are therefore, not entitled to reimbursement under article XIII B, section 6.²⁰

The Test Claim Decision accordingly addressed the state-mandated program on counties to provide public defender services *only*.²¹ “The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance *of the state-mandated program*.”²² The request for reimbursement of district attorney activities is therefore beyond the scope of the state-mandated program.

D. Remaining Sections of the Parameters and Guidelines

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

V. Staff Recommendation

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

¹⁹ California Constitution, article XIII B, section 9(b).

²⁰ Courts have recognized that reimbursement under article XIII B, section 6 is not required when the expenditure of local costs is excluded from the constitutional spending limit because those costs are not shifted *by the state*. *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70-71; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 907); see also, *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

²¹ Exhibit A, Test Claim Decision, page 19.

²² Government Code section 17557(a), emphasis added.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES

Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023

The period of reimbursement begins July 1, 2023.

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 February 13, 2026)

DECISION

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on February 13, 2026. [Witness list will be included in the adopted Decision and Parameters and Guidelines.]

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/rejected] the Proposed Decision and Parameters and Guidelines by a vote of [vote will be included in the adopted Decision and Parameters and Guidelines], 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	

I. Summary of the Mandate

These Parameters and Guidelines address new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

On September 26, 2025, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this Test Claim for the following reimbursable activities:

- 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.²³

II. Procedural History

The Commission adopted the Test Claim Decision on September 26, 2025.²⁴ Commission staff issued the Draft Expedited Parameters and Guidelines on September 29, 2025.²⁵ On October 20, 2025, the State Controller's Office filed comments on the Draft Expedited Parameters and Guidelines recommending no changes.²⁶ Also on October 20, 2025, the County of Santa Clara, the County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney, City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney filed comments on the Draft Expedited Parameters and Guidelines.²⁷ The claimant did not file comments on the Draft Expedited Parameters and Guidelines.

²³ Exhibit A, Test Claim Decision, page 41.

²⁴ Exhibit A, Test Claim Decision.

²⁵ Exhibit B, Draft Expedited Parameters and Guidelines.

²⁶ Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines.

²⁷ Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines; Exhibit E, County of Contra Costa Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit F, County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit G, City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines; Exhibit H, County of Marin's Comments on the Draft Expedited Parameters and Guidelines; Exhibit I, County of Sacramento Office of the District Attorney's Comments on the Draft

Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on November 25, 2025.

III. Positions of the Parties and Interested Parties

A. County of Los Angeles

The claimant did not file comments on the Draft Expedited Parameters and Guidelines.

B. State Controller

The Controller filed comments on the Draft Expedited Parameters and Guidelines recommending no changes.²⁸

C. County of Santa Clara

The County of Santa Clara filed comments on the Draft Expedited Parameters and Guidelines, seeking reimbursement for further public defender costs.²⁹ Reimbursement for the following is requested as “reasonably necessary activities”:

(1) the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel; and (2) the costs of requesting court transcripts, as well as CDCR records.³⁰

D. County of Contra Costa Office of the District Attorney, County of Sonoma Office of the District Attorney, City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney

Six county district attorney offices filed comments on the Draft Expedited Parameters and Guidelines, advocating that some or all their activities responding to Racial Justice Act (RJA) habeas corpus petitions be reimbursed as “reasonably necessary activities” to the state-mandated program.³¹ Two offices advocated reimbursing district attorney

Expedited Parameters and Guidelines; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines.

²⁸ Exhibit C, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

²⁹ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

³⁰ Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, page 5.

³¹ Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney’s

activities responsive to RJA petition discovery *only*.³² Four offices advocated reimbursing *all* responsive activities.³³

1. District Attorney Reimbursement Requests for Activities Responding to RJA Discovery Motions *Only*

The County of Contra Costa Office of the District Attorney and County of Sonoma Office of the District Attorney request reimbursement for responding to RJA discovery motions. They identically request the following as “reasonably necessary activities” to the state-mandated program, to “appropriately respond to these new discovery mandates”³⁴:

Preparation activities undertaken by the District Attorney’s Office, including extraction, review, and synthesis of case data and evidence necessary to comply with the statutory requirements imposed by the mandate;

and

Personnel costs borne by the District Attorney’s Office, to appropriately respond to habeas petitioner’s claims for discovery, which are necessary to comply with the statutory requirements imposed by the mandate.³⁵

The County of Contra Costa Office of the District Attorney attached a court order signed by Judge Julia Campins on September 24, 2025, addressing the district attorney’s

Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

³² Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-4.

