

RECEIVED  
March 20, 2025  
Commission on  
State Mandates

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

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

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

On behalf of the USF Racial Justice Clinic, I write in support of approving the claim underlying *Criminal Procedure: Discrimination, 24-TC-02* to reimburse the County of Los Angeles for its efforts fulfilling the mandate the Legislature has imposed on it. The County seeks reimbursement for costs incurred by the public defender’s office resulting from their appointment by the court to represent indigent clients in retroactive petitions for relief under the Racial Justice Act (RJA, Pen. Code, § 745), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

The 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. We do so on a *pro bono* basis for a very small handful of clients because of the resource-intensive efforts required to appropriately and effectively represent these clients in their RJA claims. In addition to direct representation, the Clinic also supports RJA implementation for both pre-trial and retroactive claims, which has given us a bird’s eye view of the challenges county-level public defender offices face in managing this new type of litigation for clients who are currently imprisoned.

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 previously adjudicated cases. The claim by the County of Los Angeles outlines the new and extensive costs the public defender’s office has incurred to effectuate its new obligations to clients in retroactive RJA cases. This new type of appointment to defendants whose convictions are otherwise final has substantially 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 frequently handled before.

It is critical to the effective implementation of RJA and AB 256 that counties be reimbursed for these new, additional representation costs. Through the passage of the 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 been required to take 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 they are required to continue to provide these necessary services without appropriate funding.

The new obligation the public defender’s office now carries as a result of the enactment of AB 256 has also been confirmed by the recent decision from the California Court of Appeal in *Bemore v. Superior Court of San Diego County*, which 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) (emphasis added).)

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, emphasis added.) Penal Code section 987.2 directs the superior courts to first appoint public defenders to represent indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender’s office, the current law *dictates* that the public defender’s office will be the first-in-line to be appointed counsel in these retroactive RJA claims and expend costs and resources to provide effective representation in these cases.

The Racial Justice Act is one of the most important and consequential new laws enacted in this state. Without appropriate reimbursement for this mandate imposed by the Legislature, the purpose and intent of the RJA would be rendered meaningless. Failure to effectuate this mandate would deny justice to those whose criminal cases have been impacted by racism and risk the erosion of public confidence both in the Legislature and in the court’s ability 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.

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

Respectfully,

Charlie Nelson Keever  
Acting Director  
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A handwritten signature in black ink, appearing to read "Belle Yan". The signature is fluid and cursive, with the first name "Belle" and the last name "Yan" clearly distinguishable.

Belle Yan  
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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 21, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **University of San Francisco Racial Justice Clinic's Comments on the Test Claim filed March 20, 2025**
- **County of Ventura Office of the Public Defender's Comments on the Test Claim filed March 20, 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 21, 2025 at Sacramento, California.



David Chavez

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## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 3/19/25

**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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