Hearing Date: January 26, 2024
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ITEM 4
TEST CLAIM
PROPOSED DECISION

Penal Code Section 1170.03

As Added by Statutes 2021, Chapter 719,
Section 3.1 (AB 1540)[1]

Criminal Procedure: Resentencing

22-TC-03

County of Los Angeles, Claimant

TABLE OF CONTENTS

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[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit A

For CSM Use Only
Filing Date: RECEIVED December 16, 2022 Commission on State Mandates
TC #: 22-TC-03

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

Assembly Bill (AB) 1540 Criminal Procedure: Resentencing

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Oscar Valdez, Interim Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number: (213) 974-0729

Email Address: ovaldez@auditor.lacounty.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5).)

Name and Title of Claimant Representative:

Fernando Lemus, Principal Accountant-Auditor

Organization: County of Los Angeles, Department of the Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number: (213) 974-0324

Email Address: flemus@auditor.lacounty.gov

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and check for amendments to the section or regulations adopted to implement it:

Assembly Bill (AB) 1540, Section 3.1 (2021-2022 Reg. Sess.)
Amends Penal Code Section 1170.1 and 5076.1, and adds section 1170.03

Statutes of 2021, Chapter 719, Section 3.1, effective January 1, 2022: Criminal Procedure: Resentencing
Assembly Bill (AB) 200, Section 8 (2021-2022 Reg. Sess.)
Renumbered Penal Code Section 1170.1 to Penal Code Section 1172.1 without substantive changes
Statutes of 2022, Chapter 58, Section 9, effective June 30, 2022

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12 / 16 / 2022

☑ A: Which is not later than 12 months (365 days) following [insert effective date] 01 / 01 / 2022, the effective date of the statute(s) or executive order(s) pled; or

☑ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 01 / 01 / 2022, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☑ Includes a statement that actual or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☑ Includes all of the following elements for each statute or executive order alleged **pursuant to Government Code section 17553(b)(1)**:

☑ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☑ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☑ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☑ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2022 - 2023 Total Costs: $4,296,981

☑ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: One-time granting of $5.3 million in AB 109 Realignment funds

Other nonlocal agency funds: $525,000 of one-time County Resentencing Pilot Program funds from the Board of State and Community Corrections (BSCC)

Fee authority to offset costs: None

☑ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: None

☑ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows:

☑ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☑ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☑ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.

☑ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5:

☑ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages 15 to 129.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 233 to 241.

☑ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 130 to 232.

☑ Evidence to support any written representation of fact. *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 objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5.*) Pages 8 to 14.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☑ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Oscar Valdez
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Interim Auditor-Controller
Print or Type Title

Oscar Valdez
Oscar Valdez (May 31, 2023 15:08 PDT)
Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Test Claim Form

Final Audit Report 2023-05-31

Created:	2023-05-30
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAewn2k9WxZ-cv8fnXmOSk0kU7WyzIdAkT

"Test Claim Form" History

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2023-05-30 - 4:34:13 PM GMT

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Email viewed by flemus@auditor.lacounty.gov
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Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
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Signer rcabigas@auditor.lacounty.gov entered name at signing as RICA MAE CABIGAS
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Document e-signed by Oscar Valdez (ovaldez@auditor.lacounty.gov)
Signature Date: 2023-05-31 - 10:08:11 PM GMT - Time Source: server

Agreement completed.
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COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 1540: CRIMINAL PROCEDURE: RESENTENCING

Statutes of 2021, Chapter 719, Section 3: Criminal Procedure: Resentencing Assembly Bill No. 1540, Section 3.1 (2021-2022 Regular Session) Adding Penal Code Section 1170.03, Renumbered by AB 200, Section 8 (2021-2022 Regular Session) as Penal Code Section 1172.1, Statutes of 2022, Chapter 58, Section 9

TABLE OF CONTENTS

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 1540: CRIMINAL PROCEDURE: RESENTENCING

Statutes of 2021, Chapter 719, Section 3: Criminal Procedure: Resentencing Assembly Bill No. 1540, Section 3.1 (2021-2022 Regular Session) Adding Penal Code Section 1170.03, Renumbered by AB 200, Section 8 (2021-2022 Regular Session) as Penal Code Section 1172.1, Statutes of 2022, Chapter 58, Section 9

TABLE OF CONTENTS

(CONTINUED)

SECTION 5: WRITTEN NARRATIVE

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 1540: CRIMINAL PROCEDURE: RESENTENCING

Statutes of 2021, Chapter 719, Section 3: Criminal Procedure: Resentencing Assembly Bill No. 1540, Section 3.1 (2021-2022 Regular Session) Adding Penal Code Section 1170.03, Renumbered by AB 200, Section 8 (2021-2022 Regular Session) as Penal Code Section 1172.1, Statutes of 2022, Chapter 58, Section 9

SECTION 5: WRITTEN NARRATIVE
COUNTY OF LOS ANGELES TEST CLAIM
Statutes of 2021, Chapter 719, Section 3: Criminal Procedure: Resentencing
Assembly Bill No. 1540, Section 3.1 (2021-2022 Regular Session)
Adding Penal Code Section 1170.03, Renumbered by AB 200, Section 8
(2021-2022 Regular Session) as Penal Code Section 1172.1, Statutes of 2022, Chapter 58, Section 9

I. STATEMENT OF THE TEST CLAIM

The County of Los Angeles (County or Claimant) submits this Test Claim (TC) seeking reimbursement of the costs of implementing the requirements imposed on it by California Assembly Bill (AB) 1540, Sec. 3.1 (2021-2022 Reg. Sess.), which added § 1170.03 to the Penal Code (PC), now codified at PC § 1172.1.[1] Effective January 1, 2022, AB 1540, Sec. 3.1 created a new process, which requires a court to hold a hearing and appoint counsel upon a recommendation to recall and resentence a defendant. Prior to AB 1540, Sec. 3.1, the California Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings, a county correctional administrator, a District Attorney (DA), or the Attorney General were allowed to recommend a recall and resentence of a defendant; however, the courts had discretion as to whether to grant a hearing.[2] AB 1540, Sec. 3.1, which added PC § 1170.03, authorizes a court to appoint counsel and hold hearings to determine whether reducing a defendant's term of imprisonment is in the interest of justice.[3] Therefore, AB 1540, Sec. 3.1 imposes a new program on Claimant by requiring that Claimant provide court-appointed counsel for a defendant to prepare the case, be present at the status conference, and ultimately present the defendant's case at a resentencing hearing. Further, AB 1540, Sec. 3.1 imposes a new program for the DA who must now prepare for hearings related to resentencing cases that are submitted by CDCR.

A. DESCRIPTION OF THE NEW MANDATED ACTIVITIES

AB 1540, Sec. 3.1 created a new program for Claimant by requiring that the courts hold resentencing hearings and appoint counsel for defendants.[4] Further, in these circumstances, the court must set a resentencing hearing, unless the parties stipulate to not hold a hearing. Nonetheless, the court must state its resentencing decision on the record. The DA and the Public Defender (PD) are now required to comply with the requirements of AB 1540, Sec. 3.1.

[1] Assembly Bill 200, Sec. 8 renumbered the resentencing statutes, without any substantive changes, and former PC § 1170.03 was renumbered to § 1172.1.

[2] Declaration of Diana Teran

[3] AB 1540, Sec. 3.1 added PC § 1170.03 effective January 1, 2022, which was later renumbered as PC § 1172.1 by Assembly Bill 200, Sec. 8 effective June 30, 2022. The renumbering did not result in any substantive changes to the law.

[4] PC § 1172.1(b)(1).

AB 1540, Sec. 3.1 requires the court to provide notice to the defendant, set a status conference within 30 days of the receipt of the request, and appoint counsel for the defendant. The PD's Post-Conviction Unit is responsible for handling the resentencing recommendations from the DA's office. For recommendations from CDCR, PD staff throughout the various courthouses in the County are responsible for handling the resentencing process. Once a court appoints the PD pursuant to AB 1540, Sec. 3.1, the PD must contact their clients who are housed in the various State prisons throughout the State to discuss their case and determine the best way to pursue resentencing.[5] Being appointed to represent these defendants requires the PD to gather prison records, CRA scores (risk assessment), C-files (prison central files), medical and mental health records, and any records related to schooling and programming while in prison.[6] Furthermore, the PD must review and evaluate each case and submit a sentencing memorandum to the DA and the court for DA- and CDCR-recommended cases, respectively.[7] The activities described above are necessary to the appointment of counsel provision provided in AB 1540, Sec. 3.1, as codified in PC § 1172.1(b)(1).

Since AB 1540, Sec. 3.1 requires the appointment of counsel for the defendant and a hearing, the DA must prepare for hearings related to resentencing cases that are submitted by CDCR.[8] Once a Deputy District Attorney (DDA) is assigned to the case, the DDA must review the recommendation and all attachments, and ensure the information contained in the letter is correct. In addition, if the offense involved victims, the DDA must contact the victims and advise them of their opportunity to be heard. If the crime occurred many years ago, the DDA must coordinate with their victim service representatives and investigators to locate victims. In most cases, the DDA must review the incarcerated person's prison file, which may involve issuing a subpoena duces tecum for such information. Prison files often contain thousands of pages and must be thoroughly reviewed to determine whether the person poses a risk to public safety or can be safely resentenced. Once this review is completed, the DDA prepares and files a written response either concurring or objecting to the resentencing. Regardless of the outcome, multiple court hearings are scheduled throughout the process.[9] (AB 1540, Sec. 3.1; PC § 1172.1(b)(1))

B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE

Prior to AB 1540, Sec. 3.1, the DA did not have to appear on resentencings initiated by CDCR as those hearings were not mandated.[10] Therefore, the DA had no existing

[5] Declaration of Debra Werbel

[6] Declaration of Debra Werbel

[7] Declaration of Debra Werbel

[8] Declaration of Diana Teran

[9] Declaration of Diana Teran; Penal Code § 1171.2.

[10] Declaration of Diana Teran

activities on CDCR-recommended resentencing cases. The DA had existing activities in DA-recommended resentencing cases and is not seeking reimbursement for costs associated with those activities.[11]

Prior to AB 1540, Sec. 3.1, the courts handled CDCR referrals without the PD being present, since inmates do not have a right to an attorney or a hearing in CDCR resentencing referrals.[12] On occasion, a PD attorney would learn of CDCR referrals and would represent a client in court.[13] However, those existing activities were sporadic because they depended on the attorney learning about the recommendation and the court permitting the PD to represent the client.[14]

C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE

The PD first incurred costs related to implementing the mandate in AB 1540, Sec. 3.1 on January 1, 2022. The PD has incurred $101,166 in Fiscal Year (FY) 2021-22 for their work related to AB 1540, Sec. 3.1.[15] The DA first incurred costs related to implementing the mandate in AB 1540, Sec. 3.1 on January 3, 2022.[16] The DA has incurred costs of $343,694 in FY 2021-2022 for their work related to AB 1540, Sec. 3.1.[17]

D. ACTUAL OR ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED

The PD estimates incurring $584,000 in costs associated with representing defendants under AB 1540, Sec. 3.1 for FY 2022-23.[18] The DA estimates costs of $576,985 in FY 2022-23.[19]

[11] Declaration of Diana Teran

[12] Declaration of Debra Werbel

[13] Declaration of Debra Werbel

[14] Declaration of Debra Werbel

[15] Declaration of Sung Lee

[16] Declaration of Diana Teran

[17] Declaration of Diana Teran

[18] Declaration of Sung Lee

[19] Declaration of Diana Teran

E. STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE

The DA estimates an increased statewide cost of $2,136,981 in FY 2022-23 for implementing AB 1540, Sec. 3.1.[20] The PD estimates an increased statewide cost of $2.16 million in FY 2022-23 for implementing AB 1540, Sec. 3.1.[21]

F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM

The PD has received a three-year Public Defense Pilot Program grant from the Board of State and Community Corrections (BSCC) in the amount of approximately $7 million per year. These funds are to be utilized for work associated with the following statutes: PC § 1170.95, PC § 3051, PC § 1437.7 and PC § 1170(d). The PD has discretion to use the Pilot Program grant funds on any of the aforementioned statutes and has decided to utilize the Pilot Program grant to fund PC § 1170.95, PC § 3051, and PC § 1437.7. PC § 1170(d) is not being funded by this Pilot Project grant.

The PD has also received a one-time County Resentencing Pilot Program grant from the BSCC in the amount of $525,000 specifically for DA-recommended resentencings. At this time, these funds have yet to be utilized.

Claimant received a one-time granting of funds through AB 109 Realignment in the amount of $5.3 million. Once these funds are exhausted, there will be no other local, State, or federal funding to offset the increased direct and indirect costs associated with the representation of individuals subject to AB 1540, Sec. 3.1 and any costs would be paid from the Claimant's General Fund appropriations.[22]

G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES

Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter.[23]

H. IDENTIFICATION OF LEGISLATIVELY-DETERMINED MANDATES THAT ARE ON THE SAME STATUTE OR EXECUTIVE ORDER

Claimant is not aware of any legislatively-determined mandates related to AB 1540, Sec. 3.1, Chapter 719 Statutes of 2021, pursuant to Government Code § 17573.