³³ Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

³⁴ Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

³⁵ Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 2-3; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

delayed discovery response to an RJA petition.³⁶ Contra Costa states that “[d]ue to the absence of data synthesis systems to efficiently access and compile this type of information, Petitioner has not received the information necessary to proceed with his habeas petition.”³⁷

The Sonoma County District Attorney’s Office has incurred additional legal obligations and costs due to RJA claims, including discovery comprised of potentially “decades of case-specific data on cases unrelated to petitioner’s, but sharing either ‘offense type’ or ‘charge.’”³⁸ The data is “*historical*” and located in “decades worth of archived, paper case files” that must be “manually collected.”³⁹ Work also includes review of the record and case file, expert consultation and analysis, preparation of briefs and legal argument, and court appearances and hearings, for which the county has “not received any local, State, or federal funding specific to the implementation of AB 256, and has not received any grant funding” as an offset.⁴⁰

2. District Attorney Reimbursement Requests for *All* Activities Responding to RJA Petitions

The City and County of San Francisco Office of the District Attorney, County of Marin, County of Sacramento Office of the District Attorney, and County of Stanislaus Office of the District Attorney request that *all* district attorney activities responding to RJA petitions be reimbursable as “reasonably necessary activities” to the state-mandated program.

The City and County of San Francisco Office of the District Attorney seeks reimbursement for the following as “reasonably necessary activities” to the state-mandated program:

³⁶ Exhibit E, Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 4-12.

³⁷ Exhibit E, Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

³⁸ County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 3 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney).

³⁹ County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 3 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney), emphasis in original.

⁴⁰ County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 3-4 (Declaration of Andrea E. Tavenier, Chief Deputy District Attorney).

case review; discovery (including motion work, court hearings, processing, and production); and evidentiary hearings (including pre-hearing discovery, expert witnesses, briefing, and transcripts).⁴¹

The San Francisco District Attorney has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct or indirect costs related to AB 256.⁴²

The City and County of San Francisco Office of the District Attorney also notes recent legislation on RJA discovery. “On October 13, 2025, Governor Newsom signed AB 1071, which amends subdivision (d) of section 745 to allow a defendant or petitioner to file a motion for discovery of all evidence relevant to a potential violation of subdivision (a) of section 745. Thus, with the concurrent amendment to section 1473, this discovery motion provision will now also apply to indigent habeas corpus petitioners.”⁴³

The County of Marin seeks reimbursement for the following as “reasonably necessary activities” to the state-mandated program:

- 1) discovery under the RJA [Racial Justice Act], 2) review of the record and case files, 3) expert consultation and analysis, 4) preparation of briefs and legal argument including a review of data and expert conclusions, and 5) court appearances/hearings.⁴⁴

The County of Marin outlines the legal responsibilities in responding to RJA petitions as responding to discovery under the RJA, reviewing the record and case file, engaging with expert consultation and analysis, preparing briefs and legal argument, including reviewing data and expert conclusions, and making court appearances and attending hearings, and declares that the District Attorney of Marin has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct and indirect costs related to AB 256.⁴⁵

The County of Marin notes three additional concerns. Like the City and County of San Francisco Office of the District Attorney, Marin expresses concern about the recent passage of AB 1071, but acknowledges that it is “not the current subject of this test

⁴¹ Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

⁴² Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 5-6 (Declaration of Allison Garbutt Macbeth, Division Chief of the Special Litigation and Post Conviction Division).

⁴³ Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁴⁴ Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

⁴⁵ Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 6-7 (Declaration of Dori Ahana, Chief Deputy District Attorney).

claim.”⁴⁶ Secondly, it states that, from 2023 forward, it will also have work to perform under Penal Code section 745(j) subdivisions (2), (4), and (5),⁴⁷ despite that the Test Claim Decision addresses only section 745(j)(3).⁴⁸ Lastly, Marin argues that “the test claim should not be limited to claims made by ‘indigent habeas corpus petitioners’ only; it should apply to petitioners and claimants who make a motion or file a petition under subdivision (j)(3) of Section 745.”⁴⁹

