STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

March 25, 2019

Ms. Stephanie Karnavas
County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101

Ms. Erika Li
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Youth Offender Parole Hearings, 17-TC-29
Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)
County of San Diego, Claimant

Dear Ms. Karnavas and Ms. Li:

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 **April 15, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please note that a request for extension will also require a request for postponement. Please refer to section 1187.9 of the Commission's regulations.

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

Commission on State Mandates
980 9th Street, Suite 300 Sacramento, CA 95814 | www.csm.ca.gov | tel (916) 323-3562 | email: csminfo@csm.ca.gov

Hearing

This matter is set for hearing on **Friday, May 24, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about May 10, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

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

Sincerely,

Heather Halsey
Executive Director

ITEM ___

TEST CLAIM

DRAFT PROPOSED DECISION

Penal Code Sections 3041, 3046, 3051, and 4801

Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)

Youth Offender Parole Hearings

17-TC-29

County of San Diego, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim alleges that Penal Code sections 3041, 3046, 3051, and 4801, as added and amended by Statutes 2013, chapter 312; Statutes 2015, chapter 471; Statutes 2017, chapter 675; and Statutes 2017, chapter 684, impose a reimbursable state-mandated program on counties.[1] The test claim statutes require that the state Board of Parole Hearings (BPH) conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), to review the suitability for parole of prisoners who were 25 or younger at the time of their controlling offense, or who were sentenced to life in prison without the possibility of parole for an offense committed when they were under 18, with specified exceptions.

The claimant does not identify any increased costs associated with the YOPH, but seeks reimbursement for costs associated with presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review, in anticipation of YOPHs many years in the future. The claimant asserts that the test claim statutes impose such costs on both county defense counsel and prosecutors.

[1] A bill with the same provisions, Statutes 2017, chapter 675 (AB 1308) was also enacted on October 11, 2017, but was "chaptered out" by Statutes 2017, chapter 684 (SB 394) – since SB 394 was chaptered later than AB 1308, it is the controlling legislation, pursuant to Government Code section 9605(b), which provides: "In the absence of any express provision to the contrary in the statute that is enacted last, it shall be conclusively presumed that the statute which is enacted last is intended to prevail over statutes that are enacted earlier at the same session and, in the absence of any express provision to the contrary in the statute that has a higher chapter number, it shall be presumed that a statute that has a higher chapter number was intended by the Legislature to prevail over a statute that is enacted at the same session but has a lower chapter number."

Staff finds that the test claim statutes do not impose a reimbursable state-mandated program on local agencies, and recommends that the Commission deny this test claim.

Procedural History

Statutes 2013, chapter 312 (SB 260), was enacted on September 16, 2013, and became effective on January 1, 2014. Statutes 2015, chapter 471 (SB 261), enacted on October 3, 2015, and became effective on January 1, 2016. Statutes 2017, chapter 675 (AB 1308) was chaptered out on October 11, 2017, and did not become effective. Statutes 2017, chapter 684 (SB 394), was enacted on October 11, 2017, and became effective on January 1, 2018.

The claimant filed the Test Claim on June 29, 2018. The claimant alleged that it first incurred costs under the test claim statutes on July 11, 2016, for a sentencing hearing involving a criminal defendant who would be eligible for a YOPH in the future. The County of Los Angeles, an interested party, filed comments on the Test Claim on January 9, 2019. The Department of Finance (Finance) filed late comments on the Test Claim on March 13, 2019. BPH did not file comments on the Test Claim. Commission staff issued the Draft Proposed Decision on March 25, 2019.[2]

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 statue 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 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."[3]

Claims

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

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) states: "test claims shall be filed not later than 12 months following the effective date of a statute or executive	*Timely filed* – Though the courts have upheld the shortening of periods of limitation and making the changed period applicable to

[2] Exhibit D, Draft Proposed Decision.

[3] *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.

Issue	Description	Staff Recommendation
	order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later."[4] Section 1183.1(c) of the Commission's regulations, effective April 1, 2018, defines "12 months" as 365 days.[5] Prior to April 1, 2018, former section 1183.1(c) of the Commission's regulations provided that the "within 12 months" specified in Government Code section 17551(c) meant "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[6] The statute with the earliest effective date pled in this Test Claim, became effective on January 1, 2014. The claimant filed this Test Claim on June 29, 2018, and alleges that it first incurred increased costs as a result of the test claim statutes on July 11, 2016.[7]	pending proceedings, they have required that a reasonable time be made available for an affected party to avail itself of its remedy before the statute (here regulation) takes effect.[8] The current regulation, effective April 1, 2018, cannot be applied retroactively to bar the Test Claim, since the Test Claim would then be time barred immediately upon the April 1, 2018 effective date of the regulation and thus claimant would not be allowed a reasonable time to avail itself of the remedy of provided in the mandate determination process, as required by law. The Commission's regulations as they existed prior to the April 1, 2018 amendment therefore must apply. Therefore, since the deadline to file the Test Claim under the former regulation is by June 30 of the fiscal year following fiscal year 2016-2017, or by June 30, 2018, this Test Claim filed on June 29, 2018 was timely filed.

[4] Government Code, section 17551(c).

[5] California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

[6] California Code of Regulations, title 2, former section 1183.1(c).

[7] Exhibit A, Test Claim, pages 22; 30-34 (Declaration of John O'Connell summarizing actual costs for fiscal years 2016-2017 and 2017-2018 and stating that costs were first incurred July 11, 2016).

[8] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

Issue	Description	Staff Recommendation
Do the test claim statutes impose a reimbursable state-mandated program on local agencies under article XIII B, section 6 of the California Constitution?	The test claim statutes require that BPH conduct YOPHs to review the suitability for parole of any prisoner who was 25 or younger at the time of their controlling offense, or who was sentenced to life in prison without the possibility of parole for an offense committed when they were under 18, with specified exceptions. The test claim statutes also require that BPH meet with prison inmates, including those eligible for consideration at a YOPH, during the sixth year prior to their minimum eligible parole release date. At this meeting, referred to as a consultation, BPH is required to provide inmates with information about the parole hearing process, factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their conduct and behavior. The claimant does not identify any costs associated with the YOPH, but seeks reimbursement for costs associated for defense counsel and prosecutors to present evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants	*Deny* – The test claim statutes do not impose any state-mandated activities on local agencies, but only upon the state BPH. In addition, any new activities or costs incurred by local agencies for the sentencing hearings are mandated by the courts and not the test claim statutes and, thus, there are no costs mandated by the state. Article XIII B, section 9(b) of the California Constitution expressly prohibits subvention for "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." And Government Code section 17556(b) specifically prohibits a finding of costs mandated by the state when the test claim statute "affirmed for the state a mandate that has been declared existing law or regulation by action of the courts." In this case, all the evidence in the record indicates that the new expenses allegedly incurred by the claimant are costs imposed by the courts.[9] In the wake of the *Franklin*[10] and *Perez*[11]

[9] See *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460, and; *People v. Caballero* (2012) 55 Cal.4th 262.

[10] *People v. Franklin* (2016) 63 Cal.4th 261.

[11] *People v. Perez* (2016) 3 Cal.App.5th 612.

Issue	Description	Staff Recommendation
	eligible for eventual YOPH review, in anticipation of YOPHs many years in the future.	decisions, both prosecution and defense counsel are effectively required to make a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination" at all sentencing hearings involving offenders eligible for future YOPH review.[12] However, this requirement to make a record at sentencing hearings for YOPH eligible offenders does not stem from the language of the test claim statute, but rather, from "mandates of the courts" as contemplated by article XIII B, section 9(b). *Franklin* and *Perez* are court decisions interpreting the law– they are not statutes or executive orders. Thus, the claimant's costs incurred as a result of those decisions are not subject to reimbursement

Staff Analysis

A. This Test Claim Was Timely Filed.

Government Code section 17551(c) states: "test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later."[13]

Section 1183.1(c) of the Commission's regulations, effective April 1, 2018, defines "12 months" as 365 days.[14]

Prior to April 1, 2018, former section 1183.1(c) of the Commission's regulations provided that the "within 12 months" as specified in Government Code section 17551(c) meant "by June 30 of

[12] *People v. Franklin* (2016) 63 Cal.4th 261, 286.

[13] Government Code, section 17551(c).

[14] California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[15]

Though the courts have upheld the shortening of periods of limitation and making the changed period applicable to pending proceedings, they have required that a reasonable time be made available for an affected party to avail itself of its remedy before the statute (here regulation) takes effect.[16]

The statute with the earliest effective date pled in this Test Claim, became effective on January 1, 2014.[17] Claimant filed this Test Claim on June 29, 2018, and alleges that it first incurred increased costs as a result of the test claim statutes on July 11, 2016.[18]

The regulation in effect when the claimant filed this Test Claim on June 29, 2018, would have barred this Test Claim immediately upon the regulation's April 1, 2018 effective date, since the date 365 days from the date of first incurring costs in this case had already passed nearly nine months earlier. Under the current regulation, the Test Claim would have had to be filed by July 11, 2017 (within 12 months of first incurring increased costs on July 11, 2016) to be timely.

Staff finds that the current regulation, effective April 1, 2018, cannot be applied retroactively to bar the Test Claim, as this would not allow claimant a reasonable time to avail itself of the remedy provided in the mandate determination process, as required by law.[19] The Commission's prior regulation must therefore apply in this case. Since the deadline to file the Test Claim under the former regulation was by June 30 of the fiscal year following fiscal year 2016-2017, or by June 30, 2018, this Test Claim filed on June 29, 2018 was timely filed.

