



July 6, 2023

Ms. Rebecca Andrews  
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655 West Broadway,  
15th Floor  
San Diego, CA 92101

Mr. Kris Cook  
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 Resentencing to Remove Sentencing Enhancements, 22-TC-02**  
Penal Code Sections 1171 and 1171.1 as Added by Statutes 2021, Chapter 728, Sections 2 and 3 (SB 483); Effective Date, January 1, 2022 (Renumbered as Penal Code Section 1172.7 and 1172.75 by Statutes 2022, Chapter 58)  
County of San Diego, Claimant

Dear Ms. Andrews and Mr. Cook:

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 no later than **5:00 pm on July 27, 2023**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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

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Ms. Andrews and Mr. Cook  
July 6, 2023  
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## Hearing

This matter is set for hearing on **Friday, September 22, 2023**, at 10:00 a.m. The Proposed Decision will be issued on or about September 8, 2023.

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 and so that detailed instructions regarding how to participate can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Heather Halsey  
Executive Director

**ITEM \_\_\_\_**  
**TEST CLAIM**

**DRAFT PROPOSED DECISION**

Penal Code Sections 1171 and 1171.1 as Added by  
Statutes 2021, Chapter 728, Sections 2 and 3 (SB 483)

Effective Date, January 1, 2022

(Renumbered as Penal Code Section 1172.7 and 1172.75 by  
Statutes 2022, Chapter 58)

*Resentencing to Remove Sentencing Enhancements*

22-TC-02

County of San Diego, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim filed by the County of San Diego addresses Statutes 2021, chapter 728, which added Penal Code sections 1171 and 1171.1.<sup>1</sup> Sections 1171 and 1171.1, as amended by the test claim statute retroactively apply prior changes in law that eliminated sentence enhancements for certain prior convictions, by declaring any sentence enhancement imposed by the changed laws for prior convictions that do not require sentence enhancements under current law to be legally invalid.<sup>2</sup> To remediate these legally invalid sentences, county correctional administrators are required to identify to the sentencing courts all persons in their custody currently serving a term for a judgment that included the now legally invalid sentence enhancements by certain deadlines.<sup>3</sup> The California Department of Corrections and Rehabilitation (CDCR) is also required to identify those individuals currently in its custody whose terms include the

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<sup>1</sup> These code sections were later renumbered as 1172.7 and 1172.75 by Statutes 2022, chapter 58.

<sup>2</sup> Penal Code sections 1171(a) and 1171.1(a) (renumbered as 1172.7(a) and 1172.75(a)). See also Health and Safety Code section 11370.2, as amended by Statutes 2017, chapter 677, section 1; and Penal Code Section 667.5(b), as amended by Statutes 2019, chapter 590, section 1.

<sup>3</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

legally invalid sentence enhancements by the same deadlines.<sup>4</sup> The courts are then required by certain dates to confirm that the judgments of the individuals identified by the State and the county include the legally invalid sentence enhancements and if so, recall the defendant's sentence and hold a resentencing, at which time the defendant is entitled to legal counsel.<sup>5</sup> The test claim statute expressly states, "Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety."<sup>6</sup>

Staff recommends that the Commission on State Mandates (Commission) deny the Test Claim on the ground that there are no costs mandated by the state pursuant to Government Code section 17556(g) since the test claim statute changed the penalty for a crime.

### **Procedural History**

The claimant filed the Test Claim on December 28, 2022.<sup>7</sup> The Department of Finance (Finance) filed comments on the Test Claim on April 28, 2023.<sup>8</sup> The claimant filed rebuttal comments on May 25, 2023.<sup>9</sup>

Commission staff issued the Draft Proposed Decision on July 6, 2023.<sup>10</sup>

### **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

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<sup>4</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

<sup>5</sup> Penal Code sections 1171(c) and 1171.1(c) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(c) and 1172.75(c)).

<sup>6</sup> Penal Code sections 1171(d)(1) and 1171.1(d)(1) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(d)(1) and 1172.75(d)(1)).

<sup>7</sup> Exhibit A, Test Claim, filed December 28, 2022.

<sup>8</sup> Exhibit B, Finance's Comments on the Test Claim, filed April 28, 2023.

<sup>9</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 25, 2023.

<sup>10</sup> Exhibit D, Draft Proposed Decision, issued July 6, 2023.

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.”<sup>11</sup>

**Claims**

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

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the test claim timely filed?	Test claims must be filed within 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later. <sup>12</sup> A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. <sup>13</sup>	<i>Timely Filed</i> – The test claim statute’s effective date was January 1, 2022, and the claimant filed the test claim on December 28, 2022, within 12 months of the effective date. The filing date establishes reimbursement eligibility for fiscal year 2021-2022, but the statute has a later effective date of January 1, 2022. Therefore, the potential period of reimbursement began on January 1, 2022.
Does the test claim statute mandate a new program or higher level of service on local agencies?	The test claim statute added Penal Code sections 1171 and 1171.1 (later renumbered as 1172.7 and 1172.75), which made changes in law that amended statutes that imposed sentence enhancements for a defendant’s prior convictions apply retroactively, declaring all sentence enhancements imposed under the	Yes –the test claim statute mandates a new program or higher level of service on county correctional administrators, public defenders and district attorneys. The county correctional administrators are required to identify people with invalid sentence enhancements, and provide the courts with information about these individuals.

<sup>11</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>12</sup> Government Code section 17551(c).

<sup>13</sup> Government Code section 17557(e).

Issue	Description	Staff Recommendation
	<p>previously amended laws, except for those that are still required under current law, to be legally invalid. Penal Code sections 1171 and 1171.1 remedy the legally invalid sentences by requiring the CDCR and county correctional administrators identify all persons in their custody currently serving a sentence that includes the legally invalid sentence enhancements, and report their names, birthdates, and docket or case numbers to the sentencing courts. This must be done by March 1, 2022 for all defendants who have already served their base sentence and any other sentence enhancements, and by July 1, 2022 for all other individuals. The sentencing courts review the defendants' judgments to confirm the sentence included the invalid sentence enhancements, and after confirmation recall the defendant's sentence and resentence the defendant. During resentencing, the defendant has the right to counsel. The courts must resentence all defendants who have already served their base sentence and any other sentence enhancements by October 1, 2022, and must resentence all other</p>	<p>Public defenders must represent defendants during resentencing, and district attorneys must represent the People during resentencing. These are new activities the local agencies were not obligated to perform previously, and they impose a new program or higher level of service.</p>

Issue	Description	Staff Recommendation
	<p>defendants by December 31, 2023.</p> <p>A resentencing pursuant to the test claim statute is required to result in a lesser sentence by virtue of eliminating the invalid sentence enhancements, “unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.”<sup>14</sup> In addition, the test claim statute requires “a full resentencing, not merely that the trial court strike the newly ‘invalid’ enhancements.”<sup>15</sup> Because the test claim statute requires a full resentencing, the court may also find that changes in law or post-conviction factors warrant reducing the sentence even further.<sup>16</sup></p>	
<p>Does the test claim statute result in costs mandated by the state?</p>	<p>Government Code section 17556 says, in relevant part, that “The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds any one of the following: ... (g) The</p>	<p><i>Deny</i> – There are no costs mandated by the state pursuant to Government Code section 17556(g). The test claim statute mandates a new program or higher level of service on county correctional administrators, public defenders, and district</p>

<sup>14</sup> Penal Code section 1171(d)(1) and 1171.1(d)(1) (renumbered as 1172.7(d)(1) and 1172.75(d)(1)).

<sup>15</sup> *People v. Monroe* (2022) 85 Cal.App.5th 393, 402.

<sup>16</sup> Penal Code section 1171(d)(2)-(3) and 1171.1(d)(2)-(3) (renumbered as 1172.7(d)(2)-(3) and 1172.75(d)(2)-(3)).

Issue	Description	Staff Recommendation
	statute... changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”	attorneys. However, there are no costs mandated by the state pursuant to Government Code section 17556(g). The test claim statute removes sentence enhancements from people currently serving prison sentences for a criminal conviction, thereby reducing their sentences and changing the penalty for their crimes. In addition, the activities of identifying inmates who are eligible for resentencing and representing them and the People during resentencing are not administrative in nature, but are indispensable to the scheme by which the Legislature has changed the penalty for the crime and thus, all mandated activities relate directly to the enforcement of the crime. <sup>17</sup> Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(g).

