



May 5, 2026

Mr. Chris Hill  
Department of Finance  
915 L Street, 10th Floor  
Sacramento, CA 95814

Mr. Arthur Palkowitz  
Law Offices of Arthur M. Palkowitz  
12807 Calle de la Siena  
San Diego, CA 92130

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

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing  
Race-Blind Charging, 24-TC-07**

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b),  
effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Mr. Hill and Mr. Palkowitz:

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 **by May 26, 2026**. 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.<sup>1</sup>

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(f).) Refer to <https://www.csm.ca.gov/dropbox.shtm> 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 request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(j).)

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.

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<sup>1</sup> 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.

Mr. Hill and Mr. Palkowitz

May 5, 2026

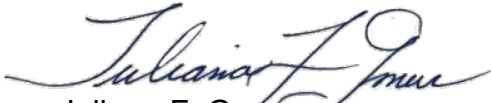
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**Hearing:** This matter is set for hearing on **Friday, August 14, 2026**, at 10:00 a.m. The Proposed Decision will be issued on or about July 31, 2026.

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, **August 11, 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,

A handwritten signature in cursive script, appearing to read "Juliana F. Gmur".

Juliana F. Gmur  
Executive Director

Hearing Date: August 14, 2026

**ITEM \_\_\_\_**  
**TEST CLAIM**  
**DRAFT PROPOSED DECISION**

Penal Code Section 741(b)  
Statutes 2022, Chapter 806, Section 2 (AB 2778)

*Race-Blind Charging*

24-TC-07

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.<sup>1</sup>

Staff recommends that the Commission approve this Test Claim as specified herein.

**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. In order 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 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

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<sup>1</sup> Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

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.”<sup>2</sup>

**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?	<p>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.<sup>3</sup></p> <p>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.”<sup>4</sup></p> <p>Government Code section 17557(e) provides that a</p>	Yes. Timely filed within one year of incurring costs <sup>6</sup> and has a period of reimbursement beginning July 1, 2023.

<sup>2</sup> *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.

<sup>3</sup> Government Code section 17551(c).

<sup>4</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>6</sup> Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

Issue	Description	Staff Recommendation
	<p>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.”</p> <p>The test claim statute became effective on January 1, 2023. The Test Claim was filed on June 10, 2025.<sup>5</sup></p>	
<p>Does Penal Code section 741(b), as added by the test claim statute, impose new state-mandated activities?</p>	<p>The claimants contend that all requirements imposed by Penal Code section 741(b) are new and mandated by the state.</p> <p>The Department of Finance (Finance) contends that the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency’s discretion to elect to employ the race-blind initial charging evaluation.<sup>7</sup></p>	<p>Yes. The test claim statute imposes new state-mandated activities as specified below:</p> <p>County and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:</p> <ol style="list-style-type: none"> <li>1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)</li> <li>2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)’, victim(s)’, and witness(es)’ race</li> </ol>

<sup>5</sup> Exhibit A, Test Claim, page 1.

<sup>7</sup> Exhibit C, Finance’s Comments on the Test Claim, page 2.

Issue	Description	Staff Recommendation
		<p>from <i>only</i> the narrative portion of the police report. (Pen. Code, § 741(b)(1).)</p> <p><i>Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.</i><sup>8</sup></p> <p>3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.</p> <p>If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review <i>must be performed anew</i> by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)<sup>9</sup></p>

<sup>8</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

<sup>9</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

Issue	Description	Staff Recommendation
		<p><i>However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.</i></p> <p>4. Document as part of the case record, the following information:</p> <ul style="list-style-type: none"> <li>• The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.</li> <li>• The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.</li> <li>• The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)</li> </ul> <p><i>However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).</i></p> <p>5. Document and retain the reason for the inability to put a case through a</p>

Issue	Description	Staff Recommendation
		<p>race-blind charging evaluation. (Pen. Code, § 741(b)(5).)</p> <p><i>However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).</i></p> <p>For counties only, to collect the data resulting from the race-blind initial charging evaluation process.</p> <p>Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>10</sup></p>

<sup>10</sup> Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

Issue	Description	Staff Recommendation
<p>Do the new, state-mandated activities imposed by Penal Code section 741(b), as added by the test claim statute, constitute a new program or higher level of service?</p>	<p>Article XIII B, section 6 of the California Constitution requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” New programs or higher levels of service have 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.”<sup>11</sup> Just one of these conditions need be met.<sup>12</sup></p>	<p>Yes. There is a new program or higher level of service.</p> <p>The new activities listed above are required to be performed by “prosecution agencies.”<sup>13</sup> “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.<sup>14</sup> Thus, the test claim statute imposes unique requirements on local government.</p> <p>The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to increase community confidence in the charging process, and to reduce the</p>

<sup>11</sup> *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.

<sup>12</sup> *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.

<sup>13</sup> Penal Code section 741(a).

<sup>14</sup> Government Code sections 26500, 41803.5, 72193.

Issue	Description	Staff Recommendation
		potential for unconscious bias.” <sup>15</sup>
Does Penal Code section 741(b), as added by the test claim statute, result in costs mandated by the state within the meaning of Government Code sections 17514 and 17556.		Yes. There are costs mandated by the state.  The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute. <sup>16</sup> There is no evidence rebutting these costs. And none of the exceptions in Government Code section 17556 apply.

### **Staff Analysis**

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.<sup>17</sup>

The Test Claim was timely filed within one year of the claimants incurring increased costs as a result of the test claim statute and has a period of reimbursement beginning July 1, 2023.<sup>18</sup>

<sup>15</sup> Statutes 2022, chapter 806, section 1.

<sup>16</sup> Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>17</sup> Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

<sup>18</sup> Government Code sections 17551(c), 17557(e); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson,

Staff finds that the following activities are new and mandated by the state:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*<sup>19</sup>

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)<sup>20</sup>

*However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.*

4. Document as part of the case record, the following information:

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Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

<sup>19</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

<sup>20</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

- The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
- The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
- The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>21</sup>

Staff further finds that the new, state-mandated activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities are required to be performed by “prosecution agencies.”<sup>22</sup> “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.<sup>23</sup> Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to

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<sup>21</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

<sup>22</sup> Penal Code section 741(a).