Accordingly, staff finds that the Test Claim was timely filed.

B. The Test Claim Statutes Do Not Impose a Reimbursable State-Mandated Program on Local Agencies.

The test claim statutes require that the state Board of Parole Hearings (BPH) conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), for reviewing the suitability for parole of any prisoner who was 25 or younger at the time of their controlling offense, or who was sentenced to life in prison without the possibility of parole for an offense committed when they were under 18. The test claim statutes also require that BPH meet with prison inmates, including those eligible for consideration at a YOPH, during the sixth year prior to their minimum eligible parole release date. At this meeting, referred to as a consultation, BPH is required to provide inmates with information about the parole hearing process, factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their conduct and behavior. The test claim statutes further exclude inmates sentenced pursuant to

[15] California Code of Regulations, title 2, former section 1183.1(c).

[16] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

[17] Statutes 2013, chapter 312.

[18] Exhibit A, Test Claim, pages 22; 30-34 (Declaration of John O'Connell summarizing actual costs for fiscal years 2016-2017 and 2017-2018 and stating that costs were first incurred July 11, 2016).

[19] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

certain specific provisions of the Penal Code from eligibility for a YOPH and the consultation process described above. The goal of the test claim statutes is "to provide a judicial mechanism for reconsidering the sentences of adults who served a significant amount of time in state prison for the conviction of crimes they committed as children."[20]

The claimant does not identify any costs associated with the YOPH, but seeks reimbursement for costs associated with presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review, in anticipation of YOPHs many years in the future. The claimant asserts that the test claim statutes impose such costs on both county defense counsel and prosecutors.[21] Prior to the enactment of the test claim statutes, claimant contends, the influence of youth-related factors was not a consideration at sentencing hearings, as YOPHs were not contemplated, and offenders were often subject to mandatory sentences with limited discretion on the part of the judge.[22]

Staff finds that the test claim statutes do not impose any state-mandated activities on local agencies, but only upon the state BPH.

In addition, any new activities or costs incurred by local agencies for the sentencing hearings are mandated by the courts and, thus, there are no costs mandated by the state. Article XIII B, section 9(b) of the California Constitution expressly prohibits subvention for "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." And Government Code section 17556(b) specifically prohibits a finding of costs mandated by the state when the test claim statute "affirmed for the state a mandate that has been declared existing law or regulation by action of the courts." In this case, all the evidence in the record indicates that the new expenses allegedly incurred by the claimant are, as a matter of law, costs imposed by the courts.[23]

In the wake of the *Franklin*[24] and *Perez*[25] decisions, both prosecution and defense counsel are now effectively required to make a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination"[26] at all sentencing hearings involving offenders eligible for future YOPH review. However, this requirement to make a record at sentencing hearings for YOPH eligible offenders does not stem from the language of the test claim statute, but rather, from the exact type of "mandates from the courts" contemplated by article XIII B, section 9(b).

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[20] Exhibit X, Senate Committee on Public Safety Analysis of SB 260, April 9, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 4.

[21] Exhibit A, Test Claim, page 13.

[22] Exhibit A, Test Claim, page 22.

[23] See *Graham v. Florida* (2010) 560 U.S. 48, *Miller v. Alabama* (2012) 567 U.S. 460, and *People v. Caballero* (2012) 55 Cal.4th 262.

[24] *People v. Franklin* (2016) 63 Cal.4th 261.

[25] *People v. Perez* (2016) 3 Cal.App.5th 612.

[26] People v. Franklin (2016) 63 Cal.4th 261, 286.

Franklin and *Perez* are court decisions interpreting the U. S. Constitution – they are not statutes or executive orders. Thus, the claimant's costs incurred as a result of those decisions are not subject to reimbursement.

Conclusion

Based on the forgoing analysis, staff finds that the test claim statutes do not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

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

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394) Filed on June 29, 2018 County of San Diego, Claimant	Case No.: 17-TC-29 *Youth Offender Parole Hearings* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 24, 2019*)

DECISION

The Commission in State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 24, 2019. [Witness list will be included in the adopted Decision.]

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

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

Member	**Vote**
Lee Adams, County Supervisor	
Keely Bosler, Director of the Department of Finance, Chairperson	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

The test claim statutes require that the state Board of Parole Hearings (BPH) conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH) to review the suitability for parole of any prisoner who was 25 or younger at the time of their controlling offense, or who was sentenced to life in prison without the possibility of parole for an offense committed when they were under 18, with specified exceptions. The test claim statutes also require that BPH meet with prison inmates, including those eligible for consideration at a YOPH, during the sixth year prior to their minimum eligible parole release date, with specified exceptions. At this meeting, referred to as a consultation, BPH is required to provide inmates with information about the parole hearing process, factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their conduct and behavior. The goal of the test claim statutes is "to provide a judicial mechanism for reconsidering the sentences of adults who served a significant amount of time in state prison for the conviction of crimes they committed as children."[27]

The claimant does not identify any costs associated with the YOPH, but seeks reimbursement for costs associated with presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review, in anticipation of YOPHs many years in the future. The claimant asserts that the test claim statutes impose such costs on both county defense counsel and prosecutors. Prior to the enactment of the test claim statutes, the influence of youth-related factors was not a consideration at sentencing hearings, as YOPHs were not contemplated, and offenders were often subject to mandatory sentences with limited discretion on the part of the judge.

The Commission finds that this Test Claim was timely filed.

The Commission further finds that reimbursement is not required under article XIII B, section 6 of the California Constitution. The test claim statutes do not impose any state-mandated activities on local agencies, but only upon the state BPH.

In addition, any new activities or costs incurred by local agencies for the sentencing hearings are mandated by the courts and, thus, there are no costs mandated by the state. Article XIII B, section 9(b) of the California Constitution expressly prohibits subvention for "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." And Government Code section 17556(b) specifically prohibits a finding of costs mandated by the state when the test claim statute "affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. In this case, all the evidence in the record indicates that the new expenses allegedly

[27] Exhibit X, Senate Committee on Public Safety Analysis of SB 260, April 9, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 4.

incurred by the claimant are costs imposed by the courts.[28] In the wake of the *Franklin*[29] and *Perez*[30] decisions, both prosecution and defense counsel are now effectively required to make a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination"[31] at all sentencing hearings involving offenders eligible for future YOPH review. However, this requirement to make a record at sentencing hearings for YOPH eligible offenders does not stem from the language of the test claim statute, but rather, from a mandate of the courts as contemplated by article XIII B, section 9(b). *Franklin* and *Perez* are court decisions interpreting the law – they are not statutes or executive orders. Thus, the claimant's costs incurred as a result of those decisions are not subject to reimbursement.

Accordingly, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2014 Effective date of Statutes 2013, chapter 312, adding Penal Code section 3051 and amending Penal Code sections 3041, 3046, and 4801.

01/01/2016 Effective date of Statutes 2015, chapter 471, amending Penal Code sections 3051 and 4801.

01/01/2018 Effective date of Statutes 2017, chapter 684, amending Penal Code sections 3051 and 4801.[32]

06/29/2018 The claimant filed the Test Claim.[33]

01/08/2019 The Department of Finance (Finance) requested an extension of time to file comments on the Test Claim, which was approved for good cause but limited to a period of 30 days.

01/09/2019 The County of Los Angeles filed comments on the Test Claim.[34]

03/13/2019 Finance filed late comments on the Test Claim.[35]

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[28] See *Graham v. Florida* (2010) 560 U.S. 48, *Miller v. Alabama* (2012) 567 U.S. 460, and *People v. Caballero* (2012) 55 Cal.4th 262.

[29] *People v. Franklin* (2016) 63 Cal.4th 261.

[30] *People v. Perez* (2016) 3 Cal.App.5th 612.

[31] *People v. Franklin* (2016) 63 Cal.4th 261, 286.

[32] Statutes 2017, chapters 675 (AB 1308) and 684 (SB 394) both amended sections 3051 and 4801 of the Penal Code in the same manner, but, pursuant to Government Code section 9605(b), chapter 684 is the controlling legislation, due to being chaptered subsequent to chapter 675 – i.e., AB 1308 was "chaptered out" by SB 394.

[33] Exhibit A, Test Claim.

[34] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim.

[35] Exhibit C, Finance's Late Comments on the Test Claim.

03/25/2019 Commission staff issued the Draft Proposed Decision.[36]

II. Background

This Test Claim alleges that Penal Code sections 3041, 3046, 3051, and 4801, as added and amended by Statutes 2013, chapter 312; Statutes 2015, chapter 471; and Statutes 2017, chapter 684, impose a reimbursable state-mandated program on counties.

Generally, the test claim statutes require the state Board of Parole Hearings (BPH) to conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), for reviewing the suitability for parole of any prisoner who was 25 or younger at the time of their controlling offense, or who was sentenced to life in prison without the possibility of parole for an offense committed when the individual was under 18. The test claim statutes also require that BPH meet with prison inmates, including those eligible for consideration at a YOPH, during the sixth year prior to their minimum eligible parole release date. At this meeting, referred to as a consultation, BPH is required to provide inmates with information about the parole hearing process, factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their conduct and behavior. The test claim statutes exclude inmates sentenced pursuant to the state's Three Strikes Law or One Strike Law (for certain sex offenses) from eligibility for a YOPH and the consultation process described above. The statutes also exclude from eligibility for a YOPH, inmates who committed an additional crime involving malice aforethought (such as murder) after reaching age 26, and those inmates who commit an additional crime for which a new life sentence was imposed after reaching age 26.