The County of Sacramento Office of the District Attorney seeks reimbursement for the following as “reasonably necessary activities” to the state-mandated program:

- Discovery
- Litigation of substantive claims
- One-time and ongoing expert costs⁵⁰

The County of Sacramento outlines the legal responsibilities in responding to RJA petitions as discovery, litigation of substantive claims, and one-time and ongoing expert costs, which includes having retained “the services of a data analytics firm to engage in large-scale data retrieval, verification, and empirical analysis to evaluate whether similarly situated individuals receive similar charging decisions, convictions, and sentences.”⁵¹ Also, Sacramento has not received any local, state, or federal funding and does not have a fee authority to offset its increased direct and indirect costs for work related to AB 256.⁵²

Like the City and County of San Francisco Office of the District Attorney and County of Marin, Sacramento expresses concern about the recent passage of AB 1071, stating it

⁴⁶ Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁴⁷ Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

⁴⁸ Exhibit A, Test Claim Decision, page 4.

⁴⁹ Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 2-3.

⁵⁰ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 3-4.

⁵¹ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 6 (Declaration of Michael Blazina, Assistant District Attorney).

⁵² Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 6 (Declaration of Michael Blazina, Assistant District Attorney).

“will further expand the Sacramento County District Attorney’s Office’s duties under the RJA starting on January 1, 2026.”⁵³

The County of Sacramento adds that more discovery is required under the RJA than under previous statutes. Prior to the RJA and the test claim statute, “claims for post-conviction discovery were controlled by Penal Code section 1054.9.”⁵⁴ And “[s]imilarly, requests for pre-trial discovery were controlled by Penal Code section 1054 *et. seq.*”⁵⁵

Like the County of Marin, Sacramento also states that, from 2023 forward, it will also have work to perform under Penal Code section 745(j) subdivisions (2), (4), and (5),⁵⁶ despite that the Test Claim Decision addresses only section 745(j)(3).⁵⁷

The County of Stanislaus Office of the District Attorney seeks reimbursement identical to the County of Marin for the following as “reasonably necessary activities” to the state-mandated program:

- 1) discovery under the RJA [Racial Justice Act], 2) review of the record and case files, 3) expert consultation and analysis, 4) preparation of briefs and legal argument including a review of data and expert conclusions, and 5) court appearances/hearings.⁵⁸

The County of Stanislaus outlines the legal responsibilities in responding to RJA petitions as responding to discovery under the RJA, reviewing the record and case file, engaging with expert consultation and analysis, preparing briefs and legal argument, including reviewing data and expert conclusions, and making court appearances and attending hearings, and declares that the District Attorney of County of Stanislaus has not received any local, state, or federal funding and does not have a fee authority to offset its increased direct and indirect costs related to AB 256.⁵⁹

⁵³ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

⁵⁴ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁵⁵ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁵⁶ Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, page 4.

⁵⁷ Exhibit A, Test Claim Decision, page 4.

⁵⁸ Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 2-3.

⁵⁹ Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 4-5 (Declaration of Mark L. Zahner, Assistant District Attorney).

IV. Discussion

Consistent with the Test Claim Decision, and in consideration of comments as analyzed below, the Parameters and Guidelines state the following:

A. Eligible Claimants (Section II. of the Parameters and Guidelines)

Any county, or city and county subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

B. Period of Reimbursement (Section III. of the Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on December 19, 2024, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

According to Government Code section 17557(a) and section 1183.7 of the Commission's regulations, the Parameters and Guidelines must identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program." As the Commission's regulation states:

(d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence in accordance with section 1187.5 of these regulations.⁶⁰

In accordance with the Government Code and the Commission's regulations, any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the activity is necessary to perform the state-mandate.⁶¹

⁶⁰ California Code of Regulations, title 2, section 1183.7(d).

⁶¹ Government Code sections 17557(a), 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

Reimbursement is not required for activities that go beyond the scope of the approved state-mandated program.

Section IV. of the Parameters and Guidelines identifies the reimbursable state-mandated activity approved by the Commission as follows:

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- 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.

Several counties request additional reimbursement for “reasonably necessary” activities for both the public defender and district attorney offices. As explained below, the majority of these requests go beyond the scope of the mandate and are not eligible for reimbursement. In addition, one request is unnecessary as the costs are already provided for in the Parameters and Guidelines.