**Staff Analysis**

**A. The Test Claim Was Timely Filed.**

Test claims must be filed within 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.<sup>18</sup> A test claim shall be submitted on or

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<sup>17</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

<sup>18</sup> Government Code section 17551(c).



before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.<sup>19</sup>

The test claim statute's effective date was January 1, 2022, and the claimant filed the Test Claim on December 28, 2022, within 12 months of the effective date. The filing date establishes reimbursement eligibility for fiscal year 2021-2022, but the statute has a later effective date of January 1, 2022. Therefore, the potential period of reimbursement began on January 1, 2022.

**B. The Test Claim Statute Mandates a New Program or Higher Level of Service, but Does Not Impose Costs Mandated by the State Because the Test Claim Statute Changes the Penalty for a Crime Pursuant to Government Code Section 17556(g).**

The test claim statute retroactively applies changes in law that eliminated sentence enhancements for certain prior convictions, by declaring any sentence enhancement imposed by the changed laws for prior convictions that do not require sentence enhancements under current law to be legally invalid.<sup>20</sup> To remediate these legally invalid sentences, county correctional administrators are required to identify to the sentencing courts all persons in their custody currently serving a term for a judgment that included the now legally invalid sentence enhancements.<sup>21</sup> The counties are required to identify those individuals who have already served their base term and any other sentence enhancements by March 1, 2022, and then identify all other individuals by July 1, 2022.<sup>22</sup> CDCR is also required to identify those individuals currently in its custody whose terms include the legally invalid sentence enhancements by the same deadlines.<sup>23</sup> The courts are then required to confirm that the judgments of the individuals identified by the State and the county include the legally invalid sentence enhancements and if so, recall the defendant's sentence and hold a resentencing, at which time the defendant is entitled to legal counsel, by October 1, 2022 for defendants who have already served their base term and any other sentence enhancements, and by December 31, 2023 for all other defendants.<sup>24</sup> A resentencing pursuant to the test

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<sup>19</sup> Government Code section 17557(e).

<sup>20</sup> Penal Code sections 1171(a) and 1171.1(a) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(a) and 1172.75(a)). See also Health and Safety Code section 11370.2, as amended by Statutes 2017, chapter 677, section 1; and Penal Code Section 667.5(b), as amended by Statutes 2019, chapter 590, section 1.

<sup>21</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

<sup>22</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

<sup>23</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

<sup>24</sup> Penal Code sections 1171(c) and 1171.1(c) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(c) and 1172.75(c)).

claim statute is required to result in a lesser sentence by virtue of eliminating the invalid sentence enhancements, “unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.”<sup>25</sup> In addition, the test claim statute requires “a full resentencing, not merely that the trial court strike the newly ‘invalid’ enhancements.”<sup>26</sup> Because the test claim statute requires a full resentencing, the court may also find that changes in law or post-conviction factors warrant reducing the sentence even further.<sup>27</sup>

Staff finds that the test claim statute mandates a new program or higher level of service on county correctional administrators, public defenders to represent the defendants during resentencing, and district attorneys to represent the People during resentencing. However, there is not substantial evidence of increased costs in the record for county correctional administrators or public defenders to identify incarcerated persons with invalid sentence enhancements, or for district attorneys to represent the People during resentencing. More importantly, even if there were substantial evidence of these increased costs, there are no costs mandated by the state pursuant to Government Code section 17556(g). Government Code section 17556(g) says the Commission shall not find increased costs mandated by the state when it finds that a statute “. . . changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” The test claim statute removes sentence enhancements from people currently serving prison sentences for a criminal conviction, thereby reducing their sentences and changing the penalty for their crimes. In addition, the activities of identifying inmates who are eligible for resentencing and representing them and the People during resentencing are not administrative in nature, but are indispensable to the scheme by which the Legislature has changed the penalty for the crime and thus, all mandated activities relate directly to the enforcement of the crime.<sup>28</sup> Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(g).

### **Conclusion**

Based on the forgoing analysis, staff finds that the test claim statute does not impose a reimbursable state mandate within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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<sup>25</sup> Penal Code section 1171(d)(1) and 1171.1(d)(1) (renumbered as 1172.7(d)(1) and 1172.75(d)(1)).

<sup>26</sup> *People v. Monroe* (2022) 85 Cal.App.5th 393, 402.

<sup>27</sup> Penal Code section 1171(d)(2)-(3) and 1171.1(d)(2)-(3) (renumbered as 1172.7(d)(2)-(3) and 1172.75(d)(2)-(3)).

<sup>28</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

**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

<p><b>IN RE TEST CLAIM</b></p> <p>Penal Code Sections 1171 and 1171.1 as Added by Statutes 2021, Chapter 728, Sections 2 and 3 (SB 483)</p> <p>Effective Date January 1, 2022</p> <p>(Renumbered as Penal Code Section 1172.7 and 1172.75 by Statutes 2022, Chapter 58)</p> <p>Filed on December 28, 2022</p> <p>County of San Diego, Claimant</p>	<p>Case No.: 22-TC-02</p> <p><i>Resentencing to Remove Sentencing Enhancements</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted September 22, 2023)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 22, 2023. [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 deny the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	
Lynn Paquin, Representative of the State Controller, Vice Chairperson	
Spencer Walker, Representative of the State Treasurer	

## **Summary of the Findings**

This Test Claim alleges new state-mandated activities arising from Penal Code sections 1171 and 1171.1, as added by Statutes 2021, chapter 728 (later renumbered as Penal Code sections 1172.7 and 1172.75).<sup>29</sup> The test claim statute retroactively applies two prior changes in law that eliminated sentence enhancements for certain prior convictions, by declaring any sentence enhancement imposed by the changed laws for prior convictions that do not require sentence enhancements under current law to be legally invalid. To remediate these legally invalid sentences, county correctional administrators are required to identify to the sentencing courts all persons in their custody currently serving a term for a judgment that included the now legally invalid sentence enhancements. The counties are required to identify those individuals who have already served their base term and any other sentence enhancements by March 1, 2022, and then identify all other individuals by July 1, 2022. The Department of Corrections and Rehabilitation (CDCR) is also required to identify those individuals currently in its custody whose terms include the legally invalid sentence enhancements by the same deadlines. The courts are then required to confirm that the judgments of the individuals identified by the State and the county include the legally invalid sentence enhancements and if so, recall the defendant's sentence and hold a resentencing, at which time the defendant is entitled to legal counsel, by October 1, 2022 for defendants who have already served their base term and any other sentence enhancements, and by December 31, 2023 for all other defendants. A resentencing pursuant to the test claim statute is required to result in a lesser sentence by virtue of eliminating the invalid sentence enhancements, "unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety."<sup>30</sup> In addition, the test claim statute requires "a full resentencing, not merely that the trial court strike the newly 'invalid' enhancements."<sup>31</sup> Because the test claim statute requires a full resentencing, the court may also find that changes in law or post-conviction factors warrant reducing the sentence even further.<sup>32</sup>

The Commission finds that the test claim statute mandates a new program or higher level of service on county correctional administrators, public defenders to represent the defendants during resentencing, and district attorneys to represent the People during resentencing. However, there is not substantial evidence of increased costs in the record for county correctional administrators or public defenders to identify incarcerated persons with invalid sentence enhancements, or for district attorneys to represent the People during resentencing. More importantly, even if there were substantial evidence of these increased costs, there are no costs mandated by the state pursuant to

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<sup>29</sup> The code sections were renumbered by Statutes 2022, chapter 58.

<sup>30</sup> Penal Code section 1171(d)(1) and 1171.1(d)(1) (renumbered as 1172.7(d)(1) and 1172.75(d)(1)).

<sup>31</sup> *People v. Monroe* (2022) 85 Cal.App.5th 393, 402.

<sup>32</sup> Penal Code section 1171(d)(2)-(3) and 1171.1(d)(2)-(3) (renumbered as 1172.7(d)(2)-(3) and 1172.75(d)(2)-(3)).