[20] Declaration of Diana Teran

[21] Declaration of Sung Lee

[22] Declaration of Sung Lee

[23] Declaration of Sung Lee

II. MANDATE MEETS BOTH SUPREME COURT TESTS

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase "new program or higher level of service," language that was approved by the voters when they passed Proposition 4 in 1979, which added article XIII B to the California Constitution. In reaching its decision, the Court held that:

> ". . . the term 'higher level of service' . . . must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.' But the term 'program' itself is not defined in Article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local government and do not apply generally to all residents and entities in the state."[24]

A program can either carry out the governmental function of providing services to the public or be a law that implements State policy that imposes unique requirements on the local government that does not apply to the entire State. Only one part of this definition has to apply in order for the mandate to qualify as a program. The mandated activities in AB 1540, Sec. 3.1 meet both prongs.[25]

III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT

The sections of the law alleged in this TC are unique to the Claimant. The activities described in section A are provided by local government agencies.

IV. MANDATE CARRIES OUT STATE POLICY

The new State statute, the subject of this TC, imposes a higher level of service by requiring local agencies to provide the mandated activities described in section A.

V. STATE MANDATE LAW

Article XIII B § 6 requires the State to provide a subvention of funds to local government agencies any time the legislature or a state agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

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

[25] *Carmel Valley Fire Protection District v. State of California (1987)* 190 Cal.App. 3d 521, 537

> 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 governments for the cost of such program or increased level of service . . .

The purpose of § 6 "is to preclude the state from shifting financial responsibility for carrying our 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."[26] The section was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.[27] In order to implement § 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.[28] Under this scheme, the Legislature established the parameters regarding what constitutes a State-mandated cost, defining "costs mandated by the state" to include:

> …any increased costs which a local agency 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 § 6 of Article XIII B of the California Constitution.[29]

VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556, which could serve to bar recovery of "costs mandated by the state," as defined in Government Code § 17556. None of the seven disclaimers apply to this TC:

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

[26] *County of San Diego v. State of California (1997)* 15 Cal. 4th 68, 81; *County of Fresno v. State of California (1991)* 53 Cal. 3d 482, 487

[27] *County of Fresno v. State of California (1991)* 53 Cal. 3d 482, 487*; Redevelopment Agency v. Commission on State Mandates (1997)* 55 Cal.App.4th 976-985

[28] Government Code § 17500, et seq.; *Kinlaw v. State of California (1991)* 54 Cal. 3d 326, 331, 333

[29] Government Code § 17514

4. The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

5. The statute or executive order provides for offsetting savings to local agencies or school districts, which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposes duties, which were expressly included in a ballot measure approved by the voters in Statewide election.

7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.[30]

None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement apply to this TC.

The enactment of AB 1540, Sec. 3.1 imposes new State-mandated activities and costs on the Claimant, and none of the exceptions in Government Code § 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the required activities. AB 1540, Sec. 3.1, therefore, represents a State mandate for which the Claimant is entitled to reimbursement pursuant to § 6 of the State Constitution.

VII. CONCLUSION

AB 1540, Sec. 3.1, Chapter 719, Statutes of 2021, imposes State-mandated activities and costs on the Claimant. Those State-mandated costs are not exempted from the subvention requirements of § 6 of the State Constitution. There are no funding sources, and the Claimant lacks authority to develop and impose fees to fund any of these new State-mandated activities. Therefore, Claimant respectfully requests that the Commission on State Mandates find that the mandated activities set forth in the TC are State mandates that require subvention under the California Constitution § 6.

[30] Government Code § 17556

SECTION 6: DECLARATIONS

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 1540: CRIMINAL PROCEDURE: RESENTENCING

DECLARATION OF DIANA TERAN

I, Diana Teran, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) District Attorney's (DA) Office and hold the title of Director, Bureau of Prosecution Support Operations. I am responsible for a number of Divisions and Units, including the Resentencing Unit. I am the recipient of all California Department of Corrections and Rehabilitation (CDCR) referrals issued pursuant to current Penal Code (PC) § 1172.1 (formerly PC §§ 1170.03 and 1170(d)). These PC sections authorize a DA, the Attorney General, a county correctional administrator, and the CDCR to recommend resentencing for incarcerated individuals when it is in the interest of justice. I am also responsible for monitoring and tracking the handling and outcomes of all DA and CDCR referrals for resentencing.

2. Prior to the passage of Assembly Bill (AB) 1540, the law governing prosecutor and CDCR resentencing requests, i.e., PC § 1170(d), when one of these entities recommended resentencing, judicial officers maintained discretion to summarily deny the recommendation without a hearing and were not required to appoint counsel for the incarcerated individual or hold a hearing where a prosecutor was required to attend and provide input.

3. Prior to AB 1540, Sec. 3.1, the DA did not have to appear on resentencings initiated by CDCR as those hearings were not mandated. Therefore, the DA had no existing activities on CDCR-recommended resentencing cases.

4. The DA had existing activities in DA-recommended resentencing cases and is not seeking reimbursement for costs associated with those activities under AB 1540, Sec. 3.1.

5. Effective January 1, 2022, the California Legislature moved the provisions of PC § 1170(d) to the newly added PC § 1170.03. In addition, the Legislature added to PC § 1170.03 the requirement that courts hold a hearing and appoint counsel in response to a resentencing recommendation (PC § 1170.03(b)(1)). (PC § 1170.03 was subsequently renumbered, effective July 1, 2022, as PC § 1172.1 by AB 200, Sec. 8.)

6. Due to PC § 1172.1(b)(1), which was added by AB 1540, Sec. 3.1 and renumbered by AB 200, Sec. 8 requiring a hearing and the appointment of counsel, the DA's Office must prepare for hearings related to resentencing

cases that are submitted by CDCR. Upon receiving a request for resentencing from CDCR pursuant to the provisions of PC § 1172.1(b)(1), which was added by AB 1540 and renumbered by AB 200, I review and ensure that a Deputy District Attorney (DDA) is assigned to the case. The DDA must thereafter review the recommendation and all attachments, thereto, and must locate and review the file to ensure the information contained in the letter about the offense and prior convictions, if any, are correct. If the offense for which the person is currently incarcerated involved victims, the DDA must make efforts pursuant to the Victims' Bill of Rights Act of 2008, Marsy's Law, to contact the victims to advise them of the upcoming sentencing hearing and afford them an opportunity to be heard. Because many of the individuals recommended for resentencing have been incarcerated for crimes committed many years ago, contact information in our files is often outdated. The DDA must coordinate with both our Victim Services Representatives and investigators from our Bureau of Investigations to locate victims. In addition to searching law enforcement databases, this task also involves sending letters to the last known address of all victims and in some cases, having an investigator conduct door knocks at those addresses.

7. In addition to notifying victims, the DDA must, in most cases, review the incarcerated individual's prison file. This involves either issuing a subpoena duces tecum for the information or coordinating with defense counsel to get a waiver from the individual to facilitate getting the prison file. The prison files are often thousands of pages long and must be reviewed to determine whether the individual has engaged in rehabilitative programming, is involved in gang activity, or has engaged in any rules violations during the course of their incarceration. These factors are all relevant to the issue of whether the individual is a risk to public safety if released or can be safely resentenced. After reviewing all relevant information, the DDAs in these cases typically prepare and file a written response either concurring with the resentencing or objecting to the resentencing. Regardless of the outcome, multiple court hearings are scheduled throughout the process. Where resentencing may result in the release of an incarcerated individual, DDAs collaborate with defense counsel and reentry programs to ensure that the individual is provided with the resources to increase the likelihood of success upon transitioning back into the community.

8. The DA's Office first incurred costs on January 3, 2022, related to implementing the mandate in AB 1540, Sec. 3.1, which added PC § 1170.03(b)(1) and was later renumbered to PC § 1172.1(b)(1) by AB 200, Sec. 8.

9. For Fiscal Year (FY) 2021-22, the DA's Office has incurred approximately $343,694 for their work related to the mandates of PC § 1172.1(b)(1), which was added by AB 1540, Sec. 3.1.

10. The DA's Office estimates incurring costs of approximately $576,985 in FY 2022-23.

11. The DA's Office estimates an increased statewide cost of $2,136,981 in FY 2022-23.[1]

12. The DA's Office is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. I have also been advised that the County is not aware of any legislatively-determined mandates related to AB 1540, Sec. 3.1.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 15th day of May 2023 in Los Angeles, California.

Diana Teran, Director
Bureau of Prosecution Support Operations
Office of the District Attorney
County of Los Angeles

[1] CDCR statistics indicate the County has approximately 27% of all inmates in the State. The County estimates incurring 27% of costs statewide ($576,985 ÷ .27 = $2,136,981).

DECLARATION OF DEBRA WERBEL

I, Debra Werbel, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

1. I am employed by the County of Los Angeles (County) Office of the Public Defender (PD) and hold the title of Head Deputy. I am responsible for overseeing PD staff assigned to the Post-Conviction Unit. This Unit handles post-conviction matters, including cases involving Assembly Bill (AB) 1540.

2. Prior to the passage of AB 1540, the law under Penal Code (PC) Section 1170(d) allowed the California Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, to recommend a recall and resentence of a defendant. However, the courts maintained discretion as to whether or not to grant a hearing; in other words, courts were not required to hold a hearing nor were they required to appoint counsel.

3. The California Legislature, in AB 1540, amended PC § 1170 and added PC § 1170.03 to require courts to hold a hearing and appoint counsel in response to a recommendation for recall and resentencing. (PC § 1170.03 was subsequently renumbered, effective July 1, 2022, as PC § 1172.1 by AB 200, Sec. 8.)

4. Prior to AB 1540, the courts handled CDCR referrals without the PD being present since inmates do not have a right to an attorney or a hearing in CDCR resentencing referrals. On occasion, the PD would learn of CDCR referrals and would represent a client in court. However, those existing activities were sporadic because they depended upon the PD learning about the recommendation and the court permitting the PD to represent the client.

5. AB 1540, Sec. 3.1 mandates that counsel be appointed at resentencing hearings and, as a result, the PD's Office has incurred costs associated with their representation of these individuals at these hearings. PC § 1172.1(b)(1).

6. The Post-Conviction Unit of the PD's Office is responsible for handling the resentencing recommendations from the County District Attorney's (DA) Office. Public defender staff also handle the resentencing of CDCR-recommended resentencing cases in the various courthouses throughout the County.

7. After counsel is appointed as mandated in AB 1540, Sec.3.1, the PD must contact their clients in the various State prisons throughout the State, discuss their case, their current status, behavior and programming in State prison, and determine the best way to pursue resentencing. Public defenders must also gather records regarding our client's behavior in prison, CRA scores (risk assessment), C-files (prison central files), program completion, prison medical and mental health

records, and records relating to schooling and programming in prison. C-files can be thousands of pages long. Medical records are equally long or longer. Our attorneys must review and evaluate each case, and then write a sentencing memorandum for submission to the court in DA-recommended cases and for submission to the court and the DA in CDCR-recommended cases. These activities occur following the appointment of counsel per PC § 1172.1(b)(1)

8. The appointment of counsel provision in AB 1540, Sec.3.1. reasonably requires the PD to gather and review records, contact family, and plan reentry, which is essential to convincing the court or the DA to agree to resentencing. The PD also prepares various documents, motions, and mitigation reports where required.

9. The PD's Office is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to AB 1540 Sec. 3.1.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 19th day of May 2023 in Los Angeles, CA.

Debra Werbel
Head Deputy, Post-Conviction Unit
Office of the Los Angeles County Public Defender

DECLARATION OF SUNG LEE

I, Sung Lee, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) Public Defender's (PD) Office and hold the title of Departmental Finance Manager II. I am responsible for oversight and management of the Fiscal/Budget Services division, including the complete and timely recovery of costs related to services mandated by the State.

2. Assembly Bill (AB) 1540, Sec 3.1 amended Penal Code (PC) § 1170 and added PC § 1170.03 to require courts to hold a hearing and appoint counsel in response to a recommendation for recall and resentence. Effective July 1, 2022, AB 200, Sec. 8 subsequently renumbered PC § 1170.03 as PC § 1172.1.

3. In the County, the recommendations primarily come from the California Department of Corrections and Rehabilitation (CDCR) and the District Attorney's (DA) Office.

4. The PD's Office has incurred costs associated with their appointment and subsequent representation of these individuals at these required hearings under PC § 1172.1(b)(1).

5. After a PD attorney staff is appointed under AB 1540, Sec. 3.1, the attorney must contact their clients, discuss the case, and determine the best way to pursue resentencing in compliance with PC § 1172.1.

6. The PD's Post-Conviction Unit has been responsible for handling DA-recommended cases. The staff handling these DA recommendations are currently being funded with a one-time granting of AB 109 Realignment funds in the amount of $5.3 million. However, once these funds are exhausted, the County will be seeking reimbursement through the State mandate process. The unit has been trained to time code their work so that their costs can be calculated.

7. The PD has also received a three-year Public Defense Pilot Program grant from the Board of State and Community Corrections (BSCC) in the amount of approximately $7 million per year. These funds are to be utilized for work associated with the following statutes: PC §§ 1170.95, 3051, 1437.7, and 1170(d). The PD has discretion to use the Pilot Program grant funds on any of the aforementioned statutes and has decided to utilize the Pilot Program grant to fund PC §§ 1170.95, 3051, and 1437.7. PC § 1170(d) is not being funded by this Pilot Project grant.