The goal of the test claim statutes is "to provide a judicial mechanism for reconsidering the sentences of adults who served a significant amount of time in state prison for the conviction of crimes they committed as children."[37] This mechanism "ensures that youth offenders will face severe punishment for their crimes, but it also gives them hope and the chance to work toward the possibility of parole."[38] The Legislature stated its intent:

> The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity. . . . It is the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.[39]

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[36] Exhibit D, Draft Proposed Decision.

[37] Exhibit X, Senate Committee on Public Safety Analysis of SB 260, April 9, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 4.

[38] Exhibit X, Senate Rules Committee Analysis of SB 394, September 15, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), page 6.

[39] Statutes 2013, chapter 312 (SB 260), section 1.

The claimant seeks reimbursement for costs it alleges were incurred by county public defenders and prosecutors "as a result" of the test claim statutes.[40] The claimant does not identify any costs associated with the YOPH, but alleges costs incurred to defend and prosecute the youth offender at the sentencing hearing, in which the court considers the mitigating circumstances attendant in the youth's crime and life so that it can impose a time when the youth offender will be able to seek a YOPH.[41]

A. The History of Juvenile Sentencing in California.

Under common law, any person aged 14 or older who was convicted of a crime was liable as an adult.[42] Those younger than seven were not subject to criminal prosecution.[43] For children between the ages of 7 and 14, the prosecution bore the burden to prove beyond a reasonable doubt that the child had the mental capacity to discern between good and evil.[44] In April 1850, the new California Legislature enacted statutes to the effect that a child under the age of 14 could not be punished for a crime, but could be found to have a sound mind manifesting a criminal intent if the child knew the distinction between good and evil.[45] However, a report by the California Prison Committee in 1859 showed that there were over 300 boys in San Quentin State Prison, some as young as 12, and that there were 600 children confined in adult jails statewide.[46]

During this time, no separate court existed in California for the processing of juvenile offenders, although several reform schools were constructed in an unsuccessful attempt to prevent juveniles

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[40] Exhibit A, Test Claim, page 13.

[41] Exhibit A, Test Claim, pages 20-23.

[42] Exhibit X, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see 4 Blackstone, Commentaries chapter II, pages 21-25.

[43] Exhibit X, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see 4 Blackstone, Commentaries, chapter II, pages 21-25.

[44] Exhibit X, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see 4 Blackstone, Commentaries, chapter II, pages 21-25.

[45] Statutes 1850, chapter 99, sections 3-4. See also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 4.

[46] Exhibit X, Macallair, *The San Francisco Industrial School and the Origins of Juvenile Justice in California: A Glance at the Great Reformation* (2003), 7 U. C. Davis Journal of Juvenile Law & Policy, issue 1, https://jjlp.law.ucdavis.edu/archives/vol-7-no-1/SF_Industrial.pdf (accessed on February 1, 2019), page 24.

from being housed in adult prisons.[47] In response to juvenile court statutes passed in Colorado, Illinois, and Washington D. C., California passed its own juvenile court law in 1903.[48] The 1903 act applied to children under the age of 16 who were not already inmates at any prison or reform school, and who violated any state or local law.[49] It required counties having more than one judge to designate a judge to hear all juvenile cases under the act, with such proceedings to be closed to the public.[50] Children under 16 who were arrested would be brought before a police judge or justice of the peace, who could allow the child to remain at home, assign them a probation officer, commit them to a reform school, or have a guardian appointed, though any order removing the child from the home would be certified to the designated juvenile case judge for hearing.[51] No child under 12 could be committed to a jail, prison, or police station.[52] A child

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[47] Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 6-10.

[48] Statutes 1903, chapter 43; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 10-13.

[49] Statutes 1903, chapter 43, section 1; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[50] Statutes 1903, chapter 43, section 2; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[51] Statutes 1903, chapter 43, sections 7-8; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[52] Statutes 1903, chapter 43, section 9; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

12 or older, but under 16 could be sentenced to a jail or prison where adults were confined, but could not be housed with adult inmates, or meet or be in the presence or sight of adult inmates.[53]

In 1909, the law was amended to include all children under the age of 18.[54] However, there were provisions allowing for a child under 18 to be prosecuted as an adult if the court found, after a hearing, to be unfit to be dealt with under the juvenile court law, as well as allowing a person over 18 but under 20 to be prosecuted as a juvenile if the court found this appropriate after a hearing.[55] A child under 14 charged with a felony could not be sentenced to adult prison unless they had first been sent to a state school and proven to be incorrigible.[56] Statutes 1911, chapter 133 amended the law to extended these protections to all persons under 21 not currently an inmate in a state institution.[57]

The Juvenile Court Law of 1915 repealed the 1909 act and the 1911 amendments thereto.[58] It applied to any person under 21, and made special provisions for determining whether offenders under 18 could be transferred to adult court, and for when offenders over 18 but under 21 could be treated as juvenile or regular offenders, allowing such offenders to request a trial in regular court, as juvenile court trials did not include the right to a trial by jury.[59] A child under 16 could, after conviction, (but not before) be sentenced to a jail or prison where adults were confined, but could not be housed with adult inmates, or meet or be in the presence or sight of adult inmates,

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[53] Statutes 1903, chapter 43, section 9; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[54] Statutes 1909, chapter 133, section 1; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 14.

[55] Statutes 1909, chapter 133, sections 17-18.

[56] Statutes 1909, chapter 133, section 20; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 14.

[57] Statutes 1911, chapter 369, section 1.

[58] Statutes 1915, chapter 631.

[59] Statutes 1915, chapter 631, sections 6-8; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 16-17.

and any person sentenced to a reform school or other institution other than a state prison could be returned to court and committed to state prison upon a finding of incorrigibility.[60]

In 1937, the California Legislature enacted the Welfare and Institutions Code, which provided, among other things, for a new juvenile court law.[61] It applied to all persons under 21, and established detention homes and forestry camps as alternative facilities to the state schools for housing juvenile offenders; however, in other respects it was similar to the Juvenile Court Law of 1915.[62]

The Youth Correction Authority Act, enacted in 1941, added sections 1700 to 1783 to the Welfare and Institutions Code, and established what would become, in 1942, the California Youth Authority (CYA), and ultimately, the contemporary Division of Juvenile Justice (DJJ).[63] The 1941 Act allowed for offenders under 23 at the time of their apprehension to be committed to CYA facilities, as opposed to state prisons, unless sentenced to very long or short terms (death, life imprisonment, or not more than 90 days incarceration).[64] All offenders committed to the CYA by a juvenile court had to be discharged after either two years or reaching the age of 21, whichever was later.[65] Misdemeanor offenders committed to CYA had to be discharged after two years or upon turning 23, whichever was later.[66] Felons committed to CYA had to be discharged by the age of 25.[67] However, if any person committed to CYA was due to be discharged before the maximum term of incarceration allowed for their commitment offense, and

[60] Statutes 1915, chapter 631, sections 10 and 14.

[61] Statutes 1937, chapter 369, sections 550-911.

[62] Statutes 1937, chapter 369, sections 550-911; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 19.

[63] Statutes 1941, chapter 937; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 21; and Exhibit X, "The History of the Division of Juvenile Justice," https://www.cdcr.ca.gov/Juvenile_Justice/DJJ_History/index.html (accessed on February 7, 2019), pages 2-8.

[64] Statutes 1941, chapter 937, page 2526.

[65] Statutes 1941, chapter 937, page 2531.

[66] Statutes 1941, chapter 937, page 2531.

[67] Statutes 1941, chapter 937, page 2532.

if the CYA believed the person was still dangerous, the CYA could go to court and seek to have the person committed to state prison for such maximum term, less the time spent at CYA.[68]

In 1961, a new Juvenile Court Law was passed, codified at Welfare and Institutions Code sections 500-914, and became popularly known as the Arnold-Kennick Juvenile Court Law, which is the basis for current juvenile justice laws in California.[69] It prohibited detaining persons under 18 "in any jail or lockup" unless charged with a felony, and if so detained, contact with adults detained in the same facility was forbidden.[70] It categorically prohibited committing anyone under 16 to a state prison.[71] It provided that anyone under 21 could be prosecuted as a juvenile, upon a finding of suitability by the juvenile court.[72] In felony cases, the juvenile court had the power, for those 16 or older at the time of the offense, to determine whether the offender was more properly subject to prosecution in juvenile court, and, if the offender was found "not a fit and proper subject" for juvenile court, to direct the district attorney to prosecute the offender as an adult "under general law."[73] Lastly, juvenile offenders were given expanded notice rights, the right to counsel, and the right to proof of the allegations against them by a preponderance of the evidence.[74] This was later changed to a proof beyond a reasonable doubt standard, by the ruling of the United States Supreme Court.[75]

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[68] Statutes 1941, chapter 937, pages 2532-2533.

[69] Statutes 1961, chapter 1616; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 25-26.

[70] Statutes 1961, chapter 1616, page 3461.

[71] Statutes 1961, chapter 1616, page 3462.

[72] Statutes 1961, chapter 1616, page 3472.

[73] Statutes 1961, chapter 1616, page 3485.

[74] Statutes 1961, chapter 1616, pages 3466-3482; see also Exhibit X, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 25-26.

[75] *In re Winship* (1970) 397 U.S. 358. Before the Arnold-Kennick Juvenile Court Law, the juvenile court basically had essentially "unbridled discretion" to adjudicate a minor as a ward of the state, as the proceedings were not considered adversarial; rather, the state was proceeding as *parens patriae* (Latin for "parent of the country"), as a minor had rights not to liberty, but to custody, and state intervention did not require due process, as the state was merely providing the custody to which the minor was entitled, and which the parents had failed to provide. This did not deprive the minor of rights, for minors, who could be compelled, among other things, to go to school and to obey their parents, had no rights. (*In re Gault* (1967) 387 U.S. 1, 15-21.)