Government Code section 17556(g). Government Code section 17556(g) says the Commission shall not find increased costs mandated by the state when it finds that a statute “. . . changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.” The test claim statute removes sentence enhancements from people currently serving prison sentences for a criminal conviction, thereby reducing their sentences and changing the penalty for their crimes. In addition, the activities of identifying inmates who are eligible for resentencing and representing them and the People during resentencing are not administrative in nature, but are indispensable to the scheme by which the Legislature has changed the penalty for the crime and thus, all mandated activities relate directly to the enforcement of the crime.<sup>33</sup> Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(g).

The Commission finds that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

## COMMISSION FINDINGS

### I. Chronology

- 10/08/2021 Penal Code section 1171 and 1171.1, Statutes 2021, Chapter 728 (SB 483), effective January 1, 2022, was enacted.
- 12/28/2022 The claimant filed the Test Claim.<sup>34</sup>
- 04/28/2023 The Department of Finance (Finance) filed comments on the Test Claim.<sup>35</sup>
- 05/26/2023 The claimant filed rebuttal comments.<sup>36</sup>
- 07/06/2023 Commission staff issued the Draft Proposed Decision.<sup>37</sup>

### II. Background

#### A. Prior Changes in Law

Until 2018, the Health and Safety Code required that when a person is convicted for one of several offenses related to possession or transport of controlled substances for the purpose of selling the controlled substance, the person would receive a full, separate, and consecutive three-year sentence enhancement for each prior felony conviction for a controlled substance offense.<sup>38</sup> In 2018, the Legislature amended the Health and

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<sup>33</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

<sup>34</sup> Exhibit A, Test Claim, filed December 28, 2022.

<sup>35</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 28, 2023.

<sup>36</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 25, 2023.

<sup>37</sup> Exhibit D, Draft Proposed Decision, issued July 6, 2023.

<sup>38</sup> Former Health and Safety Code section 11370.2 (Stats. 1998, ch. 936, §1).

Safety Code so that when a person is convicted for one of several offenses related to possession or transport of controlled substances for the purpose of selling the controlled substance, the only prior conviction that enhances the sentence is a conviction for violating or conspiring to violate the law prohibiting an adult using a minor as their agent in a controlled substance offense.<sup>39</sup>

Similarly, until 2020, the Penal Code required that whenever a convicted defendant received a prison sentence under Penal Code section 1170, the sentence would include a consecutive one-year sentence enhancement for each prior conviction the defendant had, except for convictions that were prior to a five year period in which the defendant did not commit any offenses that resulted in a felony conviction and was not in prison or jail custody.<sup>40</sup> In 2020, the Legislature amended the Penal Code so that the only prior convictions that impose a one-year sentence enhancement are sexually violent offenses as defined by Welfare and Institutions Code section 6600(b).<sup>41</sup>

Normally, changes to the codes do not have retroactive effects unless explicitly stated.<sup>42</sup> There is an exception to this rule for changes that reduce the punishment for a crime, but it only extends a change in law's applicability to defendants who were charged before the change in law took effect, but received their final sentence after the change in law took effect.<sup>43</sup> Neither of these prior changes in law included any provisions to apply the changes in law retroactively, so people who were sentenced prior to the change in law still had these sentence enhancements, even though they would not receive sentence enhancements for their prior convictions if they were sentenced today.

#### **B. Contemporaneous Changes to Sentencing Law at the Time of the Test Claim Statute**

Prior to the test claim statute, the rules for resentencing a defendant could be found in Penal Code section 1170(d):

When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole

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<sup>39</sup> Health and Safety Code section 11370.2, as amended by Statutes 2017, chapter 677, section 1.

<sup>40</sup> Former Penal Code Section 667.5(b) (Stats. 2018, ch. 423, §65).

<sup>41</sup> Penal Code Section 667.5(b), as amended by Statutes 2019, chapter 590, section 1.

<sup>42</sup> See, for example, Penal Code section 3, "No part of it is retroactive, unless expressly so declared." See also, *People v. Stamps* (2020) 9 Cal.5th 685, 699 ("It is well settled that a new statute is presumed to operate prospectively absent an express declaration of retrospectivity or a clear indication that the electorate, or the Legislature, intended otherwise.")

<sup>43</sup> *In re Estrada* (1965) 63 Cal.2d 740, 746-748.

Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. The court resentencing under this paragraph may reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. Credit shall be given for time served.<sup>44</sup>

At the same time that the test claim statute was going through the legislative process, the Legislature also passed Statutes 2021, chapter 719 (AB 1540), which moved the rules regarding resentencing to its own code section. Newly created Penal Code section 1170.03 (later renumbered as Penal Code section 1172.1) reads as follows:

(a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, within 120 days of the date of commitment on its own motion, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence.

(2) The court, in recalling and resentencing under this subdivision, shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

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<sup>44</sup> Former Penal Code section 1170(d) (Stats. 2020, ch. 29, § 15).



(3) The resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

(A) Reduce a defendant's term of imprisonment by modifying the sentence.

(B) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the Department of Justice originally prosecuted the case.

(4) In recalling and resentencing pursuant to this provision, the court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(5) Credit shall be given for time served.

(6) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

(7) Resentencing may be granted without a hearing upon stipulation by the parties.

(8) Resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board

of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant.

(2) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.<sup>45</sup>

### **C. The Test Claim Statute (Statutes 2021, Chapter 728)**

In 2021, the Legislature enacted the test claim statute with the stated intent to retroactively apply the prior changes in law discussed above on all persons currently serving a term of incarceration based on the repealed sentence enhancements.<sup>46</sup> The Legislature found that the two prior sentence enhancements were ineffective at reducing crime; longer prison sentences were demonstrably injurious to families, particularly in minority communities; and that recent studies found that retroactively applying sentence reductions had no measurable impact on recidivism rates.<sup>47</sup> As originally proposed, the bill would have required the courts to “administratively amend” a defendant’s sentence to remove the invalid sentence enhancements.<sup>48</sup> The Senate Appropriations Committee noted this was a novel and untested concept, and the more typical procedure was for the sentencing court to determine if the defendant was eligible for resentencing, and if so, whether the defendant should be resentenced.<sup>49</sup> “This traditional process aligns with the letter and presumed intent of the Victims’ Bill of Rights Act of 2008: Marsy’s Law (Proposition 9 (2008)), through which the voters, ‘to preserve and protect a victim’s right to justice and due process,’ constitutionally enshrined a victim’s right ‘[t]o be heard, upon request, at any proceeding, ... involving a post-arrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue.’”<sup>50</sup> This concern was enough that the Assembly Committee on Public Safety amended the bill to instead require the courts to recall the

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<sup>45</sup> Penal Code section 1170.03 (As added by Stats. 2021, ch. 719, §3.1; later renumbered as section 1172.1).

<sup>46</sup> Statutes 2021, chapter 728, section 1.

<sup>47</sup> Exhibit X (4) Assembly Committee on Public Safety, Analysis on SB 483 (2021-2022 Reg. Sess.) as proposed to be amended in July 13, 2021 hearing, page 3.

<sup>48</sup> Exhibit X (1), SB 483 (2021-2022 Reg. Sess.) as amended March 3, 2021, sections 2(c) and 3(c).

<sup>49</sup> Exhibit X (3), Senate Committee on Appropriations, Analysis on SB 483 (2021-2022 Reg. Sess.) as amended March 3, 2023, page 3.

<sup>50</sup> Exhibit X (3), Senate Committee on Appropriations, Analysis on SB 483 (2021-2022 Reg. Sess.) as amended March 3, 2023, pages 3-4.

sentence and resentence the defendant, incorporating much of the language found in the other resentencing bill discussed above that was simultaneously making its way through the Legislature.<sup>51</sup>

The test claim statute added two new sections to the Penal Code, sections 1171 and 1171.1 (later renumbered as 1172.7 and 1172.75 by Stats. 2022, ch. 58), which expressly make the sentence enhancement changes identified above retroactive. Penal Code section 1171(a) says that “Any sentence enhancement that was imposed prior to January 1, 2018, pursuant to Section 11370.2 of the Health and Safety Code, except for any enhancement imposed for a prior conviction of violating or conspiring to violate Section 11380 of the Health and Safety Code is legally invalid.”<sup>52</sup> Similarly, Penal Code section 1171.1(a) says that “Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.”<sup>53</sup>

The remaining subdivisions of Penal Code sections 1171 and 1171.1 proceed identically, so the following discussion is of the plain language for both sections 1171 and 1171.1.