1. Costs Incurred by the Public Defender’s Office to Request Court Transcripts or CDCR Records are Reimbursable as Direct Costs, but Costs Incurred for Public Defender Activities Performed Prior to or Irrespective of the Appointment by the Court Go Beyond the Scope of the Mandate and are Not Eligible for Reimbursement.

The County of Santa Clara requests adding reimbursement for the following as “reasonably necessary activities” performed by public defenders:

“(1) the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel; and (2) the costs of requesting court transcripts, as well as CDCR records.”⁶²

Santa Clara’s second request is already provided for in the Parameters and Guidelines and therefore need not be further addressed as a “reasonably necessary activity.” Section V.A.1-3 reimburses the direct costs of salaries and benefits, materials and supplies, and contracted services to represent indigent habeas corpus petitioners on their RJA petition.⁶³ The activity of requesting transcripts and records is an employee activity paid through salary and benefits. The costs of the court transcripts and CDCR records themselves are likewise already provided for as material costs and contract payments.

⁶² Exhibit D, County of Santa Clara’s Comments on the Draft Expedited Parameters and Guidelines, page 5.

⁶³ Exhibit B, Draft Expedited Parameters and Guidelines, page 7.

Santa Clara's first request, however, is not eligible for reimbursement because it exceeds the scope of the mandate by requesting reimbursement for expenses incurred by public defenders *before* the state mandate begins. Santa Clara's request for reimbursement "prior to, and irrespective of, official appointment as habeas counsel,"⁶⁴ plainly exceeds the state-mandated program. Pursuant to Penal Code section 1473(f), as amended by the test claim statute, the state mandate is to provide counsel to the indigent habeas corpus petitioners "when appointed by the court."⁶⁵ This appointment specifically occurs after the inmate files a petition for writ of habeas corpus (including a statement that they cannot afford counsel) and after the judge finds that the petition has alleged facts that would establish a violation or the State Public Defender requests that counsel be appointed.⁶⁶

Santa Clara argues that public defenders have an ethical obligation if they "become aware of a potential Racial Justice Act claim — for example, through their prior representation of a client at trial or their knowledge of bias in local policing, prosecution, and sentencing practices — [and] must either advise their client of the course to follow to obtain relief or take other appropriate action."⁶⁷ Santa Clara cites to this language from the court:

As discussed in the body of this opinion, noncapital appellate counsel in this state who are aware of a basis for collateral relief should not await the outcome of the appeal to determine if grounds for collateral relief exist. While they have no obligation to conduct an investigation to discover if facts outside the record on appeal would support a petition for habeas corpus or other challenge to the judgment, if they learn of such facts in the course of their representation they have an ethical obligation to advise their client of the course to follow to obtain relief, or to take other appropriate action.⁶⁸

However, while the actions described by the county may stem from an attorney's existing obligation as counsel for a criminal defendant, those actions go beyond the scope of the mandate. As the Test Claim Decision states, there is no pre-existing right to post-conviction counsel under federal or state law.⁶⁹ The state-mandated right to

⁶⁴ Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 5.

⁶⁵ Exhibit A, Test Claim Decision, page 41.

⁶⁶ Penal Code section 1473(f) (later renumbered as 1473(e)).

⁶⁷ Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 3.

⁶⁸ Exhibit D, County of Santa Clara's Comments on the Draft Expedited Parameters and Guidelines, page 3; *In re Clark* (1993) 5 Cal.4th 750, 784, footnote 20.

⁶⁹ Exhibit A, Test Claim Decision, pages 30-31.

counsel exists here *only* under the terms of the test claim statute, and the mandate begins when the court appoints counsel.⁷⁰

Santa Clara also points to a summarized statement of California law that a habeas petition's filing date is "measured from the time the petitioner *or counsel* knew, or reasonably should have known, of the information," but the cases underlying this general principle are death penalty cases and long pre-date the test claim statute.⁷¹ When addressing timeliness, the Racial Justice Act refers only to what the petitioner knew, not their counsel.⁷² Pursuant to Penal Code section 1473(f) as amended by the 2022 test claim statute, the state-mandated program begins when *new* counsel is appointed and is not affected by lack of communication between public defenders and their past clients.