8. The PD has also received a one-time County Resentencing Pilot Program grant from the BSCC in the amount of $525,000 specifically for DA-recommended resentencings. At this time, these funds have yet to be utilized.

9. I was advised by Head Deputy Debra Werbel to calculate the PD's costs associated with the Post-Conviction Unit's work under PC § 1172.1(b)(1). For the Fiscal Year (FY) 2021-22, the PD's Post Conviction Unit has incurred approximately $101,166 for their work related to the mandates of AB 1540. For FY 2022-23, the PD estimates incurring costs of approximately $584,000 for both DA and CDCR-recommended resentencings, of which $475,000 is estimated for the DA-recommended resentencings and $109,000 is estimated for CDCR-recommended sentencings, under PC § 1172.1(b)(1)

10. The CDCR-recommended resentencing hearings are spread throughout the County depending on the jurisdiction where the prior sentence was imposed. Efforts to centralize these cases were unworkable and the cases remain spread out throughout the County. The hearings are handled by the PD staff in those respective jurisdictions. As of the date of this declaration, efforts are currently underway to establish a mechanism to capture these costs. However, we are aware of 99 CDCR-recommended cases in the County at this time. Approximately 38 of these are PD cases. The hours spent working on these cases can vary depending on the complexity of the case. Based on a small sample of PD cases, the average number of hours spent on a case is approximately 15 hours.

11. The PD first incurred costs on January 1, 2022, related to implementing the requirements in PC § 1172.1(b)(1) as mandated in AB 1540, Sec. 3.1.

12. I have been informed that the County has approximately 27% of all inmate cases in the State and that the County reasonably expects to incur 27% of all statewide costs to implement the mandates in AB 1540. As such, the PD estimates increased statewide costs of $2.16 million in FY 2022-23.[1]

13. The PD is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to AB 1540.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 15th day of May 2023 in Los Angeles, California.

Sung Lee
Departmental Finance Manager II
Office of the Public Defender
County of Los Angeles

[1] $584,000 ÷ .27 = $2,162,963

SECTION 7: SUPPORTING DOCUMENTS

COUNTY OF LOS ANGELES TEST CLAIM

ASSEMBLY BILL 1540: CRIMINAL PROCEDURE: RESENTENCING

STATE AND SENATE BILL

COMMITTEES AND RULES

CASELAW AND CODES

2021 California Assembly Bill No. 1540, California 2021-2022 Regular Session

CALIFORNIA BILL TEXT

TITLE: Criminal procedure: resentencing.

VERSION: Adopted
October 08, 2021
Ting (A), Quirk (A)

Image 1 within document in PDF format.

SUMMARY: An act to amend Sections 1170 and 5076.1 of, and to add Section 1170.03 to, the Penal Code, relating to criminal procedure.

TEXT:

Assembly Bill No. 1540

CHAPTER 719

An act to amend Sections 1170 and 5076.1 of, and to add Section 1170.03 to, the Penal Code, relating to criminal procedure.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1540, Ting. Criminal procedure: resentencing.

Existing law authorizes a court, within 120 days after sentencing the defendant or at any time upon a recommendation from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, the district attorney, to recall an inmate's sentence and resentence that inmate to a lesser sentence. Existing law requires the court, when resentencing, to apply the rules of the Judicial Council to eliminate disparity of sentences and promote uniformity of sentencing. Existing law authorizes a court to reduce a defendant's term of imprisonment and modify the judgment if it is in the interest of justice.

This bill would require the court to state its reasons for a resentencing decision on the record, as specified. The bill would require the court to provide notice to the defendant, set a status conference within 30 days of the receipt of the request, and appoint counsel for the defendant. The bill would authorize the court to grant a resentencing without a hearing, if the parties are in agreement. The bill would additionally create a presumption favoring recall and resentencing the defendant in those hearings, as specified. By requiring the court to appoint counsel for the defendant, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 1170 of the Penal Code proposed by AB 124 and SB 567 to be operative only if this bill and AB 124 and SB 567 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 1170.03 of the Penal Code proposed by AB 124 to be operative only if this bill and AB 124 are enacted, without regard to chaptering.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Starting in the mid-1970s, rates of incarceration in California began to rise rapidly in an unprecedented manner.

(b) There are currently approximately 35,000 people serving life sentences in California state prisons, representing 38 percent of the prison population.

(c) According to the California Department of Corrections and Rehabilitation, as of June 2019, approximately 24 percent of the California prison population was over 50 years of age.

(d) According to the Committee on Revision of the Penal Code's 2020 Annual Report:

(1) It costs taxpayers approximately $83,000 per year to keep someone in state prison.

(2) Researchers have found that lengthy sentences and high rates of incarceration have diminishing returns in reducing crime rates.

(3) There is almost no evidence that long sentences deter the crimes they are intended to deter.

(4) Research shows that criminal involvement diminishes dramatically after an individual reaches 40 years of age and even more after 50 years of age.

(5) Crime rates in California have decreased steadily since the 1990s. This drop has continued alongside reductions in the California prison population and alongside the enactment of numerous criminal justice reforms.

(6) According to a survey by Crime Survivors for Safety and Justice and Californians for Safety and Justice, most crime victims in California support additional reforms to our criminal legal system. According to the survey, 75 percent of surveyed victims favor reducing sentence lengths for people in prison who are assessed as a low risk to public safety.

(e) In recent years, Californians have repeatedly and consistently embraced reforms to reduce California's prison population.

(f) Under existing law, any person incarcerated in a state prison or county jail can only be referred for resentencing by a law enforcement agency, such as the Secretary of the Department of Corrections and Rehabilitation, a district attorney, or the Board of Parole Hearings.

(g) These law enforcement agencies devote significant time, analysis, and scrutiny to each referral that they make.

(h) It is the intent of the Legislature for judges to recognize the scrutiny that has already been brought to these referrals by the referring entity, and to ensure that each referral be granted the court's consideration by setting an initial status conference, recalling the sentence, and providing the opportunity for resentencing for every felony conviction referred by one of these entities.

(i) It is the intent of the Legislature that resentencing proceedings pursuant to Section 1170.03 of the Penal Code apply ameliorative laws passed by this body that reduce sentences or provide for judicial discretion, regardless of the date of the offense or conviction.

SEC. 2. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using

the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph (A), this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(9) In addition to the criteria in paragraph (6), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(10) This subdivision shall have retroactive application.

(11) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

(i) This section shall become operative on January 1, 2022.

SEC. 2.1. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(2) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person 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.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(3) Paragraph (2) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (2) present.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph (A), this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person 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.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(11) In addition to the criteria in paragraph (6), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to,

coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 2.2. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph (2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumtances 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. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged

offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph (A), this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having

served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(9) In addition to the criteria in paragraph (6), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(10) This subdivision shall have retroactive application.

(11) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 2.3. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided

by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph(2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumtances 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. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person 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.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (6) present.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

(B) Notwithstanding subparagraph A this paragraph shall not apply to defendants sentenced to life without parole for an offense where it was pled and proved that the defendant tortured, as described in Section 206, their victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(3) If any of the information required in paragraph (2) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be considered without the missing information.

(4) A reply to the petition, if any, shall be filed with the court within 60 days of the date on which the prosecuting agency was served with the petition, unless a continuance is granted for good cause.

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

(6) The factors that the court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person 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.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(10) If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(11) In addition to the criteria in paragraph (6) the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

(3) Within 10 days of receipt of a positive recommendation by the secretary, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has 12 months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, they shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and their family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

(7) Any recommendation for recall submitted to the court by the secretary shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in their possession: a discharge medical summary, full medical records, state identification, parole or postrelease community supervision medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(11) The provisions of this subdivision shall be available to an inmate who is sentenced to a county jail pursuant to subdivision (h). For purposes of those inmates, "secretary" or "warden" shall mean the county correctional administrator and "chief medical officer" shall mean a physician designated by the county correctional administrator for this purpose.

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because the defendant is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to the state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is

convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in the state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a concluding portion of the term for a period selected at the court's discretion.

(B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall commence upon release from physical custody or an alternative custody program, whichever is later. During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall become effective and operative on January 1, 2015, and shall be applied prospectively to any person sentenced on or after January 1, 2015.

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in People v. Vega (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 3. Section 1170.03 is added to the Penal Code, to read:

1170.03. (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.

(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.

(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.

SEC. 3.1. Section 1170.03 is added to the Penal Code, to read:

1170.03. (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.

(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.

SEC. 4. Section 5076.1 of the Penal Code is amended to read:

5076.1. (a) The board shall meet at each of the state prisons and facilities under the jurisdiction of the Division of Adult Institutions. Meetings shall be held at whatever times may be necessary for a full and complete study of the cases of all inmates whose matters are considered. Other times and places of meeting may also be designated by the board. Each commissioner of the board shall receive their actual necessary traveling expenses incurred in the performance of their official duties. Where the board performs its functions by meeting en banc in either public or executive sessions to decide matters of general policy, a majority of commissioners holding office on the date the matter is heard shall be present, and no action shall be valid unless it is concurred in by a majority vote of those present.

(b) The board may use deputy commissioners to whom it may assign appropriate duties, including hearing cases and making decisions. Those decisions shall be made in accordance with policies approved by a majority of commissioners holding office.

(c) The board may meet and transact business in panels. Each panel shall consist of two or more persons, subject to subdivision (d) of Section 3041. No action shall be valid unless concurred in by a majority vote of the persons present. In the event of a tie vote, the matter shall be referred for en banc review by the board. The commissioners conducting the review shall consider the full record that was before the panel that resulted in the tie vote. The review shall be limited to the full record that was before the panel that resulted in the tie vote. New evidence or comment shall not be considered in the en banc proceeding. A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

(d) Consideration of parole release for persons sentenced to life imprisonment pursuant to subdivision (b) of Section 1168 shall be heard by a panel of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner. A recommendation for recall of a sentence under Section 1170.03 shall be made by a panel of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by both this bill and Assembly Bill 124. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, and (3) Senate Bill 567 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 124, in which case Sections 2, 2.2 and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by both this bill and Senate Bill 567. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, (3) Assembly Bill 124 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 567 in which case Sections 2, 2.1 and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by this bill, Assembly Bill 124, and Senate Bill 567. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2022, (2) all three bills amend Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, and (3) this bill is enacted after Assembly Bill 124 and Senate Bill 567, in which case Sections 2, 2.1 and 2.2 of this bill shall not become operative.

SEC. 6. Section 3.1 of this bill incorporates amendments made by Assembly Bill 124 to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, in Section 1170.03 of the Penal Code as proposed to be added by this bill. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, without regard to order of chaptering, (2) this bill adds Section 1170.03 to the Penal Code, and (3) Assembly Bill 124 amends Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, in which case Section 3 of this bill shall not become operative.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

End of Document

Assembly Bill No. 200

CHAPTER 58

An act to add Sections 12838.65 and 12838.95 to, and to add and repeal Chapter 7.9 (commencing with Section 8699) of Division 1 of Title 2 of, the Government Code, to amend Sections 830.7, 832.7, 1001.95, 1203.425, 1385, 2067, 4900, 4902, 4904, 5027, 5076.1, 13777, 14306, 14307, 14308, 18005, 18275, and 34010 of, to amend and renumber Sections 1170.01, 1170.03, 1170.95, 1171, and 1171.1 of, to amend, repeal, and add Section 11105 of, to add Sections 4904.5, 5007.4, and 5032 to, to add the heading of Article 1.5 (commencing with Section 1172) to Chapter 4.5 of Title 7 of Part 2 of, to add and repeal Section 1233.12 of, and to repeal and add Sections 4905 and 5003.7 of, the Penal Code, and to amend Sections 607, 726, 730, 875, and 1760.45 of, and to add and repeal Sections 1732.9 and 1732.10 of, the Welfare and Institutions Code, relating to public safety, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 30, 2022. Filed with Secretary of State June 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 200, Committee on Budget. Public safety omnibus.

(1) Existing law, the California Emergency Services Act, creates within the office of the Governor, the Office of Emergency Services, which is responsible for addressing natural, technological, or manmade disasters and emergencies. Existing law generally provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation Board from the Restitution Fund.

This bill would establish the Flexible Assistance for Survivors (FAS) pilot grant program, to be administered by the Office of Emergency Services. The bill would require the office to establish a grant selection advisory committee to provide grants to qualifying community-based organizations to establish assistance funds to distribute in direct cash assistance to survivors, as defined.

This bill would require the committee when considering grant applications to give preferences to certain organizations, including organizations that are located in, serve, and employ members of communities that experience disproportionately high rates of gun violence and imprisonment. The bill would restrict expenditure of grant funds for administrative expenses to no more than 10%, and would require organizations receiving an award to establish policies and procedures for distributing funds that comply with specified requirements.

This bill would require that cash assistance received under these provisions to be treated in the same manner as the federal earned income refund, as specified, for purposes of determining eligibility to receive specified benefits. The bill would require each grantee to report certain information to the office each year. The bill would require the office to post on its internet website a public report on the impact of the grant program before July 1, 2027, as specified, and would require the office to submit a progress report to the Legislature by July 1, 2025, as specified.

This bill would make the FAS pilot grant provisions inoperative on July 1, 2027, and would repeal them as of January 1, 2028.