<sup>23</sup> Government Code sections 26500, 41803.5, 72193.

increase community confidence in the charging process, and to reduce the potential for unconscious bias.”<sup>24</sup>

Finally, staff finds that the test claim statute results in increased costs mandated by the state and none of the exceptions in Government Code section 17556 apply to deny the claim. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.<sup>25</sup> There is no evidence rebutting these costs. The test claim statute does not create a new crime or 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. Moreover, there is no evidence in the record that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

### **Conclusion**

Based on the forgoing analysis, staff finds that Penal Code section 741(b), as added by Statutes 2022, chapter 806, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties and cities, beginning July 1, 2023, for the following activities only:

- A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:
  1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
  2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*<sup>26</sup>

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<sup>24</sup> Statutes 2022, chapter 806, section 1.

<sup>25</sup> Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>26</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)

*However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.*

4. Document as part of the case record, the following information:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
  - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>27</sup>

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<sup>27</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

All other provisions of the test claim statute and claims for reimbursement are recommended for denial.

**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 Section 741(b) Statutes 2022, Chapter 806, Section 2 (AB 2778) Filed on June 10, 2025 City of Sacramento, County of Santa Clara, and County of Sutter, Claimants	Case No.: 24-TC-07 <i>Race-Blind Charging</i> DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. <i>(Adopted August 14, 2026)</i>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on August 14, 2026. [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:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller	
Karen Greene Ross, Public Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Office of Land Use and Climate Innovation	

**Summary of the Findings**

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on

the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.<sup>28</sup>

The Test Claim was timely filed within one year of the claimants incurring increased costs as a result of the test claim statute and has a period of reimbursement beginning July 1, 2023.<sup>29</sup>

The Commission finds that the following activities are new and mandated by the state:

- A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:
  1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
  2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s), victim(s), and witness(es) race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*<sup>30</sup>

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<sup>28</sup> Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

<sup>29</sup> Government Code sections 17551(c), 17557(e); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

<sup>30</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)<sup>31</sup>

*However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.*

4. Document as part of the case record, the following information:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
  - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system,

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<sup>31</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>32</sup>

The new, state-mandated activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities are required to be performed by “prosecution agencies.”<sup>33</sup> “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.<sup>34</sup> Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to increase community confidence in the charging process, and to reduce the potential for unconscious bias.”<sup>35</sup>

Finally, the test claim statute results in increased costs mandated by the state and none of the exceptions in Government Code section 17556 apply to deny the claim. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.<sup>36</sup> There is no evidence rebutting these costs. The test claim statute does not create a new crime or 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. Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission approves this claim for costs incurred by counties and cities beginning July 1, 2023.

## COMMISSION FINDINGS

### I. Chronology

01/01/2023      The test claim statute becomes effective  
06/10/2025      The claimants filed the Test Claim.<sup>37</sup>

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<sup>32</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

<sup>33</sup> Penal Code section 741(a).

<sup>34</sup> Government Code sections 26500, 41803.5, 72193.

<sup>35</sup> Statutes 2022, chapter 806, section 1.

<sup>36</sup> Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>37</sup> Exhibit A, Test Claim.

- 08/18/2025 The California District Attorneys' Association (CDAA) filed comments on the Test Claim.<sup>38</sup>
- 08/19/2025 Finance filed comments on the Test Claim.<sup>39</sup>
- 08/19/2025 League of California Cities filed comments on the Test Claim.<sup>40</sup>
- 08/25/2025 District Attorneys filed comments on the Test Claim.<sup>41</sup>
- 08/25/2025 California State Association of Counties (CSAC) filed comments on the Test Claim.<sup>42</sup>
- 09/18/2025 The claimants filed rebuttal comments.<sup>43</sup>
- 05/05/2026 Commission staff issued the Draft Proposed Decision.<sup>44</sup>

## II. Background

The test claim statute (Statutes 2022, chapter 806) added section 741 to the Penal Code to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The relevant background for this Test Claim is summarized below.

### **A. Existing Law Authorizes County District Attorneys and City Prosecutors to Pursue Criminal Misdemeanor and Felony Charges Following Receipt and Review of Law Enforcement Reports and Documents.**

Under existing law, the county district attorney is the public prosecutor, who shall, within his or her discretion, initiate and conduct on behalf of the people all prosecutions for

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<sup>38</sup> Exhibit B, California District Attorneys’ Association’s (CDAA) Comments on the Test Claim.

<sup>39</sup> Exhibit C, Finance’s Comments on the Test Claim.

<sup>40</sup> Exhibit D, League of California Cities’ Comments on the Test Claim.

<sup>41</sup> Exhibit E, District Attorneys’ Comments on the Test Claim. These comments were signed by the District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba.

<sup>42</sup> Exhibit F, CSAC’s Comments on the Test Claim.

<sup>43</sup> Exhibit G, Claimants’ Rebuttal Comments.

<sup>44</sup> Exhibit H, Draft Proposed Decision.

public offenses.<sup>45</sup> The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he or she has information that such offenses have been committed.<sup>46</sup> With the consent of the district attorney of the county, the city attorney of any general law city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law.<sup>47</sup> And whenever a charter of any city creates the office of city prosecutor or provides that a deputy city attorney shall act as city prosecutor, the city prosecutor is required prosecute misdemeanor offenses arising out of violations of state law.<sup>48</sup>

Under existing law, the prosecuting attorney ordinarily has the sole discretion to determine who to charge and what charges to file and pursue.<sup>49</sup> The prosecuting agency makes these decisions based on a review of the reports, records, and files of the law enforcement agency submitting the case for possible prosecution.