Finally, the Commission considered a similar argument in *Sex Offenders Registration: Petitions for Termination*, 21-TC-03. There, the Department of Justice created informational literature for sex offenders suggesting they may contact their local public defender regarding the new system available to terminate their registration, but the DOJ's informational literature did not "create a reimbursable state mandate."⁷³ Similarly here, the fact that public defenders may choose under existing ethical obligations to advise former clients before the appointment of counsel by the court, these costs are not mandated by the test claim statute and are not reasonably necessary to carry out the mandated program. Penal Code sections 1473(f) identifies that the mandate begins when "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." Actions of the public defender before the appointment of counsel go beyond the scope of the mandate and do not trigger the right to reimbursement.

Accordingly, Santa Clara's second request for "the costs associated with investigating the Racial Justice Act claim and preparing the petition prior to, and irrespective of, official appointment as habeas counsel" go beyond the scope of the mandate and are not eligible for reimbursement.

⁷⁰ *Bemore v. Superior Court* (2025) 108 Cal.App.5th 1125, 1146 ("Although 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."); Penal Code section 1473(f), as amended by Statutes 2022, chapter 739 (later renumbered as 1473(e)).

⁷¹ *Walker v. Martin* (2011) 562 U.S. 307, 312, emphasis added.

⁷² Penal Code sections 1473(e) (referring to evidence "that could not have been previously known by the petitioner") and 745(c).

⁷³ Commission on State Mandates, Test Claim Decision on *Sex Offenders Registration: Petitions for Termination*, 21-TC-03, adopted October 27, 2023, <https://csm.ca.gov/decisions/21-TC-03-102723.pdf> (accessed on October 23, 2025), page 31.

2. District Attorney Activities Responding to RJA Petitions Go Beyond the Scope of the Mandate and are Not Eligible for Reimbursement.

Six district attorney offices request reimbursement for activities performed in response to an RJA petition, including responding to discovery, on the grounds that they are reasonably necessary to comply with the state-mandated program.⁷⁴

The Commission finds that activities performed by the district attorney offices go beyond the scope of the mandate imposed on the public defender by Penal Code sections 1473(f) and 745(j)(3), as amended by the 2022 test claim statute and are, therefore, not eligible for reimbursement.

As discussed above, “reasonably necessary activities” must be necessary for the performance *of the state-mandated program*, and any activity required by statutes, regulations, and other executive orders that were not pled in the Test Claim may only be used if the state-mandated program were rendered impossible without them.⁷⁵ Here, the district attorneys’ RJA work is not a reasonably necessary activity to comply with the state-mandated program because the state-mandated program is limited to the mandated activities performed by the public defender.

The state-mandated program in this case is limited to counties providing public defender services pursuant to Penal Code sections 1473(f), which declares, in part, 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” and 745(j)(3), which declares, in part, that the right to bring an RJA petition exists “regardless of when the judgment or disposition became final”, as amended by the 2022 test claim statute. These code sections do not require the district attorney to provide any services as respondents to an RJA petition or to defend the actions alleged in the RJA petition. Rather, the district attorney has general prosecutorial discretion bestowed and controlled by existing state law.⁷⁶ “The prosecutor has the responsibility to decide in the public interest whether to

⁷⁴ Exhibit E, County of Contra Costa Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-13; Exhibit F, County of Sonoma Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-4; Exhibit G, City and County of San Francisco Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit H, County of Marin’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-17; Exhibit I, County of Sacramento Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-7; Exhibit J, County of Stanislaus Office of the District Attorney’s Comments on the Draft Expedited Parameters and Guidelines, pages 1-6.

⁷⁵ California Code of Regulations, title 2, section 1183.7(d).

⁷⁶ *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 745 (“The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”); California Constitution, article V, section 13 (State Attorney General supervises “every district attorney.”); Government Code section 100(b);

seek, oppose, accept, or challenge judicial actions and rulings. These decisions, too, go beyond safety and redress for an individual victim;....”⁷⁷

In contrast, an example of the district attorneys being subject to a state-mandated program is found in *Sexually Violent Predators*, CSM-4509.⁷⁸ Where state law requires civil commitment proceedings following completion of a sentence for a sexually violent crime and imposes a legal duty on the county to handle those proceedings: “[t]he petition [for civil commitment] *shall* be filed, and the proceedings *shall* be handled, by either the district attorney or the county counsel of that county.”⁷⁹ But district attorneys are not subject to any such state-mandated direction here, so their work in response to RJA petitions remains under their prosecutorial discretion to respond to the petition and in response to any court orders rather than a mandate from the state. Appropriations required to comply with mandates of the courts, “which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly” are not subject to the local government appropriations limit in article XIII B⁸⁰ and, are therefore, not entitled to reimbursement under article XIII B, section 6.⁸¹