B. Juvenile Sentencing Statutes in Effect in California Immediately Prior to the Enactment of the Test Claim Statutes.

Immediately prior to the enactment of the test claim statutes,[76] juvenile offenders were processed pursuant to Welfare and Institutions Code section 602(a), which provided that anyone under 18 who committed a crime fell within the jurisdiction of the juvenile court and could be adjudged a ward thereof, unless they were 14 or older and were charged with special circumstances murder or specified sex offenses, in which case they had to be prosecuted "under the general law, in a court of criminal jurisdiction" (i.e., as adults).[77] Additionally, pursuant to Welfare and Institutions Code section 707(d)(1), prosecutors could "direct file" charges in adult criminal court (bypassing the juvenile court altogether) against juveniles 16 or older if they were accused of one of the 30 felonies described in Welfare and Institutions Code section 707(b), such as rape, robbery, child molestation, assault with a firearm, murder, attempted murder, and voluntary manslaughter.[78] Lastly, prosecutors could direct file against juveniles 14 or older for crimes or circumstances specified in Welfare and Institutions Code section 707(d)(2), such as personal use of a firearm during the commission of a felony, gang related offenses, or hate crimes.[79] As a result, numerous offenders were sentenced to terms in state prison for crimes committed when they were under 18. There were approximately 5,700 such persons incarcerated in state prisons as of August 14, 2013.[80]

C. The United States and California Supreme Court Decisions that Directly Led to the Enactment of the Test Claim Statutes.

Prior to the enactment of the test claim statutes, a series of rulings from the United States and California Supreme Courts found that imposition of the harshest penalties on offenders who were juveniles at the time of the offense, without considering such offenders' youth and attendant characteristics, violated the Constitution's Eighth Amendment prohibition against cruel and unusual punishment.[81] The courts further found that, a sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole from the parole board.[82]

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[76] Statutes 2013, chapter 312, effective January 1, 2014 (SB 260).

[77] Former Welfare and Institutions Code section 602.

[78] Former Welfare and Institutions Code sections 707(a), 707(b), and 707(d)(1).

[79] Former Welfare and Institutions Code section 707(d)(2).

[80] Exhibit X, Assembly Committee on Appropriations – Analysis of SB 260, August 13, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 2.

[81] *Roper v. Simmons* (2005) 543 U.S. 551; *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *People v. Caballero* (2012) 55 Cal.4th 262.

[82] *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *People v. Caballero* (2012) 55 Cal.4th 262; *Montgomery v. Louisiana* (2016) 577 U.S. __, 136 S.Ct. 718.

In *Roper v. Simmons*, the U. S. Supreme Court held that imposition of the death penalty on offenders who were under 18 (i.e., juveniles) at the time of committing their capital offenses violated the U. S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment.[83] The Court reasoned that any conclusion that a juvenile falls among the worst offenders is suspect:

> The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." (Citation.) Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. (Citation.) The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside."[84]

In *Graham v. Florida*, the U.S. Supreme Court ruled that imposing a life sentence without the possibility of parole on a juvenile offender who had not committed a homicide violated the Eighth Amendment prohibition against cruel and unusual punishment.[85] The Court explained that *Roper* had established that "because juveniles have lessened culpability they are less deserving of the most severe punishments."[86] The Court continued that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."[87] The Court further reasoned "[h]ere, in light of juvenile nonhomicide offenders' diminished moral responsibility, any limited deterrent effect provided by life without parole is not enough to justify the sentence."[88] The Court held that "An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."[89]

The Court concluded that

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[83] *Roper v. Simmons* (2005) 543 U.S. 551; 568, 578-579.

[84] *Roper v. Simmons* (2005) 543 U.S. 551, 570.

[85] *Graham v. Florida* (2010) 560 U.S. 48, 74-75.

[86] *Graham v. Florida* (2010) 560 U.S. 48, 68.

[87] *Graham v. Florida* (2010) 560 U.S. 48, 68.

[88] *Graham v. Florida* (2010) 560 U.S. 48, 72.

[89] *Graham v. Florida* (2010) 560 U.S. 48, 76.

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham *some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.* It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. *It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society*.[90]

Then, in *Miller v. Alabama*, the Court held that a mandatory life without parole sentence for a person who was under 18 at the time of their crime violated the Eighth Amendment prohibition on cruel and unusual punishment.[91] The defendants in *Miller* had been sentenced to life imprisonment without the possibility of parole (LWOP) after being convicted of murder, and given the nature of the conviction, the sentencing judges had no discretion to impose any other penalty.[92] The Court explained that "Such a scheme prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change. . . ."[93] The Court continued that the characteristics that make juveniles less culpable than adults – "their immaturity, recklessness and impetuosity – make them less likely to consider potential punishment."[94] The Court reasoned that "the mandatory penalty schemes at issue here prevent the sentence from taking account of these central considerations. . . .[I]mposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[95]

The Court concluded as follows:

> Mandatory life without parole for a juvenile *precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.* It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and

[90] *Graham v. Florida* (2010) 560 U.S. 48, 75 (emphasis added).

[91] *Miller v. Alabama* (2012) 567 U.S. 460, 465.

[92] *Miller v. Alabama* (2012) 567 U.S. 460, 465-469.

[93] *Miller v. Alabama* (2012) 567 U.S. 460, 465.

[94] *Miller v. Alabama* (2012) 567 U.S. 460, 472.

[95] *Miller v. Alabama* (2012) 567 U.S. 460, 474.

> convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. (Citations.) And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.[96]

After the U.S. Supreme Court's decisions in *Graham* and *Miller*, the California Supreme Court held, in *People v. Caballero*, that the imposition on a 16 year old defendant of a sentence of life imprisonment with a minimum of 110 years before parole eligibility, for a nonhomicide offense (attempted murder with firearm and gang enhancements), violated the U. S. Supreme Court's ruling in *Graham*.[97] The Court stated as follows:

> [W]e conclude that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. Although proper authorities may later determine that youths should remain incarcerated for their natural lives, *the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future.* Under *Graham*'s nonhomicide ruling, *the sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole from the parole board. The Board of Parole Hearings will then determine whether the juvenile offender must be released from prison "based on demonstrated maturity and rehabilitation."* (Citation.) Defendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for writs of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings. *Because every case will be different, we will not provide trial courts with a precise timeframe for setting these future parole hearings in a nonhomicide case. However, the sentence must not violate the defendant's Eighth Amendment rights and must provide him or her a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation"* under *Graham*'s mandate.[98]

On January 27, 2016, the U. S. Supreme Court issued its decision in *Montgomery v. Louisiana*.[99] The Court ruled that its decision in *Miller* (prohibiting mandatory life without the possibility parole sentences for offenders under 18) was retroactive, ordering the state of Louisiana to

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[96] *Miller v. Alabama* (2012) 567 U.S. 460, 477-478 (emphasis added).

[97] *People v. Caballero* (2012) 55 Cal.4th 262, 265.

[98] *People v. Caballero* (2012) 55 Cal.4th 262, 268-269 (emphasis added).

[99] *Montgomery v. Louisiana* (2016) 577 U.S. __, 136 S.Ct. 718.

review for parole suitability the case of an inmate who had been given such a sentence at the age of 17, for a crime committed in 1963.[100] The court added as follows:

> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. *A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.* See, e.g., Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity —and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.
>
> Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.[101]

On June 17, 2016, the California Supreme Court issued its decision in *People v. Franklin*.[102] This case involved a defendant, Franklin, who committed a murder at the age of 17, where the trial court at sentencing had no discretion other than to impose two consecutive 25 years to life sentences, for a total sentence of 50 years to life.[103] The court ruled that this violated *Miller*, reasoning

> We now hold that just as *Graham* applies to sentences that are the "functional equivalent of a life without parole sentence" (Citation), so too does *Miller* apply to such functionally equivalent sentences. As we noted in *Caballero*, *Miller* "extended *Graham*'s reasoning" to homicide offenses, observing that "'none of what [*Graham*] said about children — about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.'" (Citation.) Because sentences that are the functional equivalent of LWOP implicate *Graham*'s reasoning (Citation), and because "'*Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile' " whether for a homicide or nonhomicide offense (citation), a sentence that is the functional equivalent of LWOP under *Caballero* is subject to the strictures of *Miller* just as it is subject to the rule of *Graham*. In short, a juvenile may not be sentenced to the functional equivalent of LWOP for a homicide offense without the protections outlined in *Miller*.[104]

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[100] *Montgomery v. Louisiana* (2016) 577 U.S. __, 136 S.Ct. 718; 725-726, 734-736.

[101] *Montgomery v. Louisiana* (2016) 577 U.S. __, 136 S.Ct. 718, 736 (emphasis added).

[102] *People v. Franklin* (2016) 63 Cal.4th 261.

[103] *People v. Franklin* (2016) 63 Cal.4th 261, 268.

[104] *People v. Franklin* (2016) 63 Cal.4th 261, 276.