Existing law authorizes a person who has been convicted of a felony, imprisoned or incarcerated, and granted a pardon because either the crime was not committed or the person was innocent of the crime to present a claim against the state to the California Victim Compensation Board for the pecuniary injury sustained by the person through the erroneous conviction and imprisonment or incarceration. Existing law requires the board, in cases in which evidence shows that a crime with which a claimant was charged was either not committed at all, or not committed by the claimant, to report the facts of the case and its conclusions to the Legislature with a recommendation that the Legislature make an appropriation for the purpose of indemnifying the claimant.

This bill would repeal the provisions requiring the board to submit a report and recommendation to the Legislature for the appropriation of funds for indemnifying a claimant. The bill would instead require the board to calculate compensation for the claimant, as specified, and approve payment to a claimant if sufficient funds are available upon appropriation by the Legislature. The bill would also provide immunity to the board from liability for damages for any decision on a claim pursuant to these provisions. The bill would require the board to report annually to the Joint Legislative Budget Committee on approved erroneous conviction claims paid in the previous year, as specified.

(2) Existing law authorizes each county to establish a Community Corrections Performance Incentives Fund, and authorizes the state to annually allocate moneys into the State Community Corrections Performance Incentives Fund to be used for specified purposes relating to improving local probation supervision practices and capacities.

Existing law requires the Director of Finance, in consultation with certain entities, to annually calculate a statewide performance incentive payment and a county performance incentive payment, based upon specified performance metrics, for each eligible county, and to distribute those payments in the following fiscal year, as specified. Existing law, for the 2021–22 fiscal year, instead appropriates $122,829,397 from the General Fund to the State Community Corrections Performance Incentives Fund, in lieu of the general funding provisions, to be allocated to counties as specified.

This bill would appropriate $122,829,397 from the General Fund to the State Community Corrections Performance Incentives Fund, again in lieu of the general funding provisions, to be allocated to counties in the same

manner as in the 2021–22 fiscal year, in the 2022–23 and 2023–24 fiscal years.

(3) Existing law establishes the Department of Corrections and Rehabilitation to oversee the state prison system. Upon appropriation by the Legislature, existing law requires the department to award funding for a grant program to not-for-profit organizations to replicate their programs at institutions that are underserved by volunteer and not-for-profit organizations, as specified, and requires grant funding be provided to programs that have demonstrated success and focus on offender responsibility and restorative justice principles. Existing law requires these programs to demonstrate that they will become self-sufficient or will be funded in the long term by donations or another source of ongoing funding.

This bill would expand the types of eligible organizations to include not-for-profit organizations with experience in providing programming in a correctional setting. The bill would also remove the requirement that a program demonstrate it will become self-sufficient or funded in the long term.

Existing law also requires the Department of Correction and Rehabilitation to engage in various programs to provide rehabilitative and educational services to state prison inmates, including the California Reentry and Enrichment (CARE), Grant program to provide grants to community-based organizations that provide rehabilitative services to incarcerated individuals.

This bill would establish the Delancey Street Restaurant Management Program to teach marketable skills useful to incarcerated persons for reemployment opportunities upon their release from state prison, including restaurant operation, service, and hospitality. The bill would exempt the program from specified statutes and regulations, including the Public Contract Code and the State Contracting Manual.

(4) Existing law, within the Department of Corrections and Rehabilitation, creates the Division of Juvenile Justice, headed by a director, to operate facilities to house specified juvenile offenders. Existing law requires the Division of Juvenile Justice to close on June 30, 2023, and provides for the transition of youth who are currently housed within a Division of Juvenile Justice facility to the care and custody of counties.

This bill would specify that, during the closure of the Division of Juvenile Justice, the director shall have the authority to transfer powers, functions, duties, and responsibilities of the division to the Department of Corrections and Rehabilitation, and, upon final closure of the division, all remaining powers, functions, and duties shall succeed to, and be vested with, the Department of Corrections and Rehabilitation. The bill would also specify that any action concerning the transferred powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction shall continue in the name of the Department of Corrections and Rehabilitation. The bill would also specify that no contract or agreement to which the division is a party shall be void or voidable by reason of its closure, but shall continue in full force and effect with the Department of Corrections and Rehabilitation assuming all of the rights, obligations, and duties of the division.

This bill, immediately prior to the closure of the division, would authorize specified persons 18 years of age or older who are subject to the custody, control, and discipline of the division to consent to voluntarily remain in institution under the jurisdiction of the Department of Corrections and Rehabilitation. The bill would provide a process for the person making that decision and place requirements for continued services on the Department of Corrections and Rehabilitation. The bill would also, unless the committing court orders an alternative placement, upon closure of the division, require the State Department of State Hospitals to continue to provide evaluation, care, and treatment of state hospital patients referred to the division and would specify additional service and notifications required for those patients.

Existing law authorizes a juvenile court to order placement of a ward at the Pine Grove Youth Conservation Camp if specified criteria are met, including if the county has entered into a contract with the Division of Juvenile Justice and the division has found the ward amenable. Existing law authorizes the division to enter into contracts with counties to operate the Pine Grove Youth Conservation Camp through a state-local partnership, or other management arrangement, to train justice-involved youth in wildland firefighting.

This bill would transfer the duties of the Division of Juvenile Justice to operate the Pine Grove Youth Conservation Camp to the Department of Corrections and Rehabilitation.

(5) Existing law, commencing January 1, 2022, and subject to appropriation, requires the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and identify persons who are eligible for automatic conviction record relief. Existing law makes a person eligible for automatic conviction record relief if, on or after January 1, 1973, they were sentenced to probation, and completed it without revocation, or if they were convicted of an infraction or a misdemeanor, and other criteria are met, as specified. Existing law, commencing August 1, 2022, prohibits a court from disclosing information concerning a conviction for which automatic conviction relief was granted, except to the person whose conviction was granted relief or a criminal justice agency, as defined.

This bill would delay the August 1, 2022, implementation date until January 1, 2023.

Existing law requires the Department of Justice to maintain state summary criminal history information, as defined, and to furnish this information to various state and local government officers, officials, and other prescribed entities, if needed in the course of their duties. Existing law requires the department to disseminate every conviction rendered against an applicant, except for a conviction for which relief has been granted, as specified. Existing law requires the department to provide the Commission on Teacher Credentialing with every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of whether relief was granted. Existing law makes it a crime to furnish a record or information obtained from a record to a person who is not authorized to receive the record or information.

The bill would, until January 1, 2023, require the Department of Justice to disseminate every conviction rendered against any applicant under these provisions without regard to whether relief was granted for the conviction. The bill would, beginning January 1, 2023, again require the dissemination of convictions for which relief was granted only to the Commission on Teacher Credentialing. Because this bill would require the dissemination of additional state summary criminal history information, the unauthorized furnishing of which is a crime, the bill would expand the definition of an existing crime and would impose a state-mandated local program.

(6) Existing law requires the Secretary for Environmental Protection to award grants for the development and implementation of a course for the training of community-based nonprofit organizations or public prosecutors and investigators in specified public agencies in the investigation and enforcement of environmental laws. Existing law authorizes the secretary to award local assistance grants to local environmental regulators for the investigation and enforcement of environmental laws.

This bill would instead require the courses to be for the training of community-based nonprofit organizations or public prosecutors, or community-based nonprofit organizations and staff of other specified public agencies. The bill would authorize the secretary to award grants for the purpose of training community-based nonprofit organizations, in addition to the above-described entities.

The bill would authorize the secretary to also award local assistance grants to community-based nonprofit organizations to address environmental violations that occur in or disproportionately impact disadvantaged communities and to support inclusion of residents of disadvantaged communities in environmental enforcement efforts, among other things. The bill would authorize the secretary to allow local regulators to subgrant funding to community-based nonprofit organizations.

(7) Existing law provides various authorities for the resentencing of persons convicted of crimes including persons convicted of crimes, or enhancements that have been subsequently repealed or reclassified.

By virtue of the location in code where these provisions have been codified, the application of these provisions to certain individuals, including those sentenced to death or imprisonment for life, is prohibited or ambiguous.

This bill would renumber these provisions and place them in a new article, thereby making certain provisions that exclude certain persons from their use inapplicable to these renumbered provisions.

(8) Existing law generally authorizes a court to dismiss an action or to strike or dismiss an enhancement in the furtherance of justice. Existing law requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.

This bill would make technical, nonsubstantive changes to those provisions.

(9) Under previous law, safety and security officers of Exposition Park were granted limited arrest authority, but were not peace officers. Existing

law, commencing on January 1, 2022, instead grants peace officer status to these officers, but requires the completion of specified training requirements.

This bill would, until January 1, 2025, reinstate limited arrest authority for those Exposition Park safety and security officers appointed before March 1, 2022, who have not yet completed the training required to be peace officers.

(10) Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery. Existing law sets forth exceptions to the confidentiality of certain records, including, among others, sustained findings involving force that is unreasonable or excessive, that an officer failed to intervene against another officer using unreasonable or excessive force, unlawful arrests and unlawful searches, and sustained findings that an officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes. For the records described above, existing law generally requires those records to be released at the earliest possible time, but no later than 45 days from the date of the request. For incidents that occur prior to January 1, 2022, those records are subject to the 45-day maximum disclosure deadline as of January 1, 2023. Existing law allows state and local agencies to exceed that 45-day timeframe under certain conditions, such as during an active criminal or administrative investigation, as specified.

This bill would correct an erroneous cross-reference to clarify that the above-described records relating to incidents that occur prior to January 1, 2022, are subject to the 45-day maximum disclosure deadline as of January 1, 2023.

(11) Existing law authorizes a judge in a case where a misdemeanor is being prosecuted, over the objection of the prosecuting attorney, to offer diversion to the defendant. Existing law prohibits this type of diversion when, among other things, the current charged offense is willfully inflicting corporal injury upon a spouse, cohabitant or former cohabitant, fiancé or fiancée, or the mother or father of the offender's child or battery against those same victims or a person with whom the offender has, or has had, a dating or engagement relationship.

This bill, instead, would prohibit this type of diversion from being offered to a defendant who is charged with any offense involving domestic violence, as defined. By increasing the number of defendants who are no longer eligible for diversion, this bill would impose a state-mandated local program.

(12) Existing law requires the Attorney General to collect and analyze information relating to anti-reproductive-rights crimes, as defined, including, but not limited to, the threatened commission of these crimes and persons suspected of committing the crimes or making threats. Existing law requires the Attorney General to collect this information from local law enforcement agencies and produce an annual report for the Legislature beginning January 1, 2023.

This bill would additionally require the Attorney General to collect information relating to anti-reproductive-rights crimes from local district attorneys and elected city attorneys. The bill would change the due date for the first report to January 1, 2025, and would authorize the Attorney General to submit these reports either electronically or as part of any other report they submit to the Legislature. By requiring data collection from local district attorneys and elected city attorneys, the bill would impose a state-mandated local program.

(13) Existing law authorizes a law enforcement agency that has seized or received custody of a deadly weapon under specified circumstances to sell or destroy that weapon.

This bill would instead no longer authorize the sale of that weapon and would require the weapon to be destroyed. The bill would also require the law enforcement agency to make specified notifications. By requiring additional duties of local law enforcement agencies, this bill would impose a state-mandated local program.

(14) Existing law subjects a minor between 12 to 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed specified serious offenses, to the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court.

Existing law authorizes a court to order a ward who is 14 years of age or older to be committed to a secure youth treatment facility, operated by the county of commitment, for a period of confinement if the ward is adjudicated and found to be a ward based on the commitment of a specified serious offense, that adjudication is the most recent offense for which the ward has been adjudicated, and the court has made a finding on the record that a less restrictive, alternative disposition for the ward is unsuitable. Existing law requires the court to set a maximum term of confinement for the ward in a secure youth treatment facility.

This bill would, among other things, provide that the specified serious offense that qualifies the ward for commitment to a secure youth treatment facility be an offense that was committed when the ward was 14 years of age or older, and would require that the maximum term of confinement for the ward be based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation.

Existing law requires the court to hold a progress review hearing for the ward in a secure youth treatment facility not less frequently than once every 6 months during the term of confinement, and authorizes the court, at the conclusion of the reviewing hearing, to order that the ward's baseline term be modified downward by a reduction of confinement time not to exceed 6 months. Existing law also authorizes the court, at the conclusion of a progress review hearing, or at a separately scheduled hearing, to order a ward to be transferred from a secure youth treatment facility to a less restrictive program, and also authorizes the court to order the ward to be returned to a secure youth treatment facility if the court determines that the ward has

materially failed to comply with court-ordered conditions of placement in the less restrictive program.

This bill would instead authorize the court, at the conclusion of each review hearing held for a ward, to order that the ward's baseline term or previously modified baseline term be modified downward by a reduction of confinement time not to exceed 6 months for each review hearing. The bill would require the ward's baseline or modified baseline term to be adjusted to include credit for any time served by the ward in a less restrictive program if they are returned to a secure youth treatment facility pursuant to those provisions.

(15) This bill would declare that its provisions are severable.