If a defendant is arrested on criminal charges, an arraignment must generally occur within 48 hours of arrest.<sup>50</sup> An arraignment is the initial court hearing where a defendant is formally charged with a crime, advised of their constitutional rights, and asked to enter a plea.

For misdemeanor cases, defendants have a right to have their trial start by a deadline. For a defendant not in custody, the trial must start within 45 days of their arraignment or plea, whichever is later. For a defendant who is in custody, it must start within 30 days of their arraignment or plea, whichever is later.<sup>51</sup>

For felony offenses, the prosecuting attorney can decide to prosecute through an indictment following a preliminary hearing or by way of a grand jury. In both cases, the preliminary hearing and grand jury proceedings determine if sufficient evidence exists to hold a defendant for trial.<sup>52</sup> While a proceeding before the grand jury typically occurs

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<sup>45</sup> Government Code section 26500, as last amended by Statutes 1980, chapter 1094.

<sup>46</sup> Government Code section 26501, as added by Statutes 1947, chapter 424.

<sup>47</sup> Government Code section 41803.5, as last amended by Statutes 2002, chapter 784.

<sup>48</sup> Government Code 72193, as last amended by Statutes 1998, chapter 931.

<sup>49</sup> *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.”); *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451 (“[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”).

<sup>50</sup> Penal Code section 825, as last amended by Statutes 2003, chapter 149.

<sup>51</sup> Penal Code section 1382, as last amended by Statutes 2009, chapter 424.

<sup>52</sup> Penal Code section 859b, as last amended by Statutes 1996, chapter 122; section 872, as last amended by Statutes 2013, chapter 125; and section 904.6(a), as last amended by Statutes 2005, chapter 25.

before the arraignment, a preliminary hearing is required to be conducted within ten court days after the arraignment or plea, whichever is later, unless delayed for good cause.<sup>53</sup>

These procedures did not change with the passage of the test claim statute.

**B. The Test Claim Statute Adds a Race-Blind Charging Evaluation to the Charging Process and on January 1, 2024, DOJ Issued Race-Blind Charging Guidelines in Accordance with the Test Claim Statute.**

The purpose of the test claim statute is to reduce the potential for unconscious bias in the charging process.<sup>54</sup> Section 1 of the test claim statute states the following:

- (a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or "unconscious" bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.)
- (b) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." (id. 71) In other contexts, such as science, employment, or academia, the "blinding" of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)
- (c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done "race blind." The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.<sup>55</sup>

As indicated above, the test claim statute came about following a pilot program in which the Yolo County District Attorney partnered with the Stanford Computational Policy lab in 2021 to develop a program to find and redact race data from police reports so that the initial charging determination could be performed "race blind." The process used an initial redacted review and a secondary unredacted review process to charge cases, with a few exceptions. "By stripping police reports of all race-related data of the

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<sup>53</sup> Penal Code section 859b, as last amended by Statutes 1996, chapter 122.

<sup>54</sup> Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

<sup>55</sup> Exhibit A, Test Claim, page 57.

suspect, victim, or witness, it reduces the potential for unconscious bias and increases community confidence in the charging process by having the initial charging assessment done 'race-blind.'"<sup>56</sup> The test claim statute is modeled after this process.

Penal Code section 741(a) first requires the Department of Justice (DOJ), beginning January 1, 2024, to develop, issue, and publish Race-Blind Charging guidelines.<sup>57</sup>

The claimants request reimbursement to comply with the requirements in Penal Code section 741(b).<sup>58</sup> Penal Code section 741(b) requires prosecution agencies, following the DOJ Guidelines, to independently develop and execute versions of the redaction and review process. "Prosecution agencies" are defined in Penal Code section 741(a) as "agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors," which as stated in the previous section are county district attorneys and city prosecutors.

Beginning January 1, 2025, Penal Code section 741(b)(1) states that cases received from law enforcement agencies and suspect criminal history documentation "shall be redacted" by the prosecution agency in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation.<sup>59</sup> Penal Code section 741(b)(1) states further explains,

This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

Penal Code section 741(b)(2) states that the initial charging evaluation based on redacted information "shall determine whether the case should be charged or not charged. Individual charges shall not be determined at this initial charging evaluation stage." Subdivision (b)(2) also requires a prosecutor who does not have knowledge of the redacted facts for that case to perform the initial charging evaluation.

Penal Code section 741(b)(3) states that "[a]fter completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable

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<sup>56</sup> Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

<sup>57</sup> See, Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

<sup>58</sup> Exhibit A, Test Claim, pages 22-24; Exhibit G, Claimants' Rebuttal Comments, page 7.

<sup>59</sup> Penal Code section 741(b)(1).

individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.”

Penal Code section 741(b)(4) and (5) require the following information to be documented and disclosed:

- Each of the following circumstances shall be documented as part of the case record:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
  - The explanation for the charging decision change.
- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 [which provides that attorney work product or privileged materials is not required to be disclosed] or any other applicable law.
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

Penal Code section 741(b)(6) requires counties to collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

Penal Code section 741(c) allows the prosecution agencies to exclude each of the following crimes from a race-blind initial charging evaluation process:

- (1) Homicides.
- (2) Hate crimes.
- (3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.
- (4) Domestic violence and sex crimes.
- (5) Gang crimes.
- (6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.
- (7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

- (8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.
- (9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.
- (10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

According to the Senate Appropriations Committee, the test claim statute results in:

Unknown, potentially reimbursable costs, possibly in the millions of dollars annually [for] additional staff and possible third party IT vendor contracts for county district attorney offices to independently develop and execute a process based on the process created by the DOJ to review and redact certain information about a suspect, witness or victim information reports before charging anyone (Local Funds, General Fund). Costs may also include additional staff and IT infrastructure to collect data from a race-blind charging process and document why a DA office did not use a race-blind charging process in any case.<sup>60</sup>

On January 1, 2024, DOJ issued Race-Blind Charging Guidelines, which will be more fully addressed in the analysis.<sup>61</sup> However, the Guidelines identify the following examples of the redaction process that satisfy the requirements of the test claim statute:

- (1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.
- (2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

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<sup>60</sup> Exhibit A, Test Claim, pages 62-63 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

<sup>61</sup> Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

- (3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.
- (4) The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.<sup>62</sup>

**C. Prior Test Claim Decisions Addressing Racial Disparities in the Criminal Justice System.**

The Commission has received and approved several prior test claims addressing racial disparities in the criminal justice system, as follows:

- *Criminal Procedure: Discrimination, 24-TC-02.* This Test Claim addressed the Racial Justice for All Act as amended in 2022, which 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.<sup>63</sup> The Act allows the defendant to bring proceedings to obtain a judgment finding a violation of the Act by showing with a preponderance of the evidence that the judge, attorney, 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. One of the ways a defendant can show a violation can be based on statistical evidence; i.e., that 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

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<sup>62</sup> Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

<sup>63</sup> Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

obtained.”<sup>64</sup> If the court finds a violation, then the court is required to vacate the conviction and sentence and find both or either to be legally invalid.<sup>65</sup>

The Commission approved the Test Claim for the following reimbursable 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.<sup>66</sup>

- *Racial Identify and Profiling*, 18-TC-02. This Test Claim addressed the Racial and Identity Profiling Act of 2015 and 2017 (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, Penal Code sections 13012 and 13519.4, and regulations adopted by DOJ, which require each reporting agency that employs peace officers to annually report to the Attorney General data in electronic format on all “stops” conducted by the agency’s peace officers, the following additional information: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, and approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. The Commission approved the Test Claim for numerous activities governing the reporting process.<sup>67</sup>
- *Crime Statistics Reports for the Department of Justice*, 07-TC-10. The Commission found that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program on local law enforcement agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:
  - Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of association with a person or group with one or more of the

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<sup>64</sup> Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026), page 9.

<sup>65</sup> Penal Code section 745(e)(2)(A) - (B); Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026), page 14.

<sup>66</sup> Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026).

<sup>67</sup> Commission on State Mandates, Adopted Decision, *Racial Identify and Profiling*, 18-TC-02, [https://csm.ca.gov/decisions/18tc02\\_052220.pdf](https://csm.ca.gov/decisions/18tc02_052220.pdf) (accessed on April 30, 2026).

following actual or perceived characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.<sup>68</sup>

- *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11. The Commission found that the following statutes imposed a reimbursable state-mandated program:
  - A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background. (Pen. Code, §13014, Stats. 1992, ch. 1338.)
  - Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin. (Pen. Code, §13023, Stats. 1989, ch. 1172.)
  - For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission found this to be reimbursable from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005.<sup>69</sup>
- *Racial Profiling: Law Enforcement Training*, 01-TC-01. The Commission found that Penal Code section 13519.4, as amended by Statutes 2000 chapter 684, imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution with respect to the initial racial profiling training for incumbent law enforcement officers, as specified in the Decision. The Commission denied reimbursement for the training in the Basic

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<sup>68</sup> Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/07-tc-10correctedsodtrans041210.pdf> (accessed on April 30, 2026).

<sup>69</sup> Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, <https://csm.ca.gov/matters/02-TC-04/doc1.pdf> (accessed on April 30, 2026).

Training Course and for refresher training every five years on the ground that such costs did not result in costs mandated by the state.<sup>70</sup>

### III. Positions of the Parties

#### A. City of Sacramento, County of Santa Clara, and County of Sutter

The test claimants contend that Penal Code section 741(b), as added by the test claim statute, imposes a reimbursable state-mandated program on counties and cities and seek reimbursement for the following activities:

- Independently develop and execute versions of the redaction and review process. (Pen. Code, § 741(b).)
- Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the ‘narrative’ portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation. (Pen. Code, § 741(b)(1).)
- The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case. (Pen. Code, § 741(b)(2).)
- After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint or allow the case to be submitted to a grand jury. (Pen. Code, § 741(b)(3).)
- Each of the following circumstances shall be documented as part of the case record: (i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed. (ii) The

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<sup>70</sup> Commission on State Mandates, Adopted Decision, *Racial Profiling: Law Enforcement Training*, 01-TC-01, <https://csm.ca.gov/decisions/01tc01sod.pdf> (accessed on April 30, 2026).

initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed. (Pen. Code, § 741(b)(4)(A).)

- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. (Pen. Code, § 741(b)(4)(C).)
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. (Pen. Code, § 741(b)(5).)
- The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes. (Pen. Code, § 741(b)(6).)<sup>71</sup>

The claimants also make it clear that they are not seeking reimbursement for the activities listed above in relation to the classes of crimes or factual circumstances identified in Penal Code section 741(c)(1-10).<sup>72</sup> The claimants filed a Declaration from Kevin McCarty, the current Mayor of Sacramento and author of the test claim statute when Mayor McCarty served in the Legislature, explaining that he worked with Yolo District Attorney's Office to identify which crimes to exclude because these crimes required the review of additional evidence outside of the police report including video and audio recordings, interviews with witnesses, victims and suspects, DNA evidence, evidence from sexual assault kits, and digital evidence from cell phones, computers, and other electronic devices in order to make a charging decision.<sup>73</sup>

The claimants have filed declarations explaining how their counties and city have complied with the test claim statute and the costs incurred.

- County of Santa Clara. In County of Santa Clara, redactions are automatically applied to police reports using software provided by Harvard University's Computational Policy Lab (CPL). This software was provided to the County at no cost, but the County incurs usage costs for hosting the software in the Cloud.<sup>74</sup> The County also contracted with HTC Global Services, Inc. to integrate the case management system, Ciberlaw, with the redaction software and develop and implement workflows in its case management system. This enables the district attorney to conduct the initial and second charging evaluations, document any change in the charging decision, and document the reasons for not being able to

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<sup>71</sup> Exhibit A, Test Claim, pages 22-24.

<sup>72</sup> Exhibit G, Claimants' Rebuttal Comments, page 7.