Subdivision (b) outlines how the state and local government will identify people currently serving prison sentences that include the legally invalid sentence enhancements to correct their invalid sentences, by saying that “The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county<sup>54</sup> shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person’s date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement.”<sup>55</sup> The CDCR Secretary and county correctional administrators are required to provide this information to the courts by March 1, 2022 “for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the

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<sup>51</sup> Exhibit X (2) SB 483 (2021-2022 Reg. Sess.) as amended July 15, 2021, sections 2(d) and 3(d); see also Exhibit X (4) Assembly Committee on Public Safety, Analysis on SB 483 (2021-2022 Reg. Sess.) as proposed to be amended in July 13, 2021 hearing.

<sup>52</sup> Penal Code section 1171(a) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(a)).

<sup>53</sup> Penal Code section 1171.1(a) as added by Statutes 2021, Chapter 728 (renumbered as 1172.75(a)).

<sup>54</sup> “County correctional administrator” is not defined in the test claim statute, however, elsewhere in the Penal Code, “correctional administrator” is defined as “the sheriff, probation officer, or director of the county department of corrections.” See Penal Code sections 1203.016(g) and 1203.018(j)(1).

<sup>55</sup> Penal Code sections 1171(b) and 1171.1(b) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b) and 1172.75(b)).

enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.”<sup>56</sup> All other individuals must be identified to the courts by July 1, 2022.<sup>57</sup>

Subdivision (c) requires the courts to confirm that identified individuals’ judgments included the legally invalid sentence enhancements and to recall the sentence and hold a resentencing after verifying this. It specifically says that “Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant.”<sup>58</sup> The court must complete the recall and resentencing “by October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement,” and “by December 31, 2023, for all other individuals.”<sup>59</sup>

Subdivision (d) lays out the requirements for how a court goes about resentencing a person under the test claim statute and what information the courts are allowed to consider:

- (1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.
- (2) The court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.
- (3) The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant’s risk for future violence, and evidence that reflects that

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<sup>56</sup> Penal Code sections 1171(b)(1) and 1171.1(b)(1) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b)(1) and 1172.75(b)(1)).

<sup>57</sup> Penal Code sections 1171(b)(2) and 1171.1(b)(2) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(b)(2) and 1172.75(b)(2)).

<sup>58</sup> Penal Code sections 1171(c) and 1171.1(c) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(c) and 1172.75(c)).

<sup>59</sup> Penal Code sections 1171(c)(1)-(2); 1171.1(c)(1)-(2) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(c)(1)-(2) and 1172.75(c)(1)-(2)).

circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.<sup>60</sup>

Lastly, subdivision (e) says that the parties may choose to waive the resentencing hearing, and if the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees to it.<sup>61</sup>

### **III. Positions of the Parties**

#### **A. County of San Diego**

The claimant alleges that Penal Code sections 1172.7(b)-(e) and 1172.75(b)-(e), as added by the test claim statute and later renumbered, impose state mandated activities on public defenders and district attorneys. The mandated activities are specifically identified as:

(1) identify and review incarcerated individuals' records; (2) act as appointed counsel for individuals; and (3) represent individuals and the State of California regarding the validity of sentence enhancements, the applicability of post-conviction changes in law, and all "post-conviction factors," including but not limited to the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.<sup>62</sup>

The Test Claim notes that the activity of identifying and reviewing incarcerated individuals' records was performed by San Diego County's Public Defenders' Office.<sup>63</sup> The claimant alleges that local governments do not have any discretion on whether to perform these activities, and under prior law, local governments were not required to

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<sup>60</sup> Penal Code sections 1171(d) and 1171.1(d) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(d) and 1172.75(d)).

<sup>61</sup> Penal Code sections 1171(e) and 1171.1(e) as added by Statutes 2021, Chapter 728 (renumbered as 1172.7(e) and 1172.75(e)).

<sup>62</sup> Exhibit A, Test Claim, filed December 28, 2022, page 11.

<sup>63</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 12, 24 (Declaration of Matthew Justin Wechter, Deputy Public Defender IV, County of San Diego Public Defenders' Office, para. 8).

proactively identify individuals or gather and present evidence regarding those individuals at resentencing hearings.<sup>64</sup>

The claimant provided two declarations from its Public Defenders' Office, one declaring information about the activities performed by the Public Defenders' Office to implement the test claim statute, the other alleging the office incurred \$192,059 performing mandated activities between July 1, 2022 and December 15, 2022.<sup>65</sup> Based on anticipated staffing levels necessary to see the mandated activities through to the test claim statute's deadlines, the declarations allege an additional \$787,026 in increased costs between December 16, 2022, and December 31, 2023.<sup>66</sup> Based on San Diego County's percentage of the statewide population of incarcerated individuals, the claimant estimates statewide costs of \$9,528,162.<sup>67</sup>

The claimant alleges the mandated activities both provide a governmental service to the public, and have been uniquely imposed on local governments, making this a new program or higher level of service within the meaning of article XIII B, section 6.<sup>68</sup>

Regarding exceptions to the subvention requirement, the claimant asserts that the mandated activities do not implement any pre-existing federal constitutional or statutory scheme, and that local governments lack fee authority or other funding sources.<sup>69</sup>

Regarding the applicability of Government Code section 17556(g), the claimant alleges that the portions of the test claim statute that impose the mandated activities "do not directly penalize a defendant or relate to the 'duration or conditions of punishment.'"<sup>70</sup> The claimant looks at two prior Commission Decisions, *Domestic Violence Treatment Services – Authorization and Case Management (DVTS-ACM)*, CSM-9628101 and

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<sup>64</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 12, 14.

<sup>65</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 24 (Declaration of Matthew Justin Wechter, Deputy Public Defender IV, County of San Diego Public Defenders' Office, para. 8), 26 (Declaration of Miwa Pumpelly, Chief, Departmental Administrative Services, County of San Diego Public Defenders' Office, para. 5).

<sup>66</sup> Exhibit A, Test Claim, filed December 28, 2022, page 27 (Declaration of Miwa Pumpelly, Chief, Departmental Administrative Services, County of San Diego Public Defenders' Office, para. 6).

<sup>67</sup> Exhibit A, Test Claim, filed December 28, 2022, page 28 (Declaration of Miwa Pumpelly, Chief, Departmental Administrative Services, County of San Diego Public Defenders' Office, para. 12).

<sup>68</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 15-17.

<sup>69</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 17-18.

<sup>70</sup> Exhibit A, Test Claim, filed December 28, 2022, page 18, quoting Exhibit X (7), Commission on State Mandates, Test Claim Decision on *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03, adopted January 24, 2014, [https://csm.ca.gov/decisions/SARATSO\\_SODadopt012414.pdf](https://csm.ca.gov/decisions/SARATSO_SODadopt012414.pdf) (accessed May 30, 2023), page 30.

*State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03, where the Commission previously found the test claim statute changed the penalty for a crime, but at least some of the activities did not directly relate to enforcing the crime, and therefore were not excluded from reimbursement under Government Code section 17556(g). In *DVTS-ACM* the Commission found that assessing a defendant's probability of committing a future murder did not directly relate to enforcing the crime because doing so did not directly penalize the defendant.<sup>71</sup> In *SARATSO*, the Commission found that requirements for probation departments to include the results of a SARATSO test in presentencing reports to the courts and reports to CDCR were administrative in nature, and did not of themselves change the penalty for the underlying crime.<sup>72</sup>

As in *DVTS-ACM* and *SARATSO*, the Mandated Activities here are procedural (i.e., administrative) in nature because they involve evidence gathering and presentation.<sup>73</sup> The Mandated Activities are almost identical to the investigation, reporting, and filing activities in *SARATSO*, which did not “directly penalize a defendant” or “relate directly to the enforcement of a crime” for purposes of Section 6, even though they could impact the duration or conditions of post-conviction sentence. Further, unlike the portions of the test claim statutes at issue in those cases, the Mandated Activities do not involve monitoring a defendant who has been released on parole, requesting hearings if parole is violated, or ensuring intensive and specialized supervision for parolees.<sup>74</sup> Thus, even if some portions of SB 483 could be read as changing the penalty for a crime,

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<sup>71</sup> Exhibit X (6), Commission on State Mandates, Test Claim Decision on *Domestic Violence Treatment Services – Authorization and Case Management (DVTS-ACM)*, CSM-9628101, adopted April 24, 1998, <https://csm.ca.gov/decisions/213.pdf> (accessed May 30, 2023), page 10-11.