The court cited *Montgomery* in support of its holding that "the law categorially prohibits the imposition of certain penalties, including mandatory LWOP, on juvenile offenders."[105] The court remanded the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity at his sentencing to make a record of the type of information that may describe the diminished culpability of juveniles, the hallmarks of youth, etc., which would be relevant to his future YOPH.[106] The court reasoned that the goal of any proceeding to make such a record

> [I]s to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the [BPH], years later, may properly discharge its obligation to 'give great weight to' youth related factors ([section 4801(c)]) in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime 'while he was a child in the eyes of the law.' (Citation.)[107]

The Court clarified that if Franklin were to be granted such a proceeding, the trial court

> [M]ay receive submissions and, if appropriate, testimony pursuant to procedures set forth in [Penal Code] section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors.[108]

D. The Test Claim Statutes

1. Statutes 2013, chapter 312 was enacted to require the state Board of Parole Hearings (BPH) to conduct Youth Offender Parole Hearings (YOPHs) to consider the suitability of release on parole for those individuals who are eligible for a YOPH and committed their controlling offense before reaching age 18.

In response to the above rulings by the courts in *Graham*, *Miller*, and *Caballero*, the Legislature enacted Statutes 2013, chapter 312 specifically citing to *Graham*, *Miller*, and *Caballero*, stating that, in accordance with those decisions,

> The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has

[105] *People v. Franklin* (2016) 63 Cal.4th 261, 283.

[106] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[107] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[108] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

> shown that he or she has been rehabilitated and gained maturity. . . . It is the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.[109]

Statutes 2013, chapter 312 added section 3051 and amended sections 3041, 3046, and 4801 of the Penal Code, creating YOPHs for inmates who committed their controlling offense before reaching age 18. Statutes 2013, chapter 312 required the parole of inmates found suitable for parole at a YOPH, notwithstanding consecutive life sentences or minimum terms before parole eligibility. The statute also required the state BPH, while reviewing suitability for parole at a YOPH, to give great weight to the diminished culpability of juveniles, the hallmarks of youth, and any growth or maturity displayed by the prisoner.[110]

a. Amendments to Penal Code section 3041

The amendments to section 3041 changed how the state BPH met with inmates serving life sentences with a possibility of parole. Previously, BPH met with such inmates during their third year of incarceration, to review their files, make recommendations, and document activities or conduct relevant to granting or withholding postconviction credit.[111] The amendment changed the meeting (now called a consultation) to the sixth year before the inmate's minimum eligible parole release date,[112] and required much more individualized recommendations to the inmate regarding suitability for parole and behavior that would indicate the same.

Statutes 2013, chapter 312 amended Penal Code section 3041(a) as follows (in strikeout and underline):

> (a) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170[113]) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the ~~third year of incarceration~~ sixth year prior to the inmate's minimum eligible parole release date for the purposes of reviewing and documenting the inmate's ~~file, making recommendations,~~ activities and conduct pertinent to both parole eligibility and to the granting or withholding of postconviction credit. During this

[109] Statutes 2013, chapter 312, section 1.

[110] The terms "inmate" and "prisoner" are interchangeable; for purposes of this Decision, whichever term is being used in the statute under discussion will be used.

[111] Pursuant to Penal Code section 2930 et seq., certain inmates are eligible to receive good conduct credits reducing their sentence by up to one-third; however, such credits can be taken away for misconduct inside the prison.

[112] The minimum eligible parole release date, in the case of inmates serving a life sentence with no other specific term of years, is seven years; in the case of inmates serving a life sentence with a specific term of years, e.g., 25 to life, the minimum eligible parole release date occurs after 25 years of incarceration, i.e., after serving the specific term of years. (Pen. Code, § 3046.)

[113] Inmates sentenced to Penal Code section 1170 have determinate sentences, i.e., a sentence for a fixed term of years, such as 12 years in prison, and are released on parole at the end of their sentences, without the need for a parole hearing in front of the BPH.

consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing. One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner. In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e). The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

b. Amendments to Penal Code section 3046

The amendments to section 3046 required that a prisoner found suitable for parole at a YOPH actually be granted parole, despite provisions elsewhere in that section requiring that inmates sentenced to a term of years to life sentence (e.g., 50 years to life) or to consecutive life sentences, serve their term of years or a minimum of seven years for each consecutive life sentence.[114] Statutes 2013, chapter 312 amended section 3046 as follows (in underline):

(a) No prisoner imprisoned under a life sentence may be paroled until he or she has served the greater of the following:

(1) A term of at least seven calendar years.

[114] For example, three consecutive life sentences would require a minimum of 21 years in prison (7+7+7) before eligibility for parole; or, two consecutive 25 years to life sentences would require a minimum of 50 years in prison before eligibility for parole (25+25).

(2) A term as established pursuant to any other provision of law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.

(b) If two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, no prisoner so imprisoned may be paroled until he or she has served the term specified in subdivision (a) on each of the life sentences that are ordered to run consecutively.

(c) Notwithstanding subdivisions (a) and (b), a prisoner found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 shall be paroled regardless of the manner in which the board set release dates pursuant to subdivision (a) of Section 3041, subject to subdivision (b) of Section 3041 and Sections 3041.1 and 3041.2, as applicable.

(d) The Board of Prison Terms[115] shall, in considering a parole for a prisoner, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of the parole. The board shall enter on its order granting or denying parole to these prisoners, the fact that the statements and recommendations have been considered by it.

c. Addition of Penal Code section 3051

Statutes 2013, chapter 312 added section 3051 to the Penal Code, establishing the YOPH as a hearing conducted by the state BPH to review the suitability for parole of prisoners who were under 18 at the time of their controlling offense (i.e., juvenile offenders). "Controlling offense" is defined as the offense or enhancement for which the longest term of imprisonment was imposed. Section 3051 requires that juvenile offenders sentenced to a determinate sentence (i.e., a fixed term, such as 20 years) receive a YOPH by the BPH during their 15th year of incarceration, unless previously released. Juvenile offenders sentenced to a life term of less than 25 years to life are required to have a YOPH before the BPH during their 20th year of incarceration. Juvenile offenders sentenced to 25 years to life are required to have a YOPH during their 25th year of incarceration.[116] At a YOPH, the BPH is required to give great weight to, among other things, the diminished culpability of juveniles and the hallmark features of youth, when considering a prisoner's suitability for parole. Section 3051 also specifically

[115] As of July 1, 2005, the Board of Prison Terms was abolished, and was replaced by the BPH, and any references to the Board of Prison Terms refer to the BPH. (Pen. Code, § 5075(a).)

[116] This applies to juvenile offenders who are sentenced to a term greater than 25 years to life; for example, a juvenile offender sentenced to 32 years to life would have the right, under section 3051, to receive a YOPH after 25 years of incarceration. (*People v. Garcia* (2017) 7 Cal.App.5th 941, 949-951.)

excludes juvenile offenders convicted under the Three Strikes Law[117] or the One Strike Law,[118] or those who have committed very grave offenses after turning 18, from being given YOPHs. Lastly, it requires the state BPH to complete all YOPHs for prisoners eligible for them as of January 1, 2014, by July 1, 2015.

Penal Code section 3051 reads

> (a)(1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense.
>
> (2) For the purposes of this section, the following definitions shall apply:
>
> (A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.
>
> (B) "Controlling offense" means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.
>
> (b)(1) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.
>
> (2) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.
>
> (3) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

[117] As provided for in both Penal Code sections 1170.12 and 667, the Three Strikes law provides that a person convicted for the third time of a serious felony, as defined in Penal Code section 1192.7, or a violent felony, as defined in Penal Code section 667.5, shall serve a minimum of 25 years to life in state prison.

[118] As provided for in Penal Code section 667.61, the One Strike Law provides that a person convicted of certain sex offenses under certain circumstances shall receive a 15 years to life, 25 years to life, or LWOP sentence, depending on the specifics of the crime and the circumstances – even if the person has no prior criminal record.

(c) An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.

(d) The board shall conduct a youth offender parole hearing to consider release. At the youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f)(1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.

(3) Nothing in this section is intended to alter the rights of victims at parole hearings.

(g) If parole is not granted, the board shall set the time for a subsequent youth offender parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. In exercising its discretion pursuant to paragraph (4) of subdivision (b) and subdivision (d) of Section 3041.5, the board shall consider the factors in subdivision (c) of Section 4801. No subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(h) This section shall not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61, or in which an individual was sentenced to life in prison without the possibility of parole. This section shall not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 18 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

(i) The board shall complete all youth offender parole hearings for individuals who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this section by July 1, 2015.

d. Amendments to Penal Code section 4801

Statutes 2013, chapter 312 amended section 4801 to require the BPH, during a prisoner's YOPH, to give great weight to the diminished capacity of juveniles, the hallmark features of youth, and subsequent growth and maturation of the prisoner, consistent with decisional law. The statute amended section 4801, as relevant to this claim, by adding subdivision (c) as follows:

> (c) When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, prior to attaining 18 years of age, the board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

2. Statutes 2015, chapter 471 expanded YOPH eligibility to individuals who were under the age of 23 at the time of their controlling offense, and set deadlines for the BPH to complete such hearings.

Statutes 2015, chapter 471 further amended sections 3051 and 4801of the Penal Code. Penal Code section 3051 was amended to expand YOPH eligibility to prisoners who were under 23 at the time of their controlling offenses. In addition, section 3051 was amended to require the BPH to complete all YOPHs for individuals who were sentenced to *indeterminate life terms* and who are eligible for a YOPH as of January 1, 2016, by July 1, 2017. Section 3051, as amended, also required the BPH to complete all YOPHs for those individuals who were sentenced to *determinate* terms and who became entitled to a YOPH as of January 1, 2016, by July 1, 2021, and to complete all consultations of these individuals before July 1, 2017.

Statutes 2015, chapter 471 also made similar changes to Penal Code section 4801 to provide that prisoners who were under 23 at the time of their controlling offenses were eligible for YOPHs, with no changes to the special considerations the BPH was expected to give great weight to at such hearings.