<sup>73</sup> Exhibit G, Claimants' Rebuttal Comments, page 9.

<sup>74</sup> Exhibit A, Test Claim, pages 36-37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

puta case through the evaluation.<sup>75</sup> The County identifies several activities to implement the new redaction software and Ciberlaw workflows, including collaboration with vendors; project planning meetings; developing data dashboards and reports; training staff; and conducting regular governance meetings to monitor project status, review statistical reports, and assess the impact on attorney workload.<sup>76</sup>

Since the Redaction Software provided by CPL is able to redact only police reports, the County's district attorney's office worked with the County's IT Department to modify the County's CJIC system, which maintains local suspect criminal history documentation to apply redactions automatically by creating a new program beginning in March and several activities are listed to implement this new program.<sup>77</sup>

In addition, to implement the test claim statute, the County contends it was "reasonably necessary" for the district attorney's office to fully convert to the electronic submission of cases by local police departments. Prior to the test claim statute, some units in the police department submitted their cases to the district attorney's office in paper. The Redaction Software now requires electronic submission, which required county employees to establish user accounts in the district attorney's custom solution for the end users in the police department.<sup>78</sup>

Beginning February 2025, the County district attorney's office started the process of transitioning from the custom solution to Axon Justice Premier for the electronic submission of cases from local police departments, including integrating Axon Justice Premier with Ciberlaw, with several activities listed to accomplish this task.<sup>79</sup>

For fiscal year 2024-2025, the County estimates increased costs of \$2,016,723 in labor and vendor costs.<sup>80</sup> For fiscal year 2025-2026, the County estimates costs of \$4,281,029 for labor and vendor costs.

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<sup>75</sup> Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

<sup>76</sup> Exhibit A, Test Claim, pages 37-39 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

<sup>77</sup> Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

<sup>78</sup> Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

<sup>79</sup> Exhibit A, Test Claim, pages 41-42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

<sup>80</sup> Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

- Sutter County - The County of Sutter hired a consultant, Sicuro Analytics, which has a Race Blind Charging Solution that is programmed to use artificial intelligence (“AI”) to redact all race-based descriptions. This web-based application uses AI to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and the application redacts the data. The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. Costs include Sicuro implementation costs and Sicuro subscription, user portal, and overhead costs.<sup>81</sup>

Sutter County has not yet had an opportunity to fully track attorney time and compare the additional staff burden as a result of fully implementing case review under Sicuro's Race Blind Charging Solution.<sup>82</sup>

Sutter County identifies actual and estimated costs in fiscal year 2024-2025 of \$39,160.<sup>83</sup> Sutter County estimates costs in fiscal year 2025-2026 at \$21,120.<sup>84</sup>

- City of Sacramento - The City of Sacramento had their secretaries draft a procedure showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference when needed. Secretaries and district attorneys were trained on the new procedures.

Secretaries also electronically upload police reports, manually redact them, send them to a filing attorney, record the initial decision, and document the decision from the second review. Implementation of Penal Code section 741(b)(6) requires regular updates in the form of meetings and emails to gauge the success of the implemented procedures.<sup>85</sup>

The City estimates that the total increase for two deputy city attorneys making charging decisions due to the mandate has increased an additional 20 hours per week.<sup>86</sup>

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<sup>81</sup> Exhibit A, Test Claim, pages 29-31.

<sup>82</sup> Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

<sup>83</sup> Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

<sup>84</sup> Exhibit A, Test Claim, pages 31, 50 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

<sup>85</sup> Exhibit A, Test Claim, pages 52-54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>86</sup> Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

The additional time spent by secretarial staff is an average of 38 hours per month.<sup>87</sup>

The City identifies costs of \$122,277.60 for fiscal year 2024-2025.<sup>88</sup> The City also estimates costs in fiscal year 2025-2026 at \$244,555.20.<sup>89</sup>

The claimants estimate the statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate at \$50,000,000.00.<sup>90</sup>

### **B. Department of Finance**

The Department of Finance (Finance) states that if the Commission determines the test claim statute imposes state-mandated, reimbursable costs on local agencies, the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation. "Given that application of a race-blind initial charging evaluation process in these instances is not statutorily mandated, the associated costs are not state-reimbursable."<sup>91</sup>

### **C. Interested Parties and Persons**

The District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba;<sup>92</sup> the California District Attorneys Association;<sup>93</sup> the League of Cities,<sup>94</sup> and the CSAC<sup>95</sup> all support the Test Claim and urge the Commission to find the test claim statute imposes a reimbursable state-mandated program on local prosecuting agencies.

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<sup>87</sup> Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>88</sup> Exhibit A, Test Claim, page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>89</sup> Exhibit A, Test Claim, pages 32-33, 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>90</sup> Exhibit A, Test Claim, page 33.

<sup>91</sup> Exhibit C, Finance's Comments on the Test Claim, page 2.

<sup>92</sup> Exhibit E, District Attorneys' Comments on the Test Claim.

<sup>93</sup> Exhibit B, California District Attorneys' Association Comments on the Test Claim.

<sup>94</sup> Exhibit D, League of California Cities' Comments on the Test Claim.

<sup>95</sup> Exhibit F, CSAC's Comments on the Test Claim.

#### 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.”<sup>96</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>97</sup>

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.<sup>98</sup>
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.<sup>99</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>100</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased

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<sup>96</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>97</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>98</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>99</sup> *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).

<sup>100</sup> *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.

costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>101</sup>

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.<sup>102</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>103</sup> 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.”<sup>104</sup>

**A. The Test Claim Was Timely Filed with the 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.<sup>105</sup> 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.”<sup>106</sup>

The effective date of the test claim statute is January 1, 2023.<sup>107</sup> The claimants filed the Test Claim on June 10, 2025, more than 12 months after the effective date of the statute.<sup>108</sup> The claimants contend the Test Claim was filed within one year of first incurring costs in fiscal year 2024-2025.<sup>109</sup> This is supported by declarations filed with the Test Claim.<sup>110</sup> In addition, the delay in incurring costs is consistent with the test

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<sup>101</sup> *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.