<sup>72</sup> Exhibit X (7), Commission on State Mandates, Test Claim Decision on *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03, adopted January 24, 2014, [https://csm.ca.gov/decisions/SARATSO\\_SODadopt012414.pdf](https://csm.ca.gov/decisions/SARATSO_SODadopt012414.pdf) (accessed May 30, 2023), page 30.

<sup>73</sup> Citing *People v. Delgado* (2022) 78 Cal.App.5th 95, 98.

<sup>74</sup> Citing Exhibit X (6), Commission on State Mandates, Test Claim Decision on *Domestic Violence Treatment Services – Authorization and Case Management (DVTS-ACM)*, CSM-9628101, adopted April 24, 1998, <https://csm.ca.gov/decisions/213.pdf> (accessed May 30, 2023), page 8-9; Exhibit X (7) Commission on State Mandates, Test Claim Decision on *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03, adopted January 24, 2014, [https://csm.ca.gov/decisions/SARATSO\\_SODadopt012414.pdf](https://csm.ca.gov/decisions/SARATSO_SODadopt012414.pdf) (accessed May 30, 2023), page 32-33.

Section 17556(g) would only exempt from subvention those activities that directly penalize a defendant, which the Mandated Activities do not do.<sup>75</sup>

The claimant also argues that Penal Code sections 1171 and 1171.1 as added by the test claim statute (and later renumbered as sections 1172.7 and 1172.75) are codified in Part 2 of the Penal Code, which is titled “Of Criminal Procedure,” which further demonstrates the mandated activities are procedural, and therefore the test claim statute does not relate directly to the enforcement of the crime or infraction.<sup>76</sup>

In its rebuttal to Finance’s comments, the claimant argues that Government Code section 17556(g) does not apply to the mandated activities because the subdivisions that impose mandated activities on local governments are found in a different portion of the test claim statute from the subdivisions where the test claim statute changed the penalty for a crime.

To the extent Senate Bill 483 changed the penalty for a crime, only [newly added Penal Code sections 1171(a) and 1171.1(a)] affected that change in penalty, by declaring “[a]ny sentence enhancement that was imposed .... legally invalid.” This test claim does not seek reimbursement for [Penal Code sections 1171(a) and 1171.1(a)]. This test claim seeks reimbursement for costs incurred to comply with [Penal Code sections 1171(b)-(e) and 1171.1(b)-(e)]. These sections go beyond changing the penalty for a crime and require Claimant to undertake additional non-enforcement related activities.<sup>77</sup>

As a final point to the claimant’s rebuttal, the claimant asserts that *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 175, finds that any exceptions to the subvention requirement must be narrowly construed to give effect to the voter intent behind section 6. The exception to the subvention requirement found in Government Code section 17556(g) should therefore be narrowly construed, while the limitation to the exception found in the “but only” portion of 17556(g) should be broadly construed. “[T]o the extent there is any uncertainty regarding whether the Mandated Activities relate directly to the enforcement of a crime, *Long Beach Unified School District* requires Section 17556(g) to be applied in a constitutional manner – that is, by honoring voter intent to limit exceptions to the State’s subvention obligation.”<sup>78</sup>

## **B. Department of Finance**

Finance asserts that the claim should be denied because any costs incurred in relation to the test claim statute are not reimbursable pursuant to Government Code section 17556(g). Finance explained that “SB 483 created a new process to apply the sentence enhancement repeals [from SB 180 and SB 136] retroactively by resentencing certain persons currently serving a sentence that is comprised, at least in part, of a type of

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<sup>75</sup> Exhibit A, Test Claim, filed December 28, 2022, page 19.

<sup>76</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 25, 2023, page 2.

<sup>77</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 25, 2023, page 2.

<sup>78</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 25, 2023, pages 2-3.



sentence enhancement that was repealed in either 2018 or 2020.”<sup>79</sup> Section 17556(g) says that the Commission shall not find reimbursable costs mandated by the state in a test claim that changes the penalty for a crime or infraction. “The sentencing changes mandated by SB 483 clearly change the penalty for a crime or infraction, and these changes relate directly to the enforcement of the crime or infraction.”<sup>80</sup> Therefore, Finance concluded the Commission should deny the Test Claim in its entirety.

#### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>81</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>82</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>83</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>84</sup>

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<sup>79</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 28, 2023, page 1.

<sup>80</sup> Exhibit B, Finance’s Comments on the Test Claim, filed April 28, 2023, page 2.

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

<sup>82</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>83</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>84</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>85</sup>
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.<sup>86</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>87</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>88</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>89</sup>

**A. The Test Claim Was Timely Filed, with a Potential Period for Reimbursement Beginning January 1, 2022.**

Test claims must be filed within 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.<sup>90</sup> A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.<sup>91</sup>

The test claim statute’s effective date was January 1, 2022, and the claimant filed the Test Claim on December 28, 2022, within 12 months of the effective date and, therefore, the Test Claim was timely filed. The filing date establishes reimbursement eligibility for fiscal year 2021-2022, but the statute has a later effective date of January 1, 2022. Therefore, the potential period of reimbursement begins on January 1, 2022.

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<sup>85</sup> *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.

<sup>86</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>87</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

<sup>88</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>89</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

<sup>90</sup> Government Code section 17551(c).

<sup>91</sup> Government Code section 17557(e).

**B. The Test Claim Statute Creates a State-Mandated Program that Imposes New Activities on County Correctional Administrators, Public Defenders, and District Attorneys.**

**1. The Test Claim Statute Mandates that County Correctional Administrators Shall Identify Persons with Legally Invalid Sentence Enhancements.**

The first step of the procedure outlined in the test claim statute is that the county correctional administrators “shall identify those persons in their custody currently serving a term for a judgment that includes” one of the subject sentence enhancements, “and shall provide the name of each person, along with the person’s date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement.”<sup>92</sup> The county correctional administrators must review the records of people currently in their custody to identify those whose judgments included the invalid sentence enhancement, and provide the courts with the names, birthdates, and case number or docket number of the individuals who have already served their base term and any other sentence enhancements and are currently serving a sentence based on the enhancement, by March 1, 2022, and for all other individuals whose judgments included the invalid sentence enhancements by July 1, 2022.<sup>93</sup> These are clearly stated requirements that the county correctional administrators must complete by set deadlines, and the requirements are mandated by the state.

**2. The Test Claim Statute Mandates that Public Defenders Shall Represent Indigent Defendants During Resentencing.**

When the courts resentence a defendant under the test claim statute, the courts “shall appoint counsel.”<sup>94</sup> It is the duty of public defenders to defend, “upon order of the court... any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings.”<sup>95</sup> A resentencing, when a court is obligated to resentence the defendant, is a critical stage of the criminal proceeding.<sup>96</sup> During a resentencing under the test claim statute, the courts must appoint legal counsel to represent indigent defendants, and the duty of serving as appointed counsel falls to public defenders. The test claim statute therefore mandates that public defenders serve as appointed counsel

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<sup>92</sup> Penal Code section 1171(b) and 1171.1(b) (renumbered as 1172.7(b) and 1172.75(b)).

<sup>93</sup> Penal Code section 1171(b)(1)-(2) and 1171.1(b)(1)-(2) (renumbered as 1172.7(b)(1)-(2) and 1172.75(b)(1)-(2)).

<sup>94</sup> Penal Code sections 1171(d)(5) and 1171.1(d)(5) (renumbered as 1172.7(d)(5) and 1172.75(d)(5)).

<sup>95</sup> Government Code section 27706(a).