(16) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(17) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7.9 (commencing with Section 8699) is added to Division 1 of Title 2 of the Government Code, to read:

Chapter 7.9. Flexible Assistance for Survivors (FAS) Pilot Grant Program

8699. For the purpose of this chapter, the following definitions apply:

(a) "Community-based organization" means a nonprofit organization, or organization fiscally sponsored by a nonprofit, that provides direct services to survivors of violence and includes, but is not limited to, a trauma recovery center, as described in Section 13963.1.

(b) "Family member" means any of the following:

(1) A spouse, former spouse, or domestic partner.

(2) A cohabitant or former cohabitant.

(3) The survivor's fiancé or fiancée, or someone with whom the survivor has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243 of the Penal Code.

(4) Any other person related by consanguinity or affinity within the second degree, including relationships by adoption.

(c) “Grant program” means the Flexible Assistance for Survivors (FAS) pilot grant program established by this chapter.

(d) “Office” means the Office of Emergency Services.

(e) “Survivor” means a person who would be eligible for services pursuant Section 20103 of Title 34 of the United States Code.

8699.01. (a) The Flexible Assistance for Survivors (FAS) pilot grant program is hereby established, to be administered by the Office of Emergency Services, with the goal of improving safety, healing, and financial stability for survivors, and the loved ones of those violently injured or killed.

(b) FAS grants shall be made to qualifying community-based organizations pursuant to this chapter for the purpose of establishing assistance funds to distribute in direct cash assistance to survivors.

(c) The office shall establish an advisory committee that includes, without limitation, persons who have been impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing supportive services for marginalized survivors. Racial, gender, and ethnic diversity, and representation of communities and identities described in subdivisions (h) and (i), shall be considered for all appointments. The committee shall consist of six members, as follows:

(1) (A) Three representatives from community-based organizations providing direct services and recovery assistance such as housing, job placement, or economic support to vulnerable survivors.

(B) Of the three members described by subparagraph (A), one member shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate President pro Tempore.

(2) (A) Three community providers or advocates with expertise in community-based violence reduction programs.

(B) Of the three members described by subparagraph (A), one member shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate President pro Tempore.

(d) Notwithstanding any other law, except as specified in subdivision (b) of Section 8 of Article VII of the California Constitution, a person’s criminal history shall not disqualify them from appointment to the advisory committee.

(e) The advisory committee shall establish rules for implementing this chapter. Community-based organizations shall include all of the following in their application:

(1) A description of the organization’s history serving one or more of the groups described in subdivision (i).

(2) A description of how the community or communities the organization serves are impacted by violence and incarceration.

(3) The estimated number of survivors the organization or program currently serves.

(4) The estimated number of survivors to whom the organization or program anticipates it will distribute grant funds.

(5) How the organization plans to distribute cash assistance funds to survivors to meet immediate financial needs quickly.

(6) How the organization plans to minimize the burden on survivors to provide documentation or submit paperwork.

(f) The advisory committee shall do all of the following:

(1) Strive to minimize the paperwork burden on grant applicants and grantees.

(2) Provide guidance on developing an application, the program structure, and progress reports.

(3) Develop a plan to publicize the grant program in advance of an application deadline, including outreach to underserved areas, communities with disproportionately high rates of gun violence and imprisonment, and smaller organizations.

(4) Work with the office to develop tools to support applicants applying for an award under this chapter, including, but not limited to, templates and sample applications, which shall be posted prominently on the office's internet website.

(5) Prior to an application deadline, work with the office to publicize and host at least two webinars that are open to the public detailing how to apply for a grant under this chapter.

(6) Develop reporting metrics for grantees to provide information to the office to aid the office in creating the reports required by Section 8699.02. In developing these metrics, the advisory committee shall strive to minimize the paperwork burden on survivors that apply for assistance.

(g) A community-based organization shall be eligible to apply for a grant under this chapter if the organization has a history of serving survivors and the majority of people the organization, or a project within the organization that will administer the grant, serves are survivors.

(h) The office, with concurrence from the advisory committee, shall develop a rating process that gives preference to organizations that are located in, serve, and employ members of communities that experience disproportionately high rates of gun violence and imprisonment.

(i) The office, with concurrence from the advisory committee, shall develop a rating process that gives preference to community-based organizations that have a history of providing services to vulnerable survivors, including, but not limited to, the following:

(1) Survivors of color.

(2) Elderly survivors.

(3) Survivors with disabilities.

(4) Survivors who are transgender or gender nonconforming.

(5) Survivors who have faced disproportionate police contact.

(6) Survivors who are formerly incarcerated or who have past arrests or convictions.

(7) Survivors with immigration status issues.

(8) Survivors who are unhoused.

(9) Survivors of firearm injuries.

(10) Survivors who have lost a family member to homicide.

(11) Survivors facing mental health crises.
(12) Low-income survivors.
(13) Survivors challenged by substance abuse.

(j) An organization receiving a grant under this chapter may use the funds as follows:

(1) Flexible cash assistance to survivors to meet survivors' financial needs or to cover survivors' expenses, distributed at the discretion of the organization in amounts determined by the organization based on the needs of survivors and in a way that minimizes or eliminates the burden on survivors to provide external documentation of their need or expenses. Cash assistance awards of more than five thousand dollars ($5,000) to an individual survivor may require additional documentation of significant need.

(2) Up to 10 percent for the organization's expenses in administering the grant.

(k) A community-based organization receiving a grant under this chapter shall establish policies and procedures for distributing funds to survivors whom the organization serves that comply with all the following:

(1) Develop a method that allows survivors to attest to their experience of victimization that minimizes the burden of requiring survivors to obtain documentation of a victimization, such as by using verified written statements from a community-based organization.

(2) Promote distribution of funds to survivors in a manner that meets the immediate needs of survivors quickly.

(3) Do not require survivors to engage in other services or programs as a condition of receiving funds.

(4) Do not require survivors to provide or maintain burdensome documentation of their need or spending.

(5) Do not require survivors to report a crime to a law enforcement agency as a condition of receiving cash assistance.

(6) Do not exclude survivors on the basis of citizenship or immigration status.

(7) Do not exclude survivors on the basis of an arrest or conviction record, nor on the basis of a survivor's status under correctional supervision.

(*l*) Notwithstanding any other law, cash assistance received under this chapter shall be treated in the same manner as the federal earned income refund for the purpose of determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or amounts of those benefits.

(m) Each grantee shall annually report to the office all of the following:

(1) The aggregate number of survivors who received cash assistance through the grant program.

(2) The average amount of assistance each survivor received through the grant program.

(3) Information responsive to the metrics developed pursuant to paragraph (6) of subdivision (f).

(n) The office may use up to 5 percent of the funds appropriated for the grant program each year for the costs of administering the grant program, including, without limitation, employing personnel, providing technical assistance to grantees or prospective grantees, and issuing a report on the impacts of the grant program through the 2025–26 fiscal year.

8699.02. (a) (1) By July 1, 2025, the office shall submit a progress report to the Legislature in compliance with Section 9795 discussing the impact of the grant program, which shall include information received pursuant to paragraph (3) of subdivision (m) of Section 8699.01.

(2) The requirement for submitting a report imposed by this subdivision is inoperative on January 1, 2026, pursuant to Section 10231.5.

(b) Before July 1, 2027, the office shall post on its internet website a public report on the impact of the grant program, which shall include, at a minimum, the number of survivors who have been provided assistance and anecdotal information on the impact of the grant program on helping survivors, and information received pursuant to paragraph (3) of subdivision (m) of Section 8699.01.

8699.03. This chapter shall become inoperative on July 1, 2027, and, as of January 1, 2028, is repealed.

SEC. 2. Section 12838.65 is added to the Government Code, to read:

12838.65. During the closure of the Division of Juvenile Justice, the director shall have the authority to transfer powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the division to the Department of Corrections and Rehabilitation, which shall succeed to, and be so vested, upon transfer. Upon final closure of the Division of Juvenile Justice, all remaining powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the division shall succeed to, and be vested, with the Department of Corrections and Rehabilitation. Any action concerning the transferred powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction shall not abate but shall continue in the name of the Department of Corrections and Rehabilitation, and the Department of Corrections and Rehabilitation shall be substituted for the Division of Juvenile Justice by the court wherein the action is pending.

SEC. 3. Section 12838.95 is added to the Government Code, to read:

12838.95. No contract, lease, license, grant, or any other agreement to which the Division of Juvenile Justice is a party shall be void or voidable by reason of closure of the Division of Juvenile Justice, but shall continue in full force and effect, with the Department of Corrections and Rehabilitation assuming all of the rights, obligations, and duties of the Division of Juvenile Justice.

SEC. 4. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they successfully complete a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for independent institutions of higher education, recognized under subdivision (b) of Section 66010 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or the chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, that are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or the chief of police within whose jurisdiction the facility lies.

(d) Employees or classes of employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and Fire Protection, provided that the primary duty of the employee shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as defined in Section 99213 of the Public Utilities Code, if the district has concluded a memorandum of understanding permitting the exercise of that authority, with, as applicable, the sheriff, the chief of police, or the Department of the California Highway Patrol within whose jurisdiction the district lies. For the purposes of this subdivision, the exercise of peace officer authority may include the authority to remove a vehicle from a railroad right-of-way as set forth in Section 22656 of the Vehicle Code.

(f) Nonpeace officers regularly employed as county parole officers pursuant to Section 3089.

(g) Persons regularly employed as investigators by the Department of Transportation for the City of Los Angeles and designated by local ordinance as public officers, to the extent necessary to enforce laws related to public transportation, and authorized by a memorandum of understanding with the chief of police, permitting the exercise of that authority. For the purposes of this subdivision, “investigator” means an employee defined in Section 53075.61 of the Government Code authorized by local ordinance to enforce laws related to public transportation. Transportation investigators authorized by this section shall not be deemed “peace officers” for purposes of Sections 241 and 243.

(h) Persons regularly employed by any department of the City of Los Angeles who are designated as security officers and authorized by local ordinance to enforce laws related to the preservation of peace in or about the properties owned, controlled, operated, or administered by any department of the City of Los Angeles and authorized by a memorandum of understanding with the Chief of Police of the City of Los Angeles permitting the exercise of that authority. Security officers authorized pursuant to this subdivision shall not be deemed peace officers for purposes of Sections 241 and 243.

(i) Illegal dumping enforcement officers or code enforcement officers, to the extent necessary to enforce laws related to illegal waste dumping or littering, and authorized by a memorandum of understanding with, as applicable, the sheriff or chief of police within whose jurisdiction the person is employed, permitting the exercise of that authority. An "illegal dumping enforcement officer or code enforcement officer" is defined, for purposes of this section, as a person employed full time, part time, or as a volunteer after completing training prescribed by law, by a city, county, or city and county, whose duties include illegal dumping enforcement and who is designated by local ordinance as a public officer. An illegal dumping enforcement officer or code enforcement officer may also be a person who is not regularly employed by a city, county, or city and county, but who has met all training requirements and is directly supervised by a regularly employed illegal dumping enforcement officer or code enforcement officer conducting illegal dumping enforcement. This person shall not have the power of arrest or access to summary criminal history information pursuant to this section. No person may be appointed as an illegal dumping enforcement officer or code enforcement officer if that person is disqualified pursuant to the criteria set forth in Section 1029 of the Government Code. Persons regularly employed by a city, county, or city and county designated pursuant to this subdivision may be furnished state summary criminal history information upon a showing of compelling need pursuant to subdivision (c) of Section 11105.

(j) Until January 1, 2025, persons who, pursuant to Section 4108 of the Food and Agricultural Code, were appointed as Museum Security Officers and Supervising Museum Security Officers by the Exposition Park General Manager before March 1, 2022, and have not yet completed the regular basic training course prescribed by the Commission on Peace Officer Standards and Training.

SEC. 5. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurs before January 1, 2022,

shall not be subject to the time limitations in paragraph (11) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all

information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (b) of Section 6253 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 6. Section 1001.95 of the Penal Code is amended to read:

1001.95. (a) A judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant pursuant to these provisions.

(b) A judge may continue a diverted case for a period not to exceed 24 months and order the defendant to comply with terms, conditions, or

programs that the judge deems appropriate based on the defendant's specific situation.

(c) If the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant.

(d) If it appears to the court that the defendant is not complying with the terms and conditions of diversion, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the defendant has not complied with the terms and conditions of diversion, the court may end the diversion and order resumption of the criminal proceedings.

(e) A defendant may not be offered diversion pursuant to this section for any of the following current charged offenses:

(1) Any offense for which a person, if convicted, would be required to register pursuant to Section 290.

(2) Any offense involving domestic violence, as defined in Section 6211 of the Family Code or subdivision (b) of Section 13700 of this code.

(3) A violation of Section 646.9.

SEC. 7. The heading of Article 1.5 (commencing with Section 1172) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 1.5. Recall and Resentencing

SEC. 8. Section 1170.01 of the Penal Code is amended and renumbered to read:

1172. (a) The County Resentencing Pilot Program (pilot) is hereby established to support and evaluate a collaborative approach to exercising prosecutorial resentencing discretion pursuant to Section 1172.1. Participants in the pilot shall include a county district attorney's office, a county public defender's office, and may include a community-based organization in each county pilot site.

(b) Each participating district attorney's office shall do all of the following:

(1) Develop and implement a written policy which, at minimum, outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend individuals for recall and resentencing. The district attorney's office may take into account any input provided by the participating public defender's office or a qualified contracted community-based organization in developing this policy.