3. Statutes 2017, chapter 684 expanded YOPH eligibility to individuals who were 25 or younger at the time of their controlling offense and to individuals sentenced to life without the possibility of parole (LWOP) for a controlling offense committed while under the age of 18, and set deadlines for the BPH to complete such hearings.

Statutes 2017, chapter 684 was enacted to comply with the U. S. Supreme Court's 2016 decision in *Montgomery.*[119] Statutes 2017, chapter 684 amended Penal Code sections 3051 and 4801, allowing prisoners with the possibility of parole who committed their controlling offenses at the age of 25 or younger to qualify for YOPHs, and granting those who had been sentenced to LWOP for a controlling offense committed while under the age of 18 to receive a YOPH during their 25th year of incarceration. It set new deadlines for the BPH to complete the YOPHs for persons entitled thereto on the effective date of the statute (January 1, 2018) by January 1, 2020

[119] Exhibit X, Assembly Committee on Public Safety – Analysis of SB 394, June 26, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), pages 4-5.

(for individuals sentenced to indeterminate life terms) and January 1, 2022 (for individuals sentenced to determinate terms), and for completion of YOPHs for qualifying LWOP prisoners by July 1, 2020.

III. Positions of the Parties and Interested Parties

A. County of San Diego

The claimant alleges that the test claim statutes resulted in reimbursable increased costs mandated by the state. The claimant asserts that "as a result" of Statutes 2013, chapter 312; Statutes 2015, chapter 471; and Statutes 2017, chapter 684, and the decisions interpreting and applying that legislation in *Franklin*[120] and *People v. Perez*,[121] defense counsel and prosecutors are now required to provide newly mandated services and incur newly mandated costs as detailed below in preparation of and appearance at a YOPH-eligible individual's sentencing hearing:[122]

> (1) Preparation and presentation of evidence by counsel including evaluations and testimony regarding an individual's cognitive culpability, cognitive maturity, or that bears on the influence of youth related factors at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (2) Retention and utilization of investigators to: (a) locate and gather relevant evidence, including but not limited to, interviews with anyone that can provide mitigating information about the defendant, including family, friends, teachers, and anyone else that knows the defendant; and (b) gather records of the defendant, including school, hospital, employment, juvenile, and other relevant persona [*sic*] records (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (3) Retention and utilization of experts to evaluate the offender and prepare reports for presentation at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (4) Attendance by the district attorney's office and indigent defense counsel at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c)); and
>
> (5) Participation of counsel in training to be able to competently represent their clients at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c)).[123]

Although the claimant does not appear at YOPHs, it contends that its activities regarding the conduct of sentencing hearings for new offenders who may one day qualify for YOPHs, constitute state-mandated activities that are unique to local government and carry out a state policy.[124] The claimant argues that it is eligible to receive subvention as follows:

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[120] *People v. Franklin* (2016) 63 Cal.4th 261.

[121] *People v. Perez* (2016) 3 Cal.App.5th 612.

[122] Exhibit A, Test Claim, page 13.

[123] Exhibit A, Test Claim, pages 21-22.

[124] Exhibit A, Test Claim, pages 23-24.

> Prior to SB 260, 261, and 394, and the decisions of the courts in *Franklin* and *Perez*,[125] California defense attorneys were not mandated to present evidence, evaluations, or testimony regarding the influence of youth-related factors at sentencing hearings for use at a subsequent Youth Offender Parole Hearing many years in the future. Such information was unlikely to have any impact on the sentence imposed, given the existence of mandatory sentences for many of the crimes and judges' limited discretion with regard to certain enhancements. Because there was no effort to gather and present this information, defense attorneys expended a minimal amount of time to prepare for and to attend the sentencing hearings.
>
> For the same reasons as defense attorneys, California prosecutors presented no information and incurred no costs, other than the cost of attending sentencing hearings.
>
> In contrast to defense attorneys and prosecutors, Probation Departments were responsible for investigating and compiling information to be considered by the sentencing judge and, as a result, did incur costs. Probation officers gathered and provided information concerning the facts surrounding the offense, victim restitution requests and impact statements, the defendant's education, military, and employment history, the defendant's medical, psychiatric and substance abuse history, and the defendant's criminal and delinquent history. (See Pen. Code, § 1203, Cal. Rules of Court, Rules 4.411-4.433.) Such information was typically gathered by interviewing the defendant, without attempting to gather information from other sources. However, this effort to gather information did not include any investigation or reporting on the circumstances of the defendant's youth and is therefore distinguishable from the effort required by the mandate.
>
> As a result of the statutory changes, youth offenders now must be granted an opportunity to present evidence, evaluations, and testimony regarding the influence of youth-related factors at the sentencing hearing. Defense attorneys must perform the activities described . . . above, which will result in costs not previously incurred. In addition, prosecutors will be required to prepare for the hearings, which will also result in costs not previously incurred.[126]

The claimant further argues the "enhanced *Franklin* sentencing hearings" allegedly required by the test claim statute cost, on average, between $5,500 and $12,750 each, and that statewide costs for such hearings "will exceed $2,750,000 per year and may be as high as $6,375,000 per year."[127] The claimant alleges that "total increased costs to comply with SB 260 and 261 in Fiscal Year 2016-17 totaled at least $10,763."[128] The claimant further alleges that for fiscal year

[125] *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Perez* (2016) 3 Cal.App.5th 612.

[126] Exhibit A, Test Claim, pages 24-25.

[127] Exhibit A, Test Claim, page 26.

[128] Exhibit A, Test Claim, page 21.

2017-2018, it "incurred at least $10,705 in increased costs to comply with SB 260 and 261. Claimant also incurred at least $6,344 in increased costs to comply with SB 394."[129]

B. Department of Finance

Finance filed late comments on the Test Claim on March 13, 2019.[130] Finance argues that the claimant's expenses have been incurred as a result of court-made law, and thus the Test Claim should be rejected pursuant to Government Code section 17556(b).[131] Finance contends that the United States Supreme Court's decisions in *Graham v. Florida*[132] and *Miller v. Alabama*[133] led to the California Supreme Court's decision in *People v. Caballero,*[134] which urged the Legislature to establish a mechanism for parole eligibility for juvenile offenders serving de facto life sentences without the possibility of parole, so that they would have the opportunity to be released upon a showing of rehabilitation.[135] Finance asserts that Statutes 2013, chapter 312 was enacted in response to the *Caballero* decision, establishing the YOPH process, but not applicable to persons serving a life sentence without the possibility of parole.[136]

Finance continues that Statutes 2015, chapter 471 and Statutes 2017, chapter 684 extended eligibility for YOPHs, and that as a consequence of the California Supreme Court's decision in *People v. Franklin,*[137] offenders who are eligible for future YOPHs pursuant to the three test

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[129] Exhibit A, Test Claim, page 21.

[130] Exhibit C, Finance's Late Comments on the Test Claim. The late filing of comments in this case has resulted in a delay in the issuance of the Draft Proposed Decision in this matter, since the comments came in just two days before the Draft would normally be issued for comment and more than a month after the due date on the approved request for extension, which was limited to February 11, 2019. In addition, it has negatively impacted the timely processing of other matters pending before the Commission. As a result of the shortened time before hearing, there can be no approval of a request for extension of time to comment on the Draft Proposed Decision that does not also include a request for postponement of hearing. Under the Commission's regulations, written comments shall be filed within 30 days of the notice of complete filing. (Cal.Code Regs., tit. 2, 1183.2.) However, written testimony received at least 15 days in advance of the hearing [i.e. late filings], shall be included in the Commission's meeting binders. (Cal.Code Regs.,tit. 2, § 1187.6.) Several claimants have asserted, in a number of matters, that late comments should not be considered in Draft Proposed Decisions, but given that late filings, up to 15 days before hearing, shall be included in the Commission's meeting binders and that the same testimony may be submitted at hearing, staff is including these comments in the analysis to ease the decision making process for the Commission Members.

[131] Exhibit C, Finance's Late Comments on the Test Claim, page 1.

[132] *Graham v. Florida* (2010) 560 U.S. 48.

[133] *Miller v. Alabama* (2012) 567 U.S. 460.

[134] *People v. Caballero* (2012) 55 Cal.4th 262.

[135] Exhibit C, Finance's Late Comments on the Test Claim, page 1.

[136] Exhibit C, Finance's Late Comments on the Test Claim, pages 1-2.

[137] *People v. Franklin* (2016) 63 Cal.4th 261.

claim statutes must now receive "*Franklin* hearings" if their trial courts did not allow them to present evidence of youth-related factors that would eventually be considered by the BPH.[138] Finance notes the amount of the costs allegedly incurred by the claimant in fiscal years 2016-2017 and 2017-2018 for the conduct of five *Franklin* hearings.[139] Finance argues that the language of these cases and statutes clearly indicates that YOPHs were created as a mechanism "to affirm what the courts had declared to be existing law."[140] Finance concludes that since claimant's costs were incurred as a result of court-made law, the Commission should reject the Test Claim in its entirety pursuant to Government Code section 17556(b).[141]

C. Board of Parole Hearings

No comments have been filed by BPH.