<sup>96</sup> *People v. Rouse* (2016) 245 Cal.App.5th 292, 300.

for defendants, and argue in favor of any changes in law or post-conviction factors that would warrant the court impose a lesser sentence on the defendant.<sup>97</sup>

### **3. Although the Test Claim Statute Does Not Explicitly Mention District Attorneys, District Attorneys Are Required by Law to Participate in the Mandated Resentencing Activities.**

District attorneys are not referenced anywhere in the plain language of the test claim statute itself. However, the legislative history shows a clear expectation that district attorneys would be involved in a mandated resentencing. As originally proposed, the test claim statute didn't require resentencing; instead courts were directed to administratively amend the person's sentence, removing the legally invalid sentence enhancements without a hearing.<sup>98</sup> The Assembly Committee on Public Safety amended SB 483 to require the courts resentence the defendants instead of administratively amend their sentences.<sup>99</sup> In making this change, the Assembly Appropriations Committee noted that the proposed bill presented possible reimbursable costs to the counties "for county prosecutors and public defenders to litigate re-sentencing hearings."<sup>100</sup> This acknowledgement demonstrates the Legislature knew that a resentencing hearing requires not just public defenders to represent indigent defendants, but district attorneys to represent the People.

District attorneys serve as public prosecutors, and are required to represent the public in criminal proceedings.<sup>101</sup> "Sentencing is a critical stage in the criminal process within the meaning of the Sixth Amendment."<sup>102</sup> Courts have applied similar importance to resentencing when a court finds it must resentence the defendant.<sup>103</sup> "[T]he People have an interest in being heard throughout the course of a criminal prosecution, and it is the district attorney's duty to advocate on the People's behalf in an effort to achieve a fair and just result."<sup>104</sup>

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<sup>97</sup> Penal Code sections 1171(d)(2)-(3) and 1171.1(d)(2)-(3) (renumbered as 1172.7(d)(2)-(3) and 1172.75(d)(2)-(3)).

<sup>98</sup> Exhibit X (1), SB 483 (2021-2022 Reg. Sess.) as amended March 3, 2021, sections 2(c) and 3(c), as amended March 3, 2021.

<sup>99</sup> Exhibit X (2), SB 483 (2021-2022 Reg. Sess.) as amended July 15, 2021, sections 2(d) and 3(d); see also Exhibit X (4), Assembly Committee on Public Safety, Analysis on SB 483 (2021-2022 Reg. Sess.) as proposed to be amended at July 13, 2021 hearing.

<sup>100</sup> Exhibit X (5), Assembly Committee on Appropriations, Analysis on SB 483 (2021-2022 Reg. Sess.) as amended July 15, 2021, page 2.

<sup>101</sup> Government Code section 26500

<sup>102</sup> *People v. Rouse* (2016) 245 Cal.App.5th 292, 297.

<sup>103</sup> *People v. Rouse* (2016) 245 Cal.App.5th 292, 300.

<sup>104</sup> *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1388 (finding the district attorney must serve as prosecutor and represent the People at a sentencing hearing).

Under this test claim statute, a court must recall a sentence and resentence the defendant once it confirms that the defendant’s judgment included the now legally invalid sentence enhancements. During resentencing, the court also considers whether imposing a lesser sentence would endanger public safety. Because the resentencing is a critical stage in the criminal procedure, and district attorneys are required by law to represent the People in the proceedings, district attorneys are mandated by the state to participate in the resentencing under the test claim statute.

**4. The Mandated Activities in the Test Claim Statute Constitute a New Program or Higher Level of Service.**

For a test claim statute to be subject to subvention under article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. A mandated activity is new when it is new in comparison to what was legally required immediately before the test claim statute or executive order.<sup>105</sup> Newly mandated activities impose a new program or higher level of service when the activities carry out the governmental function of providing services to the public or impose a unique requirement on local governments that does not apply to all residents and entities within the state.<sup>106</sup>

Here, the state-mandated requirements are new. Prior to the test claim statute, a person whose sentence was made final before the prior changes in law went into effect could not benefit from the changes in law, and the county administrators, public defenders, and district attorneys were not required to perform the activities described above.<sup>107</sup> In addition, the activities carry out unique governmental functions in providing public safety and ensuring fairness in the criminal legal system. The mandated activities therefore constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

**C. The New Mandated Activities Do Not Result in Increased Costs Mandated by the State.**

**1. There Is Not Substantial Evidence in the Record for Increased Costs Mandated by the State for County Correctional Administrators or Public Defenders to Identify Inmates with Legally Invalid Sentence Enhancements, or for District Attorneys to Represent the People During Resentencing.**

The final element that must be met for reimbursement to be required under article XIII B, section 6 of the California Constitution is that the mandated activities must result in a local agency incurring increased costs mandated by the state within the meaning of

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<sup>105</sup> See *Lucia Mar Unified School Dist. v. State of California* (1988) 44 Cal.3d 830, 835.

<sup>106</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521; *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538

<sup>107</sup> Penal Code section 3, “No part of it is retroactive, unless expressly so declared.” See *People v. Stamps* (2020) 9 Cal.5th 685, 699.

Government Code section 17514. That section defines “costs mandated by the state” as “any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” Substantial evidence in the record is required to support a finding that the mandated activities result in costs mandated by the state.<sup>108</sup> While the claimant has filed sufficient evidence supporting the increased costs incurred by the Public Defender’s Office beginning in July 2022, the claimant has not filed any evidence to support the allegation that the activity of identifying inmates with legally invalid sentence enhancements, or the activities performed by the District Attorney’s Office, result in increased costs mandated by the state.

The claimant filed one declaration to support the allegation that the Public Defenders’ Office incurred \$192,059 of actual increased costs for support staff and attorney time between July 1 and December 15, 2022, and estimates that the Public Defenders’ Office will incur an additional \$787,027 in support staff and attorney costs to complete all resentencing by December 31, 2023.<sup>109</sup> While this is sufficient to support increased costs for public defenders representing defendants during resentencing, the claimant has not filed any declarations alleging increased costs for the activities required to be performed by county correctional administrators or district attorneys. In the Test Claim, the claimant alleges that the Public Defenders’ Office did the work to identify inmates with invalid sentence enhancements.<sup>110</sup> The test claim statute directed this activity to county correctional administrators, which as stated previously, has been defined in the Penal Code to mean “the sheriff, probation officer, or director of the county department of corrections.”<sup>111</sup> The Assembly Appropriations Committee acknowledged the statute imposed possible reimbursable costs for “county jail staff to review inmate records and identify inmates eligible for referral to the sentencing court,” further demonstrating it was not the Legislature’s intention for public defenders to perform these activities.<sup>112</sup> Even assuming that it was proper for the public defenders to perform activities mandated to the county correctional administrator, the public defenders’ declarations only

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<sup>108</sup> Government Code section 17559(b).

<sup>109</sup> Exhibit A, Test Claim, filed December 28, 2022, page 26-27 (Declaration of Miwa Pumpelly, Chief, Departmental Administrative Services, County of San Diego Public Defender’s Office, para. 5-6). This declaration satisfies the requirement in Government Code section 17564(a) that the Test Claim exceed one thousand dollars.

<sup>110</sup> Exhibit A, Test Claim, filed December 28, 2022, page 24 (Declaration of Matthew Justin Wechter, Deputy Public Defender IV for the County of San Diego, para. 8).

<sup>111</sup> See Penal Code sections 1203.016(g) and 1203.018(j)(1).

<sup>112</sup> Exhibit X (5), Assembly Committee on Appropriations, Analysis on SB 483 (2021-2022 Reg. Sess.) as amended July 15, 2021, page 2.

demonstrate actual increased costs incurred *after* the deadlines to identify inmates with legally invalid sentence enhancements.<sup>113</sup>

Similarly, there is no evidence of increased costs mandated by the state for the activities performed by the District Attorney's Office.

Accordingly, there is not substantial evidence in the record supporting a finding of increased costs mandated by the state for county correctional administrators or Public Defenders to identify inmates with legally invalid sentence enhancements, or for the activities performed by the District Attorney's Office.