The Test Claim Decision accordingly addressed the state-mandated program on counties to provide public defender services *only*.⁸² “The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary

Government Code section 26500 (“The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.”): *Dix v. Superior Court* (1991) 53 Cal.3d 442, 452 (public interest standing does not prevail “over the public prosecutor’s exclusive discretion in the conduct of criminal cases”).

⁷⁷ *Dix v. Superior Court* (1991) 53 Cal. 3d 442, 452.

⁷⁸ Commission on State Mandates, Test Claim CSM-4509, adopted June 25, 1998, <https://csm.ca.gov/decisions/doc96.pdf> (accessed on October 24, 2025), pages 2-3.

⁷⁹ Welfare and Institutions Code section 6601(i), emphasis added; see generally Welfare and Institution Code sections 6601-6608.

⁸⁰ California Constitution, article XIII B, section 9(b).

⁸¹ Courts have recognized that reimbursement under article XIII B, section 6 is not required when the expenditure of local costs is excluded from the constitutional spending limit because those costs are not shifted *by the state*. *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70-71; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 907; see also, *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

⁸² Exhibit A, Test Claim Decision, page 19.

for the performance of the state-mandated program.”⁸³ The request for reimbursement of district attorney activities is therefore beyond the scope of the state-mandated program.

Finally, any concerns expressed by the counties over AB 1071 (2025) are not relevant to these Parameters and Guidelines since the mandate is limited to Penal Code sections 745(j)(3) and 1473(f), as amended by the 2022 test claim statute.

D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct and indirect costs that are eligible for reimbursement and includes the standard boilerplate language.

E. Offsetting Revenues and Reimbursements (Section VII. Offsetting Revenues and Reimbursements)

Section VII. addresses offsetting revenues and contains the following boilerplate language:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant’s proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

F. The Remaining Sections of the Parameters and Guidelines

Section VI. Record Retention; Section VIII. State Controller’s Claiming Instructions; Section IX. Remedies Before the Commission; and Section X. Legal and Factual Basis for the Parameters and Guidelines contain standard boilerplate language.

V. Conclusion

Based on the foregoing, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

PARAMETERS AND GUIDELINES⁸⁴

Penal Code Sections 745(j)(3) and 1473(f), as Amended by Statutes 2022, Chapter 739, Sections 2 and 3.5 (AB 256), Effective January 1, 2023

Criminal Procedure: Discrimination

⁸³ Government Code section 17557(a), emphasis added.

⁸⁴ Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

Period of reimbursement begins July 1, 2023

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address new state-mandated activities and costs resulting from Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739, also known as the Racial Justice for All Act, effective January 1, 2023.

On September 26, 2025, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this Test Claim for the following reimbursable activities:

- 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.⁸⁵

II. ELIGIBLE CLAIMANTS

Any county, or city and county subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on December 19, 2024, establishing eligibility for reimbursement for the 2023-2024 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2023.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.

⁸⁵ Exhibit A, Test Claim Decision, page 41.

3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- 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.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time

according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. Claimants have the option of using the federal de minimis indirect cost rate percentage of direct labor identified in the Office of Management and Budget Circular, at Code of Federal Regulations, title 2, section 200.414(f), excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds the de minimis rate.⁸⁶

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR, Chapter I and Chapter II, Part 200 et al.) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either

⁸⁶ Effective October 1, 2024, the federal de minimis rate was raised from 10 percent to 15 percent. (Code of Federal Regulations, title 2, § 200.414(f) (89 FR 30046, 30092).)

direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter⁸⁷ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds that are not the claimant's proceeds of taxes shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for

⁸⁷ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 November 25, 2025, I served the:

- **Current Mailing List dated November 25, 2025**
- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued November 25, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Penal Code Sections 745(j)(3) and 1473(f) as Amended by Statutes 2022, Chapter 739 (AB 256), Sections 2 and 3.5, Effective January 1, 2023
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 November 25, 2025 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/25/25

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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