(2) Identify, investigate, and recommend the recall and resentencing of incarcerated persons consistent with its written policy.

(3) Direct all funding provided for the pilot be used for the purposes of resentencing individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy district attorneys, paralegals, and data analysts who will coordinate obtaining records and case files, support data entry, assist in the preparation and filing of pleadings, coordinate with victim

services, and any other tasks required to complete the processing and facilitation of resentencing recommendations and to comply with the requirements of the pilot.

(c) A participating district attorney's office may contract with a qualifying community-based organization for the duration of the pilot. The community-based organization shall have experience working with currently or formerly incarcerated individuals and their support networks, and shall have expertise in at least two of the following areas:

(1) Supporting and developing prerelease and reentry plans.

(2) Family reunification services.

(3) Referrals to postrelease wraparound programs, including, but not limited to, employment, education, housing, substance use disorder, and mental health service programs.

(4) Restorative justice programs.

(d) Nothing in this section shall be construed to limit the discretion or authority granted to prosecutors under Section 1172.1.

(e) All funding provided to a participating public defender's office shall be used for the purposes of supporting the resentencing of individuals pursuant to the pilot, including, but not limited to, ensuring adequate staffing of deputy public defenders and other support staff to represent incarcerated persons under consideration for resentencing, identifying and recommending incarcerated persons to the district attorney's office for resentencing consideration, and developing reentry and release plans. A participating public defender's office may provide input to the county district attorney's office regarding the factors, criteria, and processes to be used by the district attorney in their exercise of discretion under Section 1172.1.

(f) Each participating district attorney's office shall utilize the same template developed by the evaluator to identify and track specific measures consistent with the goals of this section. The template shall be finalized no later than October 1, 2021. The measures shall include, but not be limited to, the following:

(1) A summary of expenditures by each entity receiving funds.

(2) A summary of any implementation delays or challenges, as well as steps being taken to address them.

(3) The total number of people incarcerated in state prison on the first day of each reporting year for convictions obtained in the reporting county.

(4) The factors and criteria used to identify cases to be considered for prosecutor-initiated resentencing.

(5) The total number of cases considered by a pilot participant for prosecutor-initiated resentencing. For each case, information collected shall include the date the case was considered, along with the defendant's race, ethnicity, gender, age at commitment, categories of controlling offenses, date of prison admission, earliest possible release date or minimum eligible parole date, and date of birth.

(6) The total number of prosecutor-initiated resentencing recommendations by the pilot participant to the court for recall of sentence, date of referral, and information on the defendant's race, ethnicity, gender,

age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(7) The total number of prosecutor-initiated resentencing recommendations by the pilot participant in which the court responded, the date the court considered each case referred, how many cases the court considered, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(8) The total number of prosecutor-initiated resentencing recommendations denied by the court, and for each case the date of the denial and the reasons for the denial, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(9) The total number of people who were resentenced, the date of resentencing, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(10) The total number of people released from state prison due to prosecutor-initiated resentencing by the pilot participant, how many were released from state prison and the date of release, and information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of recall consideration, time served, and time remaining.

(g) The participating district attorneys' offices shall provide the data listed in subdivision (f) to the evaluator on a quarterly basis.

(h) To the extent possible, the evaluation of data reported by the participating district attorneys' offices shall be conducted in a manner that allows for comparison between the pilot participant sites. This includes, but is not limited to, collection and reporting of data at the individual case level using the same definitions. Each pilot participant shall provide any information necessary to the evaluator's completion of its analysis.

(i) Notwithstanding any other law, state entities, including, but not limited to, the Department of Corrections and Rehabilitation, the State Department of Social Services, and the Department of Child Support Services, shall provide any information needed for the completion of the evaluator's analysis.

(j) The evaluator shall do all of the following:

(1) For each case considered by a pilot participant, calculate the time served by an individual and the time remaining on their sentence.

(2) Analyze the data and prepare two preliminary reports and a final report to the Legislature. The first preliminary report shall be submitted to the Legislature on or before October 1, 2022. The second preliminary report shall be submitted to the Legislature on or before October 1, 2023. The final report shall be submitted to the Legislature on or before January 31, 2025.

(3) As part of the evaluation, the evaluator shall conduct, at minimum, four assessments, as follows:

(A) An implementation assessment shall be conducted to determine if pilot activities were implemented as intended. This assessment shall include

semi-structured in-depth interviews with all relevant stakeholders, including, but not limited to, representatives from the district attorney agencies, public defender agencies and community-based organizations participating in the pilot jurisdictions. The assessment shall document the different strategies the pilot sites used, the development and implementation of the written resentencing policies and procedures, which cases were prioritized for resentencing and the referral process, and factors that facilitated or hindered implementation.

(B) A cost study that shall estimate the resources required to implement the pilot activities, to include both new expenditures on personnel and other goods and services, and the reallocation of resources from prior activities to the pilot activities. The assessment shall include total cost and cost per case.

(C) An assessment of the estimated amount of time by which an individual's earliest possible release date or minimum eligible parole date was advanced due to prosecutor-initiated resentencing, including a descriptive analysis of the process of cases from initial recommendation to final resentencing outcomes to document points of attrition in the process and allow for comparison between individuals based on age, gender, race, offense, and county. This assessment shall include a description of recidivism outcomes for individuals released from prison, based on definitions created in collaboration with pilot participants. This assessment shall include a calculation of the total number of days of incarceration avoided, and amount of time by which the person's earliest possible release date or minimum eligible parole date was advanced due to prosecutor-initiated resentencing for those individuals released from prison using data maintained by the Department of Corrections and Rehabilitation data systems.

(D) An assessment which compares, to the extent feasible, records at the individual case level with county or state administrative data files that capture utilization of government benefit and social service programs, such as Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, and other government cash or in-kind social services, and court-ordered child support and visitation. The evaluator shall document changes in these indicators at the individual case level during the evaluation period, in order to determine whether any observed changes can be attributed to the pilot. The evaluator shall combine the descriptive information on outcomes from the third and fourth evaluation components with the cost analysis findings from the second component to estimate the potential for cost savings to state and local governments from the pilot activities. The evaluator shall, using the data collected from the pilot, estimate the potential for cost savings to state and local governments from the pilot activities.

(k) The pilot term shall begin on September 1, 2021, and end on September 1, 2024. The evaluation term shall begin on September 1, 2021, and end on January 31, 2025.

SEC. 9. Section 1170.03 of the Penal Code is amended and renumbered to read:

1172.1. (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.

(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.

SEC. 10. Section 1170.95 of the Penal Code is amended and renumbered to read:

1172.6. (a) A person convicted of felony murder or murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, attempted murder under the natural and probable consequences doctrine, or manslaughter may file a petition with the court that sentenced the petitioner to have the petitioner's murder, attempted murder, or manslaughter conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or other theory under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine.

(2) The petitioner was convicted of murder, attempted murder, or manslaughter following a trial or accepted a plea offer in lieu of a trial at which the petitioner could have been convicted of murder or attempted murder.

(3) The petitioner could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189 made effective January 1, 2019.

(b) (1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented

the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:

(A) A declaration by the petitioner that the petitioner is eligible for relief under this section, based on all the requirements of subdivision (a).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(3) Upon receiving a petition in which the information required by this subdivision is set forth or a petition where any missing information can readily be ascertained by the court, if the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.

(c) Within 60 days after service of a petition that meets the requirements set forth in subdivision (b), the prosecutor shall file and serve a response. The petitioner may file and serve a reply within 30 days after the prosecutor's response is served. These deadlines shall be extended for good cause. After the parties have had an opportunity to submit briefings, the court shall hold a hearing to determine whether the petitioner has made a prima facie case for relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause. If the court declines to make an order to show cause, it shall provide a statement fully setting forth its reasons for doing so.

(d) (1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder, attempted murder, or manslaughter conviction and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline may be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have the murder, attempted murder, or manslaughter conviction vacated and to be resentenced. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is guilty of murder or attempted murder under California law as amended by the changes to Section 188 or 189 made effective January 1, 2019. The admission of evidence in the hearing shall

be governed by the Evidence Code, except that the court may consider evidence previously admitted at any prior hearing or trial that is admissible under current law, including witness testimony, stipulated evidence, and matters judicially noticed. The court may also consider the procedural history of the case recited in any prior appellate opinion. However, hearsay evidence that was admitted in a preliminary hearing pursuant to subdivision (b) of Section 872 shall be excluded from the hearing as hearsay, unless the evidence is admissible pursuant to another exception to the hearsay rule. The prosecutor and the petitioner may also offer new or additional evidence to meet their respective burdens. A finding that there is substantial evidence to support a conviction for murder, attempted murder, or manslaughter is insufficient to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges.

(e) The petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes if the petitioner is entitled to relief pursuant to this section, murder or attempted murder was charged generically, and the target offense was not charged. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person convicted of murder, attempted murder, or manslaughter whose conviction is not final may challenge on direct appeal the validity of that conviction based on the changes made to Sections 188 and 189 by Senate Bill 1437 (Chapter 1015 of the Statutes of 2018).

(h) A person who is resentenced pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to two years following the completion of the sentence.

SEC. 11. Section 1171 of the Penal Code is amended and renumbered to read:

1172.7. (a) 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.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county 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. This information shall be provided as follows:

(1) 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 enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentence 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. The review and resentencing shall be completed as follows:

(1) 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.

(2) By December 31, 2023, for all other individuals.

(d) (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 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.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

SEC. 12. Section 1171.1 of the Penal Code is amended and renumbered to read:

1172.75. (a) 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.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county 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. This information shall be provided as follows:

(1) 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 enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) 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. The review and resentencing shall be completed as follows:

(1) 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.

(2) By December 31, 2023, for all other individuals.

(d) (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 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.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

SEC. 13. Section 1203.425 of the Penal Code is amended to read:

1203.425. (a) (1) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, shall identify persons with convictions that meet the criteria set forth in subparagraph (B) and are eligible for automatic conviction record relief.

(B) A person is eligible for automatic conviction relief pursuant to this section if they meet all of the following conditions:

(i) The person is not required to register pursuant to the Sex Offender Registration Act.

(ii) The person does not have an active record for local, state, or federal supervision in the Supervised Release File.

(iii) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for an offense and there is no indication of pending criminal charges.

(iv) Except as otherwise provided in subclause (III) of clause (v), there is no indication that the conviction resulted in a sentence of incarceration in the state prison.

(v) The conviction occurred on or after January 1, 1973, and meets either of the following criteria:

(I) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation.

(II) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment.

(2) (A) Except as specified in subdivision (b), the department shall grant relief, including dismissal of a conviction, to a person identified pursuant to paragraph (1) without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records.

(B) The state summary criminal history information shall include, directly next to or below the entry or entries regarding the person's criminal record, a note stating "relief granted," listing the date that the department granted relief and this section. This note shall be included in all statewide criminal databases with a record of the conviction.

(C) Except as otherwise provided in paragraph (4) and in Section 13555 of the Vehicle Code, a person granted conviction relief pursuant to this section shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.

(3) (A) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, the department shall electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section. Commencing on January 1, 2023, for any record retained by the court pursuant to Section 68152 of the Government Code, except as provided in paragraph (4), the court shall not disclose information concerning a conviction granted relief pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(B) If probation is transferred pursuant to Section 1203.9, the department shall electronically submit a notice as provided in subparagraph (A) to both the transferring court and any subsequent receiving court. The electronic notice shall be in a mutually agreed upon format.

(C) If a receiving court reduces a felony to a misdemeanor pursuant to subdivision (b) of Section 17, or dismisses a conviction pursuant to law, including, but not limited to, Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.43, or 1203.49, it shall furnish a disposition report to the department with the original case number and CII number from the transferring court. The department shall electronically submit a notice to the superior court that sentenced the defendant. If probation is transferred multiple times, the department shall electronically submit a notice to all other involved courts. The electronic notice shall be in a mutually agreed upon format.

(D) If a court receives notification from the department pursuant to subparagraph (B), the court shall update its records to reflect the reduction or dismissal. If a court receives notification that a case was dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, the court shall update its records to reflect the dismissal and shall not disclose information concerning a conviction granted relief to any person or entity, in any format, except to the person whose conviction was granted relief or a criminal justice agency, as defined in Section 851.92.

(4) Relief granted pursuant to this section is subject to the following conditions:

(A) Relief granted pursuant to this section does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, as defined in Section 830.

(B) Relief granted pursuant to this section does not relieve a person of the obligation to disclose the conviction in response to a direct question contained in a questionnaire or application for public office, or for contracting with the California State Lottery Commission.

(C) Relief granted pursuant to this section has no effect on the ability of a criminal justice agency, as defined in Section 851.92, to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.

(D) Relief granted pursuant to this section does not limit the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted pursuant to this section.

(E) Relief granted pursuant to this section does not affect a person's authorization to own, possess, or have in the person's custody or control a firearm, or the person's susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the criminal conviction would otherwise affect this authorization or susceptibility.

(F) Relief granted pursuant to this section does not affect a prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction.

(G) Relief granted pursuant to this section does not release a person from the terms and conditions of any unexpired criminal protective order that has been issued by the court pursuant to paragraph (1) of subdivision (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (*l*) of Section 368, or subdivision (k) of Section 646.9. These protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, despite the dismissal of the underlying conviction.