**2. Even if Substantial Evidence of Costs Were Filed for All the Mandated Activities, there Are No Costs Mandated by the State Because the Test Claim Statute Changes the Penalty for a Crime Pursuant to Government Code Section 17556(g).**

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds... The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."<sup>114</sup>

The test claim statute retroactively applies changes in law that eliminated sentence enhancements that used to be added to a person's term of judgment to reduce convicted persons' sentences, clearly changing the penalties for crimes that were originally imposed at sentencing. Although the prior changes to Health and Safety Code section 11370.2 and Penal Code section 667.5(b) are what ended the use of these sentence enhancements, the test claim statute actually changed the penalties for people who were convicted and sentenced for their crimes before these changes in law.<sup>115</sup> The Legislature gave the prior changes in law retroactive effect because it found that the sentence enhancements were ineffective at reducing crime, longer prison sentences are demonstrably injurious to families in minority communities, and that retroactively applying sentence reductions has no measurable impact on recidivism rates.<sup>116</sup> A resentencing pursuant to the test claim statute is required to result in a

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<sup>113</sup> Exhibit A, Test Claim, filed December 28, 2022, page 26-27 (Declaration of Miwa Pumpelly, Chief, Departmental Administrative Services, County of San Diego Public Defender's Office, para. 5-6), showing increased costs between July 1, 2022 and December 15, 2022, and anticipated increased costs between December 16, 2022 and December 31, 2023, all of which were incurred after the March 31 and July 1, 2022 statutory deadlines to identify inmates with legally invalid sentence enhancements. (Penal Code sections 1171(b)(1)-(2) and 1171.1(b)(1)-(2) (renumbered as section 1172.7(b)(1)-(2) and 1172.75(b)(1)-(2)).

<sup>114</sup> Government Code section 17556(g).

<sup>115</sup> *People v. Burgess* (2022) 86 Cal.App.5th 461, 382.

<sup>116</sup> Exhibit X (4) Assembly Committee on Public Safety, Analysis on SB 483 (2021-2022 Reg. Sess.) as proposed to be amended in July 13, 2021 hearing, page 3.

lesser sentence by virtue of eliminating the invalid sentence enhancements, “unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety.”<sup>117</sup> In addition, the test claim statute requires “a full resentencing, not merely that the trial court strike the newly ‘invalid’ enhancements.”<sup>118</sup> Because the test claim statute requires a full resentencing, the court may also find that changes in law or post-conviction factors warrant reducing the sentence even further.<sup>119</sup> It is indisputable that the purpose of the test claim statute is to change and reduce the penalty for convicted persons’ crimes.

The next question under section 17556(g) is whether the mandated activities are part of “that portion of the statute relating directly to the enforcement of the crime or infraction.” The Fourth District Court of Appeal recently held that a mandated activity directly relates to enforcement of the crime or infraction when “it plays an indispensable role” in the scheme that changed the penalty for a crime.<sup>120</sup>

Here, the mandated activities all play an indispensable role in the scheme that changed the penalty for a crime. Identifying individuals with invalid sentence enhancements is an indispensable part of the resentencing scheme outlined by the test claim statute. Without the county correctional administrators providing information to the courts about the people in their custody with invalid sentence enhancements, the courts would not be able to recall and resentence defendants.<sup>121</sup> Moreover, as originally proposed, the test claim statute would have required the courts to administratively amend the defendant’s sentence, but this was changed to instead require the court properly resentence the defendant because administratively amending the sentence would violate victims’ rights to be heard in post-conviction sentencing and release decisions.<sup>122</sup> As explained earlier, resentencing is a critical stage of the criminal process.<sup>123</sup> Public defenders have

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<sup>117</sup> Penal Code section 1171(d)(1) and 1171.1(d)(1) (renumbered as 1172.7(d)(1) and 1172.75(d)(1)).

<sup>118</sup> *People v. Monroe* (2022) 85 Cal.App.5th 393, 402.

<sup>119</sup> Penal Code section 1171(d)(2)-(3) and 1171.1(d)(2)-(3) (renumbered as 1172.7(d)(2)-(3) and 1172.75(d)(2)-(3)).

<sup>120</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

<sup>121</sup> See *People v. Burgess* (2022) 86 Cal.App.5th 375, 381 (finding the courts lacked jurisdiction to resentence a defendant under Penal Code section 1172.75 outside of the mandated procedure); see also Penal Code section 1172.1(a) (Resentencing procedure only allows courts to resentence a defendant on its own motion within 120 days of sentencing, otherwise it must be at the recommendation of either the CDCR Secretary, the Board of Parole Hearings, county correctional administrator, district attorney or Attorney General).

<sup>122</sup> Exhibit X (1), Senate Committee on Appropriations, Analysis on SB 483 (2021-2022 Reg. Sess.) as amended March 3, 2023, page 3.

<sup>123</sup> *People v. Rouse* (2016) 245 Cal.App.5th 292, 300.



a stated duty imposed by the test claim statute to represent defendants during resentencing, and district attorneys are likewise obligated to represent the People during resentencing.<sup>124</sup> The activities of public defenders and district attorneys are therefore indispensable to resentencing under the test claim statute. The test claim statute changes the penalty for a crime, and the mandated activities are indispensable to the scheme used to change the penalty for the crime, and therefore are directly related to enforcing the crime or infraction within the meaning of Government Code section 17556(g).

The claimant, however, raises four arguments for why Government Code section 17556(g) does not apply. First, the claimant alleges that the mandated activities are merely procedural or administrative in nature, as was the case in prior test claims that found at least some mandated activities did not directly relate to enforcing a crime and were therefore reimbursable.<sup>125</sup> Second, the claimant argues that according to the prior test claim decisions it relies on, mandated activities can only directly relate to enforcing a crime if they directly penalize a defendant or relate to the duration or conditions of a punishment.<sup>126</sup> Third, the claimant argues that the mandated activities in Penal Code sections 1171 and 1171.1 are in different subdivisions from where the test claim statute actually changed the penalty for a crime, and therefore do not directly relate to enforcing the crime.<sup>127</sup> Lastly, the claimant argues that to the extent there is any uncertainty regarding whether the mandated activities directly relate to enforcing a crime, *Long Beach Unified School District* requires any exceptions to the subvention requirement to be narrowly construed to honor voter intent in enacting article 6.<sup>128</sup>

The law does not support the claimant's arguments.

The claimant cites to *People v. Delgado* (2022) 78 Cal.App.5th 95, 98 (*Delgado*) in support of its claim the mandated activities are merely procedural or administrative and not directly related to enforcing a crime. *Delgado* does not discuss whether resentencing is a procedural or administrative activity; it addresses whether a defendant had a right to a special type of court proceeding used to preserve evidence to be considered in future parole hearings called a *Franklin* proceeding. In a footnote, the

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<sup>124</sup> *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1388 (finding the district attorney must serve as prosecutor and represent the People at a sentencing hearing).

<sup>125</sup> Exhibit A, Test Claim, filed December 28, 2022, pages 18-19, citing to the Commission's Decisions in *Domestic Violence Treatment Services – Authorization and Case Management (DVTM-ACM)*, CSM-9628101 and *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03.

<sup>126</sup> Exhibit A, Test Claim, filed December 28, 2022, page 19, citing to the Commission's Decisions in *Domestic Violence Treatment Services – Authorization and Case Management (DVTM-ACM)*, CSM-9628101 and *State Authorized Risk Assessment Tool for Sex Offenders, (SARATSO)*, 08-TC-03.

<sup>127</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 25, 2023, page 2.

<sup>128</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 25, 2023, pages 2-3.

*Delgado* court explained the difference between a proceeding, where the court does not render a final determination or make any findings of fact, and a hearing involving issues of law and fact to be determined, stating:

A hearing generally involves definitive issues of law or fact to be determined with a decision rendered based on that determination. A proceeding is a broader term describing the form or manner of conducting judicial business before a court. While a judicial officer presides over a *Franklin* proceeding and regulates its conduct, the officer is not called upon to make findings of fact or render any final determination at the proceeding's conclusion.<sup>129</sup>

However, *Delgado* refutes the claimant's position that the mandated activities are merely procedural or administrative, rather than supports it. Unlike the *Franklin* proceeding discussed in *Delgado*, there are issues of law and fact that must be considered during a resentencing under the test claim statute. A resentencing under the test claim statute is a full resentencing, not just the removal of invalid sentence enhancements.<sup>130</sup> Pursuant to Penal Code sections 1171(d)(2) and 1171.1(d)(2), "[t]he court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing." The court is also required by Penal Code sections 1171(d)(1) and 1171.1(d)(1) to impose a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, "unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety." Thus, *Delgado* does not support claimant's assertions that the mandated activities are administrative or procedural.