<sup>102</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

<sup>103</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>104</sup> *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.

<sup>105</sup> Government Code section 17551(c).

<sup>106</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>107</sup> Exhibit A, Test Claim, page 56.

<sup>108</sup> Exhibit A, Test Claim, page 1.

<sup>109</sup> Exhibit A, Test Claim, page 26.

<sup>110</sup> Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when

claim statute, Penal Code section 741(b), which requires local agencies to develop their own process following the issuance of the DOJ Race-Blind Charging Guidelines on January 1, 2024, and before implementation is required to begin on January 1, 2025.<sup>111</sup> Thus, the Commission finds that the Test Claim was timely filed.

While costs were first incurred by the claimants in the 2024-2025 fiscal year, 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 June 10, 2025 (during FY 2024-2025), the period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.

**B. Penal Code Section 741(b) Imposes Some New State-Mandated Requirements on Counties and Cities.**

The test claim statute requires counties and cities that prosecute felonies and misdemeanors to perform the activities listed below, some of which impose a new state-mandated program.

**1. Performing the Activities Required in Section 741(b) Is Not Mandated by the State for the Crimes and Circumstances Listed in Section 741(c).**

Penal Code section 741(c) allows prosecuting agencies to exclude the following classes of crimes or factual circumstances from the race-blind charging evaluation requirements imposed by section 741(b) due to “the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision:”

- (1) Homicides.
- (2) Hate crimes.
- (3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.
- (4) Domestic violence and sex crimes.
- (5) Gang crimes.
- (6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

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the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

<sup>111</sup> Penal Code section 741(b)(1).

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

Reimbursement under article XIII B, section 6 of the California Constitution is only required when an activity is mandated by the state. A mandate can be found when the local agency has a legally enforceable duty to comply and is not found when the requirement is triggered by a local discretionary decision.<sup>112</sup>

The Commission finds that reimbursement is not mandated by the state to comply with the activities required by Penal Code section 741(b) for the crimes and factual circumstances identified in Penal Code section 741(c) since compliance is at the discretion of the local prosecuting agency and is not mandated by the state.

## **2. The Requirement to Independently Develop Versions of the Redaction and Review Process Following the Issuance of the DOJ Guidelines Is a New State-Mandated Activity. (Pen. Code, § 741(b).)**

The introductory language in Penal Code section 741(b) states that following the DOJ guidelines, local “prosecuting agencies shall independently *develop* and execute versions of this redaction and review process.”

The DOJ Guidelines explain that this requirement means that

Each prosecution agency must create a redaction process for the materials used for the initial charging evaluation to ensure that the “direct means” of identifying the race of the suspect(s), victim(s), and/or witness(es) have been removed or redacted, as required by Penal Code section 741, subdivision (a). Personnel not associated with evaluating or charging the case shall perform the redaction, either

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<sup>112</sup> *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (Kern High School Dist.) (2003) 30 Cal.4th 727, 731, 742-745; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

manually or through automation, so long as the method used reasonably ensures correct redaction. (§ 741, subd. (b)(1).)<sup>113</sup>

The Guidelines state: “For purposes of this section, the “direct means” for identifying the race of the suspect(s), victim(s) and witness(es) are (1) the stated race or ethnicity, (2) the first or last name, and (3) the skin color or complexion.”<sup>114</sup>

DOJ’s interpretation of section 741(b) is entitled to great weight and is consistent with the plain language in section 741(a).<sup>115</sup> Section 741(a) says “the Department of Justice shall develop, issue, and publish ‘Race-Blind Charging’ guidelines for a process whereby *all prosecution agencies*, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted.” While the initial requirement to develop guidelines is imposed on DOJ, section 741(a) explains what the Legislature is requiring of local agencies in section 741(b); i.e. that local agencies are required to develop a process to redact information from which a direct means of identifying the race of the suspect, victim, or witness have been removed for the initial review of the case.

The requirement to develop a redaction and review process as required by Penal Code section 741(b) is new and imposes a state-mandated activity on counties and cities. The plain language of Penal Code section 741(b) states that local “prosecuting agencies *shall* independently develop and execute versions of this redaction and review process.” Under well-settled rules of statutory construction, the courts ordinarily construe the word “may” as permissive and the word “shall” as mandatory, particularly when the Legislature uses both words in a single statute.<sup>116</sup> In this case, the Legislature is using the word “shall” in subdivision (b) for the requirement to develop a local process to redact, whereas in subdivision (c), the Legislature uses the word “may” to allow city and county prosecuting agencies to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. Thus, the plain language indicates that the word “shall” in subdivision (b) is mandatory.

This finding is consistent with the legislative intent of the test claim statute to establish a process to reduce the potential for unconscious bias in the charging process, which as

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<sup>113</sup> Exhibit A, Test Claim, page 67.

<sup>114</sup> Exhibit A, Test Claim, page 68.

<sup>115</sup> *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8 (An administrative interpretation of a statute [while subject to judicial review] is accorded great respect by the courts and will be followed if not clearly erroneous.).

<sup>116</sup> *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542; *Independent Office of Law Enforcement Review v. Sonoma County Sheriff’s Office* (2026) 119 Cal.App.5th 668.

stated in the Background, above, can lead to violations under the Racial Justice for All Act<sup>117</sup> when it is shown that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses.<sup>118</sup>

Accordingly, the requirement in Penal Code section 741(b) to independently develop versions of a redaction and review process following the DOJ Race-Blind Charging Guidelines imposes a new state-mandated requirement on counties and cities.