(H) Relief granted pursuant to this section does not affect the authority to receive, or take adverse action based on, criminal history information, including the authority to receive certified court records received or evaluated pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or pursuant to any statutory or regulatory provisions that incorporate the criteria of those sections.

(I) Relief granted pursuant to this section does not make eligible a person who is otherwise ineligible to provide, or receive payment for providing, in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code.

(J) In a subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.

(5) This section shall not limit petitions, motions, or orders for relief in a criminal case, as required or authorized by any other law, including, but not limited to, Sections 1203.4 and 1204.4a.

(6) Commencing July 1, 2022, and subject to an appropriation in the annual Budget Act, the department shall annually publish statistics for each county regarding the total number of convictions granted relief pursuant to this section and the total number of convictions prohibited from automatic

relief pursuant to subdivision (b), on the OpenJustice Web portal, as defined in Section 13010.

(b) (1) The prosecuting attorney or probation department may, no later than 90 calendar days before the date of a person's eligibility for relief pursuant to this section, file a petition to prohibit the department from granting automatic relief pursuant to this section, based on a showing that granting that relief would pose a substantial threat to the public safety. If probation was transferred pursuant to Section 1203.9, the prosecuting attorney or probation department in either the receiving county or the transferring county shall file the petition in the county of current jurisdiction.

(2) The court shall give notice to the defendant and conduct a hearing on the petition within 45 days after the petition is filed.

(3) At a hearing on the petition pursuant to this subdivision, the defendant, the probation department, the prosecuting attorney, and the arresting agency, through the prosecuting attorney, may present evidence to the court. Notwithstanding Sections 1538.5 and 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, reliable, and relevant.

(4) The prosecutor or probation department has the initial burden of proof to show that granting conviction relief would pose a substantial threat to the public safety. In determining whether granting relief would pose a substantial threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) Declarations or evidence regarding the offense for which a grant of relief is being contested.

(B) The defendant's record of arrests and convictions.

(5) If the court finds that the prosecutor or probation department has satisfied the burden of proof, the burden shifts to the defendant to show that the hardship of not obtaining relief outweighs the threat to the public safety of providing relief. In determining whether the defendant's hardship outweighs the threat to the public safety, the court may consider any relevant factors including, but not limited to, either of the following:

(A) The hardship to the defendant that has been caused by the conviction and that would be caused if relief is not granted.

(B) Declarations or evidence regarding the defendant's good character.

(6) If the court grants a petition pursuant to this subdivision, the court shall furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief pursuant to this section was denied, and the department shall not grant relief pursuant to this section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice to the transferring court, and, if probation was transferred multiple times, to all other involved courts.

(7) A person denied relief pursuant to this section may continue to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants relief pursuant to one of those sections, the court shall

furnish a disposition report to the Department of Justice pursuant to Section 13151, stating that relief was granted pursuant to the applicable section, and the department shall grant relief pursuant to that section. If probation was transferred pursuant to Section 1203.9, the department shall electronically submit a notice that relief was granted pursuant to the applicable section to the transferring court and, if probation was transferred multiple times, to all other involved courts.

(c) At the time of sentencing, the court shall advise a defendant, either orally or in writing, of the provisions of this section and of the defendant's right, if any, to petition for a certificate of rehabilitation and pardon.

SEC. 14. Section 1233.12 is added to the Penal Code, to read:

1233.12. (a) Notwithstanding Sections 1233.3 and 1233.4, in each of the 2022–23 and 2023–24 fiscal years, the amount of one hundred twenty-two million eight hundred twenty-nine thousand three hundred ninety-seven dollars ($122,829,397) is hereby appropriated from the General Fund to the State Community Corrections Performance Incentives Fund, established pursuant to Section 1233.6, for the community corrections program. Funds shall be allocated by the Controller to counties according to the requirements of the program and pursuant to the following schedule:

Alameda	$ 2,760,919
Alpine	$ 200,000
Amador	$ 233,777
Butte	$ 416,404
Calaveras	$ 512,027
Colusa	$ 267,749
Contra Costa	$ 6,643,176
Del Norte	$ 200,000
El Dorado	$ 348,495
Fresno	$ 3,156,754
Glenn	$ 223,171
Humboldt	$ 1,055,456
Imperial	$ 203,247
Inyo	$ 222,098
Kern	$ 1,519,187
Kings	$ 1,105,869
Lake	$ 465,073
Lassen	$ 253,037
Los Angeles	$ 37,413,530
Madera	$ 1,237,543
Marin	$ 988,095
Mariposa	$ 200,000
Mendocino	$ 592,510
Merced	$ 1,032,961
Modoc	$ 202,975
Mono	$ 257,466
Monterey	$ 300,463

Napa	$ 329,767
Nevada	$ 669,278
Orange	$ 4,973,540
Placer	$ 545,848
Plumas	$ 442,681
Riverside	$ 6,954,331
Sacramento	$ 12,329,233
San Benito	$ 282,215
San Bernardino	$ 8,357,087
San Diego	$ 2,930,998
San Francisco	$ 3,060,552
San Joaquin	$ 2,227,270
San Luis Obispo	$ 1,322,460
San Mateo	$ 1,175,827
Santa Barbara	$ 1,416,944
Santa Clara	$ 1,747,784
Santa Cruz	$ 1,746,643
Shasta	$ 512,037
Sierra	$ 215,489
Siskiyou	$ 284,355
Solano	$ 807,241
Sonoma	$ 1,067,821
Stanislaus	$ 1,286,879
Sutter	$ 738,100
Tehama	$ 458,088
Trinity	$ 200,000
Tulare	$ 1,864,437
Tuolumne	$ 382,373
Ventura	$ 783,267
Yolo	$ 1,504,870
Yuba	$ 200,000

(b) The total annual payment to each county, as scheduled in subdivision (a), shall be divided into four equal quarterly payments.

(c) A county that fails to provide the information required in Section 1231 to the Judicial Council shall not be eligible for payment pursuant to this section.

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 15. Section 1385 of the Penal Code is amended to read:

1385. (a) The judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court

reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

(b) (1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

(c) (1) Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.

(2) In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. "Endanger public safety" means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.

(A) Application of the enhancement would result in a discriminatory racial impact as described in paragraph (4) of subdivision (a) of Section 745.

(B) Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed.

(C) The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed.

(D) The current offense is connected to mental illness.

(E) The current offense is connected to prior victimization or childhood trauma.

(F) The current offense is not a violent felony as defined in subdivision (c) of Section 667.5.

(G) The defendant was a juvenile when they committed the current offense or any prior offenses, including criminal convictions and juvenile adjudications, that trigger the enhancement or enhancements applied in the current case.

(H) The enhancement is based on a prior conviction that is over five years old.

(I) Though a firearm was used in the current offense, it was inoperable or unloaded.

(3) While the court may exercise its discretion at sentencing, this subdivision does not prevent a court from exercising its discretion before, during, or after trial or entry of plea.

(4) The circumstances listed in paragraph (2) are not exclusive and the court maintains authority to dismiss or strike an enhancement in accordance with subdivision (a).

(5) For the purposes of subparagraph (D) of paragraph (2), a mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. A court may conclude that a defendant's mental illness was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental illness substantially contributed to the defendant's involvement in the commission of the offense.

(6) For the purposes of this subdivision, the following terms have the following meanings:

(A) "Childhood trauma" means that as a minor the person experienced physical, emotional, or sexual abuse, physical or emotional neglect. A court may conclude that a defendant's childhood trauma was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's childhood trauma substantially contributed to the defendant's involvement in the commission of the offense.

(B) "Prior victimization" means the person was a victim of intimate partner violence, sexual violence, or human trafficking, or the person has experienced psychological or physical trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence. A court may conclude that a defendant's prior victimization was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's prior victimization substantially contributed to the defendant's involvement in the commission of the offense.

(7) This subdivision shall apply to all sentencings occurring after January 1, 2022.

SEC. 16. Section 2067 of the Penal Code is amended to read:

2067. (a) As outlined in the Budget Act of 2018, it is anticipated that all California inmates will be returned from out-of-state contract correctional facilities by February 2019. To the extent that the adult offender population continues to decline, the Department of Corrections and Rehabilitation shall begin reducing private in-state male contract correctional facilities in a manner that maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. The private in-state male contract correctional facilities that are

primarily staffed by non-Department of Corrections and Rehabilitation personnel shall be prioritized for reduction over other in-state contract correctional facilities.

(b) As the population of offenders in private in-state male contract correctional facilities identified in subdivision (a) is reduced, and to the extent that the adult offender population continues to decline, the Department of Corrections and Rehabilitation shall accommodate the projected population decline by reducing the capacity of state-owned and operated prisons or in-state leased or contract correctional facilities, in a manner that maximizes long-term state facility savings, leverages long-term investments, and maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. In reducing this additional capacity, the department shall take into consideration the following factors, including, but not limited to:

(1) The cost to operate at the capacity.

(2) Workforce impacts.

(3) Subpopulation and gender-specific housing needs.

(4) Long-term investment in state-owned and operated correctional facilities, including previous investments.

(5) Public safety and rehabilitation.

(6) The durability of the state's solution to prison overcrowding.

(c) The following shall apply:

(1) Subdivision (b) shall not be enforceable by a private right of action.

(2) Subdivision (b) does not create an act or duty enforceable under Sections 1060 or 1085 of the Code of Civil Procedure.

(3) A city, county, city and county, local district, or special district shall not maintain an action or proceeding against the State of California pursuant to subdivision (b).

(d) An action initiated regarding this section shall be brought in the superior court of the County of Sacramento.

SEC. 17. Section 4900 of the Penal Code is amended to read:

4900. (a) Any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, shall have served the term or any part thereof for which they were imprisoned in state prison or incarcerated in county jail, may, under the conditions provided under this chapter, present a claim against the state to the California Victim Compensation Board for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration.

(b) If a state or federal court has granted a writ of habeas corpus or if a state court has granted a motion to vacate pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of Section 1473.7, and the charges were subsequently dismissed, or the person was acquitted of the charges on a

retrial, the California Victim Compensation Board shall, upon application by the person, and without a hearing, approve payment to the claimant if sufficient funds are available, upon appropriation by the Legislature, pursuant to Section 4904, unless the Attorney General establishes pursuant to subdivision (d) of Section 4902, that the claimant is not entitled to compensation.

SEC. 18. Section 4902 of the Penal Code is amended to read:

4902. (a) If the provisions of Section 851.865 or 1485.55 apply in any claim, the California Victim Compensation Board shall, within 30 days of the presentation of the claim, calculate the compensation for the claimant pursuant to Section 4904 and approve payment to the claimant if sufficient funds are available, upon appropriation by the Legislature. As to any claim to which Section 851.865 or 1485.55 does not apply, the Attorney General shall respond to the claim within 60 days or request an extension of time, upon a showing of good cause.

(b) Upon receipt of a response from the Attorney General, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the time fixed for the hearing. The board shall use reasonable diligence in setting the date for the hearing and shall attempt to set the date for the hearing at the earliest date convenient for the parties and the board.

(c) If the time period for response elapses without a request for extension or a response from the Attorney General pursuant to subdivision (a), the board shall fix a time and place for the hearing of the claim, mail notice thereof to the claimant at least 15 days prior to the time fixed for the hearing, and make a recommendation based on the claimant's verified claim and any evidence presented by the claimant.

(d) If subdivision (b) of Section 4900 applies in any claim, the California Victim Compensation Board shall calculate the compensation for the claimant pursuant to Section 4904 and approve payment to the claimant if sufficient funds are available, upon appropriation by the Legislature, unless the Attorney General objects in writing, within 45 days from when the claimant files the claim, with clear and convincing evidence that the claimant is not entitled to compensation. The Attorney General may request a single 45-day extension of time, upon a showing of good cause. If the Attorney General declines to object within the allotted period of time, then the board shall issue its recommendation pursuant to Section 4904 within 60 days thereafter. Upon receipt of the objection, the board shall fix a time and place for the hearing of the claim, and shall mail notice thereof to the claimant and to the Attorney General at least 15 days prior to the fixed time for the hearing. At a hearing, the Attorney General shall bear the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the Attorney General fails to meet this burden, the board shall approve payment to the claimant, calculated pursuant to Section 4904, if sufficient funds are available upon appropriation by the Legislature.

SEC. 19. Section 4904 of the Penal Code is amended to read:

4904. If the evidence shows that the crime with which the claimant was charged was either not committed at all, or, if committed, was not committed by the claimant, or for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office has not met their burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense, and the California Victim Compensation Board has found that the claimant has sustained injury through their erroneous conviction and imprisonment, the California Victim Compensation Board shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature. The amount of the payment shall be a sum equivalent to one hundred forty dollars ($140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration. That payment shall not be treated as gross income to the recipient under the Revenue and Taxation Code.

SEC. 20. Section 4904.5 is added to the Penal Code, to read:

4904.5. On or before September 1 each year, the California Victim Compensation Board shall submit an annual report to the Joint Legislative Budget Committee on approved erroneous conviction claims that were paid in the prior fiscal year. The report shall include a listing of all individuals approved by the board for compensation under this chapter, the amount approved for each individual, and a case summary.