D. County of Los Angeles

The County of Los Angeles, an interested party under the Commission's regulations,[142] filed comments on the Test Claim on January 9, 2019.[143] The County of Los Angeles argues that the California Supreme Court's ruling in *Franklin*, indicating that assembling the type of information about a person who would ultimately appear at a YOPH is more easily done near the time of the offense, rather than decades later.[144] The County of Los Angeles concludes

> Prior to the passage of SB 260, 261, and 394, attorneys were not required to present youth related factors at the time of sentencing. Now, the Legislature has created a new youth offender parole process, mandating a higher level of service by requiring defense counsel to present youth related factors at sentencing hearings. The Legislature seeks to ensure that the California Board of Parole Hearings receives an accurate record of the offender's characteristics and circumstances at the time of the offense to later afford the offender with a fair parole hearing.
>
> In light of the significant costs associated with this state mandate to ensure that parole hearings provide youth offenders with an opportunity for release, the County of Los Angeles, on behalf of the Los Angeles County Public Defender's Office, hereby collectively request that the Commission adopt the County of San Diego's test claim.[145]

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[138] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[139] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[140] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[141] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[142] California Code of Regulations, title 2, section 1181.2(i).

[143] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim.

[144] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim, page 2.

[145] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim, pages 2-3.

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."[146] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[147]

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.[148]
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.[149]
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.[150]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[151]

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

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

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

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

[149] *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).

[150] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[151] *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.

Constitution.[152] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[153] 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."[154]

A. This Test Claim Was Timely Filed.

Government Code section 17551(c) provides that a test claim must be filed "not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."

Section 1183.1(c) of the Commission's regulations, effective April 1, 2018, defines "12 months" as 365 days.[155]

Prior to April 1, 2018, former section 1183.1(c) of the Commission's regulations provided that the "within 12 months" as specified in Government Code section 17551(c) meant "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[156]

The statute with the earliest effective date pled in this Test Claim, became effective on January 1, 2014.[157] The claimant filed this Test Claim on June 29, 2018, and alleges that it first incurred increased costs as a result of the test claim statutes on July 11, 2016.[158]

The regulation in effect when the claimant filed this Test Claim on June 29, 2018, would have barred this Test Claim immediately upon the regulation's April 1, 2018 effective date, since the date 365 days from the date of first incurring costs in this case had already passed nearly nine months earlier. Under the current regulation, the Test Claim would have had to be filed by July 11, 2017 (within 365 days of first incurring increased costs on July 11, 2016) to be timely.

It is established precedent that a plaintiff or party has no vested right in any particular statute of limitations or time for the commencement of an action, and that the Legislature may shorten a

[152] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

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

[154] *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].

[155] California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

[156] California Code of Regulations, title 2, former section 1183.1(c).

[157] Statutes 2013, chapter 312.

[158] Exhibit A, Test Claim, pages 22; 30-34 (Declaration of John O'Connell summarizing actual costs for fiscal years 2016-2017 and 2017-2018 and stating that costs were first incurred July 11, 2016).

statute of limitations.[159] However, "a statute is presumed to be prospective only and will not be applied retroactively unless such intention clearly appears in the language of the statute itself."[160] Furthermore, "a statute shortening period of limitations cannot be applied retroactively to wipe out an accrued cause of action that is not barred by then then applicable statute of limitations."[161] To avoid the unconstitutional effect of retroactive application, the statute of limitations must be applied prospectively to such causes of action. Even when applied prospectively, the claimant must be allowed a reasonable time within which to proceed with his cause of action.[162] "If the time left to file suit is reasonable, no such constitutional violation occurs, and the statute is applied as enacted. If no time is left, or only an unreasonably short time remains, then the statute cannot be applied at all."[163] Thus, though the courts have upheld the shortening of periods of limitation and making the changed period applicable to pending proceedings, they have required that a reasonable time be made available for an affected party to avail itself of its remedy before the statute (here regulation) takes effect.[164]

In the instant case, the April 1, 2018 amendment to section 1183.1 of the Commission's regulations would have instantly terminated the claimant's ability to file a test claim. Nothing in the language of section 1183.1(c) gives any indication of an intent to apply the amendment's new statute of limitations retroactively. Moreover, "a statute shortening period of limitations cannot be applied retroactively to wipe out an accrued cause of action that is not barred by then then applicable statute of limitations."[165] Thus, the 2018 amendment to section 1183.1 cannot be applied to this Test Claim as this would not allow claimant a reasonable time to avail itself of the remedy of provided in the mandate determination process, as required by law.[166] The Commission's prior regulation must therefore apply. Therefore, since the deadline to file the Test Claim under the former regulation was by June 30 of the fiscal year following fiscal year 2016-2017, or by June 30, 2018, this Test Claim filed on June 29, 2018 was timely filed pursuant to Government Code section 17551(c) and former section 1183.1 of the Commission's regulations.

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[159] *Krusesky v. Baugh* (1982) 138 Cal.App.3d 562, 566; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773.

[160] *Krusesky v. Baugh* (1982) 138 Cal.App.3d 562, 566.

[161] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43.

[162] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43; *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 121-125.

[163] *Aronson v. Superior Court* (1987) 191 Cal.App.3d 294, 297.

[164] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

[165] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43.

[166] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

B. The Test Claim Statutes Do Not Impose a Reimbursable State-Mandated Program on Local Agencies.

1. The plain language of the test claim statutes impose requirements on the state BPH, but do not impose a state-mandated program on local agencies.

The claimant asserts that the test claim statutes impose a state-mandated program under article XIII B, section 6 since the statutes (as interpreted by the *Franklin* and *Perez* cases) result in the claimant incurring increased costs, to both public defenders and prosecutors, at the sentencing hearings of youthful offenders, during which evidence, evaluations or testimony may be presented to the court, to make a record for the youthful offender's YOPH many years in the future.[167]

The test claim statutes, however, do not impose a state-mandated program on local agencies.

Reimbursement under article XIII B, section 6 is limited. Local agencies are not entitled to reimbursement for all increased costs resulting from legislative enactments, "but only those costs mandated by a new program or an increased level of service *imposed upon them by the State*."[168] Costs that are mandated by the state are "ordered" or "commanded" by the state, making the local agency compelled to comply.[169]

In this case, the plain language of sections 3041, 3046, 3051, and 4801 of the Penal Code, as added and amended by the test claim statutes, do not impose *any* requirements on local agencies; rather all responsibilities created by these sections are assigned to the BPH – a state agency. Nothing in any of these sections expressly directs or requires local agencies to perform any activities. Indeed, the language of Statutes 2013, chapter 312, Statutes 2015, chapter 471, and Statutes 2017, chapter 684 does not make a single reference to any local agency – only to the BPH. Additional evidence that these laws were not intended to apply to local agencies is found in the Legislative Counsel's Digests for all three statutes, which reference the BPH only, and not any local agencies.[170]

Furthermore, it is the BPH that is required to provide state-appointed counsel to inmates at YOPHs – not the local agency.[171] The Legislature noted this during its deliberations on Statutes

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[167] Exhibit A, Test Claim, pages 21-22.

[168] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816, emphasis added; see also, *Lucia Mar Unified School District v. State of California* (1988) 44 Cal.3d 830, 835; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

[169] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174. See also, *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742 (actions taken without any legal or practical compulsion from the state, do not trigger a state mandate).

[170] Legislative Counsel's Digest of Senate Bill 260 (2013-2014 Reg. Sess.); Legislative Counsel's Digest of Senate Bill 261 (2015-2016 Reg. Sess.); Legislative Counsel's Digest of Senate Bill 394 (2017-2018 Reg. Sess.).

[171] Penal Code section 3041.7; California Code of Regulations, title 15, section 2256(c).

2013, chapter 312.[172] Lastly, it must be noted that the claimant nowhere asserts that it provides counsel during YOPHs.

The Commission therefore finds that the test claim statutes do not impose any state-mandated activities on the claimant or any other local agencies.

2. Any new activities or costs incurred by local agencies for the sentencing hearings are mandated by the courts and, thus, there are no costs mandated by the state under article XIII B, section 6 and Government Code section 17556(b).

The claimant asserts that due to the *Franklin*[173] and *Perez* decisions[174] interpreting the test claim statutes, it is now required to provide services and incurs costs that are "newly mandated."[175] The claimant refers to its allegedly newly mandated activities at sentencings for offenders who are eligible for future YOPH consideration as *Franklin* hearings,[176] and this nomenclature will be employed here.

The Commission finds that any new activities or costs incurred by local agencies at the *Franklin* sentencing hearings are costs imposed by the courts, and not costs mandated by the state. As explained below, reimbursement under article XIII B, section 6 is not required under these circumstances.

Article XIII B, section 6 is part of a comprehensive scheme adopted by the voters "to protect residents from excessive taxation and government spending," and must be interpreted in light of its textual and historical context.[177] In 1978, the voters adopted Proposition 13, adding article XIII A to the California Constitution to limit the power of state and local government to adopt and levy new taxes. The next year, the voters adopted Proposition 4 to add article XIII B to the California Constitution, which imposes a complementary appropriations limit, beginning in fiscal year 1980-1981, on the rate of growth in government spending. Article XIII B subjects each state and local governmental entity's "appropriations subject to limitation" to a limit equal to the entity's appropriations in the prior year, adjusted for changes in population and the cost of living.[178] "'Appropriations subject to limitation'" include "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity …."[179] The voters specifically excluded some categories of appropriations from the

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[172] Exhibit X, Senate Committee on Appropriations – Analysis of SB 261, May 28, 2015, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB261 (accessed on January 16, 2019), page 3.

[173] *People v. Franklin* (2016) 63 Cal.4th 261

[174] *People v. Perez* (2016) 3 Cal.App.5th 612

[175] Exhibit A, Test Claim, page 13.

[176] Exhibit A, Test Claim, page 26.

[177] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 80-81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[178] Article XIII B, sections 1, 8(e), (f).