**3. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(1) Imposes a New State-Mandated Activity to Redact the Narrative Portion of the Police Report by Hand or by Automation with the Use of Computer Programming to Ensure Correct Redaction for the Initial Race-Blind Charging Evaluation.**

Penal Code section 741(b)(1) states:

Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

Redaction means removing the "direct means" of identifying the race of the suspect(s), victim(s), and/or witness(es).<sup>119</sup> According to DOJ Guidelines,

. . . "redaction" does not require the "black box" style for concealing information. Rather, it encompasses any means of removal or obliteration of the direct means for identifying race, such that the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation.<sup>120</sup>

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<sup>117</sup> Penal Code section 745.

<sup>118</sup> Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (access on April 30, 2026), page 9.

<sup>119</sup> Penal Code section 741(a); Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

<sup>120</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

However, as explained by the plain language in section 741(b)(1), “[t]he redaction may be applied to the entire report or to only the ‘narrative’ portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.” DOJ Guidelines state:

At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency *may, at its option*, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent “supplemental” reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.<sup>121</sup>

Thus, the minimum requirement imposed by section 741(b)(1) is to redact the *narrative portion of the police report* by hand or by automation with the use of computer programming to ensure correct redaction. Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not legally compelled by state law.<sup>122</sup>

Moreover, there is no evidence in the law or the record that prosecuting agencies are practically compelled to redact the entire report.<sup>123</sup> As explained below, the initial review of the redacted race-blind narrative of the report is only needed to determine whether charges should be brought or not and is not used to determine the individual charges against a suspect.<sup>124</sup>

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<sup>121</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

<sup>122</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745.

<sup>123</sup> *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 (practical compulsion “arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.”); see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754 (where no “legal” compulsion exists, “practical” compulsion may be found if the local agency faces “certain and severe...penalties” such as “double...taxation” or other “draconian” consequences if they fail to comply with the statute).

<sup>124</sup> Penal Code section 741(b)(2).

This requirement is new. Local prosecuting agencies were not required to redact or remove the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report under prior law.

Therefore, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(1) imposes a new state-mandated activity to redact the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report by hand or by automation with the use of computer programming to ensure correct redaction for the initial race-blind charging evaluation.

**4. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(2) Imposes a New State-Mandated Activity for a Prosecutor to Perform the Initial Race-Blind Charging Evaluation Based on Redacted Information in the Narrative of the Police Report to Determine Whether the Case Should Be Charged or Not Be Charged. However, Penal Code Section 741(b)(3) Does Not Impose a New State-Mandated Requirement to Conduct the Second, “Ordinary” Evaluation.**

Penal Code section 741(b)(2) requires that a prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation:

The initial charging evaluation is intended to perform a gate-keeping and recording function prior to the actual charging process, rather than the more thorough second review to determine individual charges or decide charges with certainty. Accordingly, the initial charging evaluation shall determine only whether a case should be charged or not be charged against a particular defendant and shall not determine individual charges.

. . . A case “should be charged” for purposes of this section if the reviewing prosecutor determines, based on redacted material, that a charge, of any type, should be alleged in the case. A case “should not be charged” for the purposes of this section if the reviewing prosecutor determines that no charge, of any type, should be alleged in the case.<sup>125</sup>

Penal Code section 741(b)(3) requires that after completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

The DOJ Guidelines state that the “second review is intended to be the *ordinary* charging process for the prosecution agency without limitation on the information or evidence that a charging prosecutor may consider” and that “[t]his review mimics the

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<sup>125</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

ordinary criminal charging process that *preexisted* the race-blind process, and is used to determine the most applicable individual charges and enhancements.<sup>126</sup>

The DOJ Guidelines further state that “[t]he prosecutor performing the second review for charging must be the same prosecutor who performed the initial charging review. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging.”<sup>127</sup> This interpretation is consistent with the test claim statute, which attempts to eliminate unconscious bias in charging by the prosecutor of the case. Under the statute, the prosecutor who does not have knowledge of the redacted facts for that case initially reviews the redacted report to determine if the case should be charged, then conducts his or her evaluation of the case based on all information, as was done under prior law. As explained in the next section below, any change in the prosecutor’s determination of the case between the initial and secondary evaluation must be documented by that prosecutor. Thus, the same prosecutor is required to conduct both evaluations for the process to work.

The Commission finds that the initial evaluation is a new state-mandated activity, which was not required by prior law. State law did not previously require a race-blind evaluation to determine whether charges should be brought.

However, the second review of all materials to determine the exact charges to bring is does *not* impose a new state-mandated activity; it is “intended to be the ordinary charging process” for the prosecution agency to determine, based on the evidence, the applicable charges to include in a criminal complaint or a case submitted to the grand jury. This is true even if the prosecuting agency now has less time to bring charges because of the additional initial evaluation.

Thus, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(2) imposes a new state-mandated activity for a prosecutor who does not have knowledge of the redacted facts to perform the initial race-blind charging evaluation based on redacted information in the narrative of the police report to determine whether the case should be charged or not be charged. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging.<sup>128</sup> However, the second, complete review for charging using unredacted reports and all available evidence pursuant to Penal Code section 741(b)(3) is not new and does *not* impose a new state-mandated activity.

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<sup>126</sup> Exhibit A, Test Claim, pages 70, 73 (DOJ Race-Blind Charging Guidelines), emphasis added.

<sup>127</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

<sup>128</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

**5. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(4) and (5) Impose New State-Mandated Requirements to Document Specified Information. However, the Costs To Make the Information Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).**

Penal Code section 741(b)(4) requires prosecuting agencies to document as part of the case record, the following information:

- The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
- The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
- The explanation for the charging decision change.

Penal Code section 741(b)(4) further states that this information shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. The DOJ Guidelines clarify that this information must be disclosed upon request *after* sentencing in the case or dismissal of all charges, and that any response shall be governed by the California Records Act.<sup>129</sup>

Penal Code section 741(b)(5) also states if a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. The DOJ Guidelines clarify that any response shall be governed by the California Records Act.<sup>130</sup>

These activities were not required by prior law and are new. The Commission finds that except for the crimes and circumstances listed in Penal Code section 741(c), the requirement to document the information above imposes a new state-mandated requirement.

