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March 18, 2025

Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814



RE: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

I am writing in support of approving the claim underlying *Criminal Procedure: Discrimination*, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

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.

We appreciate your review of our comments and your consideration. Thank you for your attention to this important matter.

Respectfully,



Elena D’Agustino
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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 18, 2025, I served the:

- **Current Mailing List dated March 18, 2025**
- **Solano County Office of the Public Defender's Comments on the Test Claim filed March 17, 2025**

Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 18, 2025 at Sacramento, California.



Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/18/25

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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