Furthermore, recent case law considered the applicability of Government Code section 17556(g) on activities the claimant alleged were merely procedural or administrative. In *County of San Diego v. Commission on State Mandates*, the claimant asserted that a statute that required the State Parole Board hold youth offender parole hearings for defendants who were under 26 years old at the time of their offense created a state mandate requiring district attorneys and public defenders to first participate in *Franklin* proceedings to preserve evidence of the youth-related factors to be considered at the future parole hearings. The appellant in that case raised the same argument that the claimant raises here; that the mandated activities implemented procedural and administrative changes, and therefore did not directly relate to enforcing the crime.<sup>131</sup> The court found this claim to be without merit, and explained that:

Parole is not a mere "procedural" or "administrative" facet of the criminal justice system. "[P]arole is punishment." [citation omitted] In fact, "parole is a mandatory component of any prison sentence. 'A sentence resulting in

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<sup>129</sup> *People v. Delgado* (2022) 78 Cal.App.5th 95, 98 (fn. 1).

<sup>130</sup> *People v. Monroe* (2022) 85 Cal.App.5th 393, 402.

<sup>131</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

imprisonment in the state prison ... shall include a period of parole supervision or postrelease community supervision, unless waived ....' [citation omitted] Thus, a prison sentence 'contemplates a period of parole, which in that respect is related to the sentence.' " [citation omitted] By guaranteeing parole eligibility for all qualified youth offenders, the Test Claim Statutes altered the substantive punishments, i.e., the penalties, for the offenses perpetrated by those offenders.<sup>132</sup>

Just as parole is not a mere "procedural" or "administrative" facet of the criminal justice system, but is part of the defendant's punishment, so too are all the steps required by the test claim statute to recall and resentence a person whose term of judgment contains the legally invalid sentence enhancements. When the courts find a defendant is entitled to resentencing, the resentencing has the same importance as sentencing.<sup>133</sup> "The purpose of sentencing is public safety achieved through *punishment*, rehabilitation, and restorative justice."<sup>134</sup> Thus, by requiring the county to identify convicted persons whose terms of judgment contain the legally invalid enhancements, and then requiring courts to recall and resentence convicted persons to remove legally invalid sentence enhancements, apply any other changes in law that would reduce sentences or allow for judicial discretion, and consider postconviction factors and evidence that reflect a convicted person's reduced risk for future violence or that continued incarceration is no longer in the interest of justice, the test claim statute has substantively changed the penalty for the crimes. Accordingly, the mandated activities are not merely administrative or procedural facets of the criminal justice system, but rather all play an indispensable role in the enforcement of the crime and the resulting reduction in the penalty imposed.<sup>135</sup>

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<sup>132</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

<sup>133</sup> *People v. Rouse* (2016) 245 Cal.App.5th 292, 300.

<sup>134</sup> Penal Code section 1170(a) (Emphasis added).

<sup>135</sup> The claimant also argues as its second point that the Commission's prior decisions show that only mandated activities that directly relate to enforcement of a crime are those that either directly penalize the defendant or relate to the duration or conditions of punishment. (Exhibit A, Test Claim, filed December 28, 2022, pages 18-19, citing to the Commission's decisions in *State Authorized Risk Assessment Tools for Sex Offenders (SARATSO)*, 08-TC-03 and *Domestic Violence Treatment Services Authorization and Case Management (DVTS-ACM)*, CSM-96-281-01.) As described above, all the mandated activities in this case relate to the criminal sentences and thus, all relate to conditions of punishment. Therefore, this case is distinguishable from those prior test claims that were partially approved.

Moreover, the Commission does not designate its past decisions as precedential pursuant to Government Code section 11425.60, and due process permits administrative agencies substantial deviation from the principle of stare decisis. (*Weiss v. Board of Equalization* (1953) 40 Cal.2d 772, 776) What is legal precedent is the

*County of San Diego* also addresses the claimant’s third argument that the mandated activities are located in a different subdivision from where the test claim statute actually changed the penalty for a crime.<sup>136</sup> In that case, the County of San Diego argued that Penal Code section 3051(f) created mandated activities for public defenders and district attorneys to preserve evidence of the youth-related factors to be considered at the future parole hearings, while the portions of the test claim statute that obligated the State Parole Board to hold parole hearings resulting in the actual change of penalty for a crime were located in Penal Code sections 3046 and 3051(b) and (e) and, thus, Government Code section 17556(g) does not apply. The court found this argument unpersuasive, and found that preserving the evidence identified in section 3051(f) played an indispensable role in the State Parole Board’s determination, and was directly related to the change in penalty and enforcement of crime.

Penal Code section 3051, subdivision (f), identifies the evidence that may be introduced and considered when the Board assesses a parole candidate’s growth, maturity, and overall parole suitability. (Pen. Code, § 3051, subd. (f)(1), (2).) Because it dictates the evidence and information the Board may, or must, assess when determining a candidate’s parole suitability, it plays an indispensable role in the youth offender parole hearing scheme. Indeed, in practice, it very well may be determinative as to whether a given youth offender will be released on parole. Further, there can be no dispute that parole flows directly from the parolee’s underlying crime. [citation omitted] Because Penal Code section 3051, subdivision (f), plays a pivotal role in the Board’s parole determination, and parole is a direct consequence of a criminal conviction, we conclude section 3051, subdivision (f)—like the other statutory components that make up the Test Claim Statutes—directly relates to the enforcement of the crimes perpetrated by eligible youth offenders.<sup>137</sup>

Just as in *County of San Diego*, the claimant’s assertion that the mandated activities are located in a different subdivision of the test claim statute from where it changes the penalty for a crime is not relevant. The dispositive issue is whether the mandated activities are indispensable to the scheme through which the Legislature implemented the change to the penalty for a crime, and as stated above, all of the mandated activities are indispensable to the recall of the original sentence required by the test claim statute

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Fourth District Court of Appeal’s finding that a mandated activity directly relates to enforcement of the crime or infraction pursuant to Government Code section 17556(g) when “it plays an indispensable role” in the scheme that changed the penalty for a crime.” (*County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].)

<sup>136</sup> Exhibit C, Claimant’s Rebuttal Comments, filed May 25, 2023, page 2.

<sup>137</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

to remove the legally invalid sentence enhancements and the subsequent resentencing requirement that results in a reduced penalty.

Finally, there is the claimant's argument that "to the extent there is any uncertainty regarding whether the mandated activities relate directly to enforcing a crime, *Long Beach Unified School District* requires section 17556(g) to be applied in a constitutional manner – that is, by honoring voter intent to limit exceptions to the State's subvention obligation."<sup>138</sup> There is no uncertainty here as to whether the mandated activities relate directly to enforcing a crime. Mandated activities directly relate to enforcing a crime when they "[play] an indispensable role" in the scheme through which the Legislature has changed the penalty for a crime.<sup>139</sup> As explained above, the mandated activities of identifying defendants with legally invalid sentence enhancements, and then representing those defendants and the State in resentencings to redetermine the defendants' sentences, are indispensable to the scheme through which the Legislature has removed the invalid sentence enhancements and changed the defendants' penalties for their crimes. It is therefore not inconsistent with *Long Beach Unified School District* to find that the mandated activities directly relate to enforcing the crime.

Accordingly, the Commission finds that the test claim statute does not result in costs mandated by the state because the test claim statute changes the penalty for a crime pursuant to Government Code section 17556(g).

## **V. Conclusion**

Based on the foregoing analysis, the Commission denies this Test Claim.

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<sup>138</sup> Exhibit C, Claimant's Rebuttal Comments, filed May 25, 2023, pages 2-3.

<sup>139</sup> *County of San Diego v. Commission on State Mandates* (May 16, 2023, D079742) 91 Cal.App.5th 625 [p. 11] [2023 WL 3473659].

## 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 July 6, 2023, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 6, 2023**

*Resentencing to Remove Sentencing Enhancements, 22-TC-02*

Penal Code Sections 1171 and 1171.1 as Added by Statutes 2021, Chapter 728, Sections 2 and 3 (SB 483); Effective Date, January 1, 2022 (Renumbered as Penal Code Section 1172.7 and 1172.75 by Statutes 2022, Chapter 58)  
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 July 6, 2023 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/21/23

**Claim Number:** 22-TC-02

**Matter:** Resentencing to Remove Sentencing Enhancements

**Claimant:** County of San Diego

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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