[179] Article XIII B, section 8(b).

spending limit, however. Article XIII B, section 9(b), for example, permits appropriations beyond the limit for "[a]ppropriations required to comply with mandates of the courts or the federal government, which without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." Such expenditures are not considered to be an exercise of the local agency's discretionary spending authority and, therefore, are not limited by the Constitution.

The voters included section 6 in article XIII B, recognizing that articles XIII A and XIII B severely restrict the taxing and spending powers of local government. "Its purpose 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."[180] The courts have explained the purpose as follows:

> Subvention principles are part of a more comprehensive political scheme. The basic purpose of the scheme as a whole was to limit the taxing and spending powers of government. The taxing and spending powers of local agencies were to be "frozen" at existing levels with adjustments only for inflation and population growth. Since local agencies are subject to having costs imposed upon them by other governmental entities, the scheme provides relief in that event. *If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency.*[181]

Several courts have recognized that reimbursement under article XIII B, section 6 is not required when the expenditure of local costs is excluded from the constitutional spending limit in article XIII B, section 9, including those costs incurred to comply with a federal mandate, because those costs are not shifted by the state.[182] Such expenditures are not "costs mandated by the state." Local agencies are not entitled to the benefit of an exemption from the spending limit *and* reimbursement under article XIII B, section 6. Article XIII B, section 9, as relevant to this claim, specifically excludes from the subvention requirement "appropriations required *to comply with mandates of the courts* or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly." (Emphasis added.)

In this case, all the evidence in the record indicates that the new expenses allegedly incurred by the claimant are costs imposed by the courts. As discussed previously, the California Supreme Court in *Franklin* remanded Franklin's case to the trial court to determine if he had been

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

[181] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595 (emphasis added).

[182] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70-71; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898, 907.

afforded sufficient opportunity to make a record relevant to his eventual YOPH.[183] The court reasoned that the goal of such proceedings was to provide the opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense, so that the BPH could give great weight to youth-related factors at a YOPH many years later.[184] Although *Franklin* did not explicitly state that such a proceeding was now mandatory at all sentencing hearings for YOPH eligible offenders, dictum of the California Supreme Court is entitled to great weight where the issue was carefully considered and should not be disregarded without a compelling reason.[185]

In the *Perez* decision, defendant Perez was sentenced to 86 years to life in prison for attempted premeditated murder with a firearm enhancement, for a crime committed when he was 20.[186] The Court of Appeal held that although this sentence did not constitute an Eighth Amendment violation, one of the test claim statues, Statutes 2015, chapter 471, made Perez eligible for a YOPH during his 25th year of incarceration.[187] The court also reasoned that since Perez was sentenced in October 2014, before Statutes 2015, chapter 471 extended YOPH eligibility to offenders under 23, he had not been afforded to make a record of his characteristics and circumstances at the time of the offense, in contemplation of a future YOPH.[188] Citing *Franklin*, the court remanded the matter to the trial court for the limited purposes of allowing both Perez and the prosecution to make such a record.[189]

In the wake of the *Franklin* and *Perez* decisions, both prosecution and defense counsel are now effectively required to make such a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination" at all sentencing hearings involving offenders eligible for future YOPH review. The failure to do so would likely result in a flood of cases being remanded to the trial court, either after direct appeal, or by writ of habeas corpus, in order for such a record to be made. The claimant notes that a case currently pending before the California Supreme Court is considering the issue of whether "'youth offenders' whose convictions are already final and who are currently incarcerated, are entitled to a hearing before the trial court to preserve evidence for use at a future [YOPH], as ordered in *Franklin*."[190] Although not citable, the appellate court decision under review held that "the relief afforded by *Franklin*" (i.e., a hearing before the sentencing court to make a record for an eventual YOPH) "is available by both direct

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[183] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[184] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[185] *Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 912, fn. 10; *California Coastal Commission v. Office of Administrative Law* (1989) 210 Cal.App.3d 758, 763.

[186] *People v. Perez* (2016) 3 Cal.App.5th 612, 615-616.

[187] *People v. Perez* (2016) 3 Cal.App.5th 612, 618.

[188] *People v. Perez* (2016) 3 Cal.App.5th 612, 619-620.

[189] *People v. Perez* (2016) 3 Cal.App.5th 612, 619-620.

[190] Exhibit A, Test Claim, page 13, fn. 3. The case under review is *In re Cook* (2017) 7 Cal.App.5th 393, which is not citable per the California Rules of Court, rule 8.1115(e)(1), except for potentially persuasive value. The California Supreme granted habeas corpus review on April 12, 2017, S240153.

review and petition for writ of habeas corpus."[191] The court further opined that "*Franklin* thus holds that a defendant has the right at the time of sentencing to present evidence and make a record of information that may be relevant at the eventual [YOPH]."[192] Moreover, established precedent holds that convicted defendants may obtain relief via habeas corpus when California or U.S. Supreme Court decisions retroactively expand their rights regarding sentencing.[193]

However, this requirement to make a record at sentencing hearings for YOPH eligible offenders does not stem from the language of the test claim statutes, but rather, from a mandate of the courts as contemplated by article XIII B, section 9(b). *Franklin* and *Perez* are court decisions interpreting the law– they are not statutes or executive orders.[194] Thus, the claimant's costs incurred as a result of those decisions are not subject to reimbursement.

This conclusion is supported by the timing of the claimant's filing of the Test Claim. Statutes 2013, chapter 312 became effective on January 1, 2014, and Statutes 2015, chapter 471 became effective on January 1, 2016. Statutes 2017, chapter 684 became effective on January 1, 2018. As of March 31, 2015, the BPH had completed 534 YOPHs.[195] Yet, the claimant did not file its Test Claim until June 29, 2018 –12 days after the issuance of the *Franklin*[196] decision, despite the fact that YOPHs had continued to be held the entire time, pursuant to the test claim statute. This evidences that the Test Claim is not filed in response to the test claim statutes, but rather to

[191] *In re Cook* (2017) 7 Cal.App.5th 393, 395 [currently pending review in the California Supreme Court, Case No. S240153].

[192] *In re Cook* (2017) 7 Cal.App.5th 393, 399 [currently pending review in the California Supreme Court, Case No. S240153].

[193] See *In re Cortez* (1971) 6 Cal.3d 78 [new California Supreme Court decision justified relief via writ of habeas corpus], and *In re Johnson* (1970) 3 Cal.3d 404 [new U.S. Supreme Court decision entitled prisoner to habeas corpus relief].

[194] Government Code section 17516 defines an executive order as an order, plan, requirement, rule, or regulation issued by the Governor, an officer or official serving at the Governor's pleasure, or an agency, department, board or commission of state government.

[195] Exhibit X, Senate Committee on Appropriations – Analysis of SB 261, as amended May 28, 2015, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB261 (accessed on January 16, 2019), page 3.

[196] Exhibit A, Test Claim; *People v. Franklin* (2016) 63 Cal.4th 261.

various court orders. Statutes 2013, chapter 312 was passed in anticipation of the writs of habeas corpus expected from prisoners after the *Graham*,[197] *Miller*,[198] and *Caballero*[199] decisions.[200]

Statutes 2015, chapter 417 considered those same decisions when it extended YOPH eligibility to offenders who were under 23 at the time of their crimes.[201] Statutes 2017, chapter 684 considered those decisions, as well as *Montgomery*[202] and *Franklin*,[203] in extending YOPH eligibility to juvenile offenders who had been sentenced to LWOP.[204] Furthermore, the Test Claim seeks reimbursement for "*Franklin* hearings" (as opposed to YOPHs, which the claimant has no involvement with) and argues that costs and activities have been imposed on it by the test claim statute "as interpreted by the courts."[205] This is precisely the type of exclusion from subvention that is intended by article XIII B, section 9(b).

Therefore, the Commission finds that any new activities or expenses regarding *Franklin* hearings are not mandates of the state, but rather they are mandates of the courts, which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly and which are specifically excluded from the subvention requirement of the Constitution.

Furthermore, Government Code section 17556(b) specifically prohibits a finding of costs mandated by the state when the test claim statute "affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute . . . was enacted or issued."[206] Accordingly, these court actions occurred both prior to and during the

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[197] *Graham v. Florida* (2010) 560 U.S. 48.

[198] *Miller v. Alabama* (2012) 567 U.S. 460.

[199] *People v. Caballero* (2012) 55 Cal.4th 262.

[200] Exhibit X, Senate Rules Committee – Analysis of SB 260, as amended September 6, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 6.

[201] Exhibit X, Assembly Committee on Public Safety Analysis of SB 261, as amended June 29, 2015, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB261 (accessed on January 16, 2019), pages 2-3.

[202] *Montgomery v. Louisiana* (2016) 577 U.S. __, 136 S.Ct. 718.

[203] *People v. Franklin* (2016) 63 Cal.4th 261.

[204] Exhibit X, Assembly Committee on Public Safety – Analysis of SB 394, as amended June 26, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), pages 2-5.

[205] Exhibit A, Test Claim, page 26.

[206] Government Code, section 17556(b).

enactment of the test claim statutes and declared existing law, with the test claim statutes ultimately affirming the courts' interpretation of the law.

Accordingly, the Commission finds that the costs incurred by the claimant are not mandated by the state, but by the courts, and therefore are not eligible for reimbursement pursuant to article XIII B, section 9 of the California Constitution and Government Code section 17556(b).

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim and finds that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 25, 2019, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 25, 2019**

  Youth Offender Parole Hearings, 17-TC-29
  Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)
  County of San Diego, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 25, 2019 at Sacramento, California.

Jill Magee

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

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Matter: Youth Offender Parole Hearings

Claimant: County of San Diego

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