However, any costs incurred to disclose the information under the California Public Records Act are not eligible for reimbursement. As adopted by Proposition 42 (June 3, 2014), the voters amended article I, section 3(b)(7) of the California Constitution to state “each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.” Article XIII B, section 6(a)(4) was also

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<sup>129</sup> Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

<sup>130</sup> Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

amended to provide that reimbursement is *not* required for any legislative mandates contained in statutes within the scope of article I, section 3(b)(7) as follows:

(a) 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 that local government for the costs of the program or increased level of service, *except that the Legislature may, but need not, provide a subvention of funds for the following mandates:*

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.<sup>131</sup>

The analysis of Proposition 42 by the Legislative Analyst's Office concludes that the amendment "Eliminates the state's responsibility to pay local governments for their costs related to these laws."<sup>132</sup>

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), the following activities are new and mandated by the state:

1. Document as part of the case record, the following information:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
  - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)
2. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

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<sup>131</sup> Emphasis added.

<sup>132</sup> Exhibit X (1), Legislative Analyst's Office Report on Proposition 42, page 1. Reports by the Legislative Analyst are relevant for determining voter intent. *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 445.

**6. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(6) Imposes a New State-Mandated Requirement To Collect the Raw Data Resulting from the Race-Blind Initial Charging Evaluation Process. However, the Costs to Make the Data Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).**

Penal Code section 741(b)(6) requires that counties “shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.” The DOJ Guidelines state that responses to requests for research data shall be governed by the California Public Records Act.<sup>133</sup>

The Guidelines further clarify that

Only the raw data generated by the process, rendered anonymous for privacy, shall be provided for research; the underlying materials, reports, or criminal history information are not required to be produced by these Guidelines. The raw data would include crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures.<sup>134</sup>

The requirement to collect this data is new. Counties were not previously required to perform this activity. And based on the plain language, the requirement to collect the data is mandated by the state.

However, the requirement to disclose the data collected under Penal Code section 741(b)(6) pursuant to a public records request is not eligible for reimbursement pursuant to article XIII B, section 6(a)(4) of the California Constitution.

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(6) imposes a new state-mandated requirement to collect the raw data resulting from the race-blind initial charging evaluation process.

**7. The Other Costs Requested in the Test Claim Are Not Mandated by the Plain Language of the Test Claim Statute.**

As explained in Section III. of this Decision under the claimants’ position, the claimants have also identified activities and costs they allege to be reasonably necessary to comply with the test claim statute, including costs for training, meetings, and modifying

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<sup>133</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

<sup>134</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

a county's CJIC system that maintains local suspect criminal history documentation.<sup>135</sup> These activities are not required by the plain language of the test claim statute and, thus, they are not mandated by the state.

However, these activities and costs may be considered for reimbursement at the parameters and guidelines phase if they are supported by evidence in the record showing they are "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

**C. The New State-Mandated Activities Constitute a New Program or Higher Level of Service.**

As indicated above, the following requirements are new state-mandated requirements for county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state):

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report. (Pen. Code, § 741(b)(1).)
3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)<sup>136</sup>

4. Document as part of the case record, the following information:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

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<sup>135</sup> Exhibit A, Test Claim, pages 36 et seq. (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara; Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter; and Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>136</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

- The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)
5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

In addition, the following activity is new and mandated by the state for counties only:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>137</sup>

Article XIII B, section 6 of the California Constitution requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” New programs or higher levels of service have 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.”<sup>138</sup> Just one of these conditions need be met.<sup>139</sup> In this Test Claim, both are met.

The new activities listed above are required to be performed by “prosecution agencies.”<sup>140</sup> “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which as stated in the Background, are county district attorneys and city prosecutors.<sup>141</sup> Thus, the test claim statute imposes unique requirements on local government to carry out the policy of reducing the potential for unconscious bias in charging crimes.

The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended

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<sup>137</sup> Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

<sup>138</sup> *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.

<sup>139</sup> *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.

<sup>140</sup> Penal Code section 741(a).

<sup>141</sup> Government Code sections 26500, 41803.5, 72193.

“to increase community confidence in the charging process, and to reduce the potential for unconscious bias.”<sup>142</sup>

Accordingly, the Commission finds that the new state-mandated activities constitute a new program or higher level of service.

**D. The New State-Mandated Requirements Result 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.**

Finally, 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 as a result 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. A finding of such costs mandated by the state also means that no exception in Government Code section 17556 applies.

The claimant has filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.<sup>143</sup> There is no evidence rebutting these costs.

The Commission further finds that none of the exceptions to costs mandated by the state in Government Code section 17556 apply to deny the claim. The test claim statute does not create a new crime or 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. As explained above, the purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal justice system.<sup>144</sup> Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission finds the new state-mandated requirements result in costs mandated by the state within the meaning of Government Code section 17514 and the exceptions to reimbursement in Government Code section 17556 do not apply.

**V. Conclusion**

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Penal Code section 741(b), as added by Statutes 2022, chapter 806, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties and cities, beginning July 1, 2023, for the following activities only:

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<sup>142</sup> Statutes 2022, chapter 806, section 1.

<sup>143</sup> Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

<sup>144</sup> Statutes 2022, chapter 806, section 1.

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*<sup>145</sup>

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)<sup>146</sup>

*However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.*

4. Document as part of the case record, the following information:
  - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
  - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
  - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

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<sup>145</sup> Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

<sup>146</sup> Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

*However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).*

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)<sup>147</sup>

All other provisions of the test claim statute and claims for reimbursement are denied.

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<sup>147</sup> Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

## 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 May 5, 2026, I served the:

- **Current Mailing List dated May 4, 2026**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 5, 2026**

*Race-Blind Charging, 24-TC-07*

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 May 5, 2026 at Sacramento, California.



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Jill Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/4/26

**Claim Number:** 24-TC-07

**Matter:** Race-Blind Charging

**Claimants:** City of Sacramento  
County of Santa Clara  
County of Sutter

### 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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