SEC. 21. Section 4905 of the Penal Code is repealed.

SEC. 22. Section 4905 is added to the Penal Code, to read:

4905. The California Victim Compensation Board is immune from liability for damages, including prejudgment interest, for any decision on a claim under this chapter. The immunity granted to the board under this section does not change or affect the immunity provided by Section 820.2 of the Government Code.

SEC. 23. Section 5003.7 of the Penal Code is repealed.

SEC. 24. Section 5003.7 is added to the Penal Code, to read:

5003.7. The Department of Corrections and Rehabilitation shall remove all incarcerated persons from, cease operations of, and close, the California Correctional Center located in the Town of Susanville, California, no later than June 30, 2023.

SEC. 25. Section 5007.4 is added to the Penal Code, to read:

5007.4. (a) (1) The Delancey Street Restaurant Management Program is hereby established for the purpose of teaching marketable skills useful to incarcerated persons for reemployment opportunities upon their release from state prison. The program shall focus on restaurant operation, service, and hospitality.

(2) (A) The program shall be operated by the department in consultation with the Delancey Street Foundation.

(B) The foundation shall be aware of, and comply with, all federal and state statutes, rules, regulations, and department policies and directives. Notwithstanding subdivision (b), department policies and directives shall include, but are not limited to, the California Correctional Health Care

Services Health Care Department Operations Manual, Title 15 of the California Code of Regulations, policy memoranda issued by the Secretary of the Department of Corrections and Rehabilitation or jointly with the receiver of the California Correctional Health Care Services, and any similar departmentwide guidance issued by proper authority, of which the foundation has been informed by the department or that has been published on the department's public internet website.

(b) Operation of the program is exempt from all of the following:

(1) Article 5 (commencing with Section 19625) of Chapter 6 of Part 2 of Division 10 of the Welfare and Institutions Code.

(2) Section 2807.

(3) The Public Contract Code.

(4) The State Contracting Manual.

(5) Section 599.652 of Title 2 of the California Code of Regulations.

(6) Sections 3054.6, 3054.7, and 3056 of Title 15 of the California Code of Regulations.

(c) Beginning November 1, 2023, and annually thereafter, the department shall make available, upon request, the total expenditures and revenue collected for the program during the previous fiscal year.

SEC. 26. Section 5027 of the Penal Code is amended to read:

5027. (a) Upon appropriation by the Legislature in the annual Budget Act, the Department of Corrections and Rehabilitation shall award funding for an innovative grant program to not-for-profit organizations to replicate their programs at institutions that the Director of the Division of Rehabilitative Programs has determined are underserved by volunteer and not-for-profit organizations. The director shall develop a formula for identifying target institutions based upon factors including, but not limited to, number of volunteers, number of inmates, number of volunteer-based programs, and the size of waiting lists for inmates wanting to participate in programs.

(b) Grant funding shall be provided to not-for-profit organizations wishing to expand programs that they are currently providing in other California state prisons that have demonstrated success and focus on offender responsibility and restorative justice principles or to not-for-profit organizations with experience in providing programming in a correctional setting. The grants shall be awarded for a three-year period and are designed to be one time in nature. All funding shall go directly to the not-for-profit organizations and shall not be used for custody staff or administration of the grant. Any unspent funds shall revert to the fund source authorized for this purpose at the end of three years.

(c) On or before January 1 of each year, the department shall report to the budget committees and public safety committees in both houses of the Legislature on the following information from the previous fiscal year's grants:

(1) The number of grants provided.

(2) The institutions receiving grants.

(3) A description of each program and level of funding provided, organized by institution.

(4) The start date of each program.

(5) Any feedback from inmates participating in the programs on the value of the programs.

(6) Any feedback from the program providers on their experience with each institution.

(7) The number of participants participating in each program.

(8) The number of participants completing each program.

(9) Waiting lists, if any, for each program.

SEC. 27. Section 5032 is added to the Penal Code, to read:

5032. Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the closure of a prison or juvenile facility operated or leased by the Department of Corrections and Rehabilitation, or to any activity or approval necessary for, or incidental to, the closure of a prison or juvenile facility operated or leased by the Department of Corrections and Rehabilitation, including, but not limited to, a prison or juvenile facility that was identified or designated for closure before the effective date of this section. This section is declaratory of existing law.

SEC. 28. Section 5076.1 of the Penal Code is amended to read:

5076.1. (a) The board shall meet at each of the state prisons and facilities under the jurisdiction of the Division of Adult Institutions. Meetings shall be held at whatever times may be necessary for a full and complete study of the cases of all inmates whose matters are considered. Other times and places of meeting may also be designated by the board. Each commissioner of the board shall receive their actual necessary traveling expenses incurred in the performance of their official duties. Where the board performs its functions by meeting en banc in either public or executive sessions to decide matters of general policy, a majority of commissioners holding office on the date the matter is heard shall be present, and no action shall be valid unless it is concurred in by a majority vote of those present.

(b) The board may use deputy commissioners to whom it may assign appropriate duties, including hearing cases and making decisions. Those decisions shall be made in accordance with policies approved by a majority of commissioners holding office.

(c) The board may meet and transact business in panels. Each panel shall consist of two or more persons, subject to subdivision (d) of Section 3041. No action shall be valid unless concurred in by a majority vote of the persons present. In the event of a tie vote, the matter shall be referred for en banc review by the board. The commissioners conducting the review shall consider the full record that was before the panel that resulted in the tie vote. The review shall be limited to the full record that was before the panel that resulted in the tie vote. New evidence or comment shall not be considered in the en banc proceeding. A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

(d) Consideration of parole release for persons sentenced to life imprisonment pursuant to subdivision (b) of Section 1168 shall be heard by

a panel of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner. A recommendation for recall of a sentence under Section 1172.1 shall be made by a panel of two or more commissioners or deputy commissioners, of which only one may be a deputy commissioner.

SEC. 29. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease

community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may perform state and federal criminal history information checks as provided for in subdivision (u). The Department of Justice shall provide a state or federal response to the agency, officer, or official pursuant to subdivision (p).

(11) A city, county, city and county, or district, or an officer or official thereof, if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city, county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy documents or information concerning or arising from offenses for or of which the parent

has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph

to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal-level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal-level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) A peace officer of the state other than those included in subdivision (b).

(3) An illegal dumping enforcement officer as defined in subdivision (i) of Section 830.7.

(4) A peace officer of another country.

(5) Public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) A person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) An individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or

subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal-level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal-level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) A campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the

department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) A foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints

for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or which did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning

an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 1300 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u) (1) If a fingerprint-based criminal history information check is required pursuant to any statute, that check shall be requested from the Department of Justice and shall be applicable to the person identified in the referencing statute. The agency or entity identified in the statute shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of the types of applicants identified in the referencing statute, for the purpose of obtaining information as to the

existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of the state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(2) If requested, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history information check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute.

(3) The Department of Justice shall provide a state- or federal-level response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute, pursuant to the identified subdivision.

(4) The agency or entity identified in the referencing statute shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2, for persons described in the referencing statute.

(5) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the request described in this subdivision.

(v) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 30. Section 11105 is added to the Penal Code, to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.

(3) District attorneys of the state.

(4) Prosecuting city attorneys or city prosecutors of a city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, including all appeals and postconviction motions, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, if the information is requested in the course of representation.

(10) An agency, officer, or official of the state if the state summary criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may perform state and federal criminal history information checks as provided for in subdivision (u). The Department of Justice shall provide a state or federal response to the agency, officer, or official pursuant to subdivision (p).

(11) A city, county, city and county, or district, or an officer or official thereof, if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the state summary criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city, county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) A managing or supervising correctional officer of a county jail or other county correctional facility.

(16) A humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing state summary criminal history information, the agency shall delete or purge from the file and destroy documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for a purpose other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving state summary criminal history information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive

homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing the officer's duties.

(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.

(26) (A) A state entity, or its designee, that receives federal tax information. A state entity or its designee that is authorized by this paragraph to receive state summary criminal history information also may transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation for the purpose of the state entity or its designee obtaining federal-level criminal offender record information from the Department of Justice. This information shall be used only for the purposes set forth in Section 1044 of the Government Code.

(B) For purposes of this paragraph, "federal tax information," "state entity" and "designee" are as defined in paragraphs (1), (2), and (3), respectively, of subdivision (f) of Section 1044 of the Government Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal-level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) A public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, the Attorney General shall furnish a copy of the data to the person to whom the data relates.

(2) A peace officer of the state other than those included in subdivision (b).

(3) An illegal dumping enforcement officer as defined in subdivision (i) of Section 830.7.

(4) A peace officer of another country.

(5) Public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) A person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) An individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or a foreign nation.

(10) (A) (i) A public utility, as defined in Section 216 of the Public Utilities Code, or a cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and arrests for which the person is released on bail or on their own recognizance pending trial.

(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

(iii) State summary criminal history information is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on their own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. A public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(v) This section shall not be construed as imposing a duty upon public utilities or cable corporations to request state summary criminal history information on current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means a corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal-level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal-level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(11) A campus of the California State University or the University of California, or a four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to a special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) A foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, a person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for

this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or a state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting state summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(F) Sex offender registration status of the applicant.

(G) Sentencing information, if present in the department's records at the time of the response.

(*l*) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or that did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention, or the subject was granted relief pursuant to Section 851.91.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(E) Sex offender registration status of the applicant.

(F) Sentencing information, if present in the department's records at the time of the response.

(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or a statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(D) Sex offender registration status of the applicant.

(E) Sentencing information, if present in the department's records at the time of the response.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in the successful completion of a diversion program, exoneration, or a grant of relief pursuant to Section 851.91.

(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) A statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant

is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 1300 of the Financial Code, or a statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 1300 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sentencing information, if present in the department's records at the time of the response.

(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (*l*), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or a statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. The Commission on Teacher Credentialing shall receive every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on their own recognizance pending trial.

(C) Sex offender registration status of the applicant.

(D) Sentencing information, if present in the department's records at the time of the response.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (*l*), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.

(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.

(u) (1) If a fingerprint-based criminal history information check is required pursuant to any statute, that check shall be requested from the Department of Justice and shall be applicable to the person identified in the referencing statute. The agency or entity identified in the statute shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of the types of applicants identified in the referencing statute, for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of the state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

(2) If requested, the Department of Justice shall transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history information check. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and compile and disseminate a response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute.

(3) The Department of Justice shall provide a state- or federal-level response or a fitness determination, as appropriate, to the agency or entity identified in the referencing statute, pursuant to the identified subdivision.

(4) The agency or entity identified in the referencing statute shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2, for persons described in the referencing statute.

(5) The Department of Justice shall charge a fee sufficient to cover the reasonable cost of processing the request described in this subdivision.

(v) This section shall become operative on January 1, 2023.

SEC. 31. Section 13777 of the Penal Code is amended to read:

13777. (a) The Attorney General shall do each of the following:

(1) Collect information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats.

(2) Direct local law enforcement agencies, district attorneys, and elected city attorneys to provide to the Department of Justice, in a manner that the Attorney General prescribes, all of the following on an annual basis:

(A) The total number of anti-reproductive-rights crime-related calls for assistance made to the department:

(B) The total number of arrests for anti-reproductive-rights crimes, reported by which subdivision of Section 423.2 is the basis for the arrest. The report of each crime that violates any other law shall note the code, section, and subdivision that prohibits the crime. The report of any crime that violates both Section 423.2 and any other law shall note both the subdivision of Section 423.2 and the other code, section, and subdivision that prohibits the crime.

(C) The total number of cases in which the district attorney charged an individual with a crime that violates Section 423.2, including the subdivision that prohibits the crime.

(3) Beginning January 1, 2025, report to the Legislature on an annual basis the information collected pursuant to paragraph (2). To avoid production and distribution costs, the Attorney General may submit the reports electronically or as part of any other report that the Attorney General submits.

(4) Develop a plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes, and to carry out the legislative intent expressed in subdivisions (c), (d), (e), and (f) of Section 1 of the act that enacts this title in the 2001–02 Regular Session of the Legislature.

(b) In carrying out their responsibilities under this section, the Attorney General shall consult the Governor, the Commission on Peace Officer Standards and Training, and other subject matter experts.

SEC. 32. Section 14306 of the Penal Code is amended to read:

14306. (a) The secretary shall provide funding to qualified grantees to develop and implement, not later than 12 months after the receipt of funds, a course or courses of instruction for the training of staff of community-based nonprofit organizations, public prosecutors, or staff of community-based nonprofit organizations and public prosecutors in the enforcement of state and local environmental laws.

(b) The course or courses of instruction shall, at a minimum, do one or more of the following:

(1) Provide an understanding of the requirements of environmental laws.

(2) Teach prosecution techniques that will facilitate prosecution of environmental law violations.

(c) The secretary shall not award a grant to, or enter into a contract with, the California District Attorneys Association for development and implementation of courses of instruction pursuant to this section.

SEC. 33. Section 14307 of the Penal Code is amended to read:

14307. (a) The secretary shall provide funding to qualified grantees to develop and implement, not later than 12 months after the receipt of funds, a course or courses of instruction for the training of staff of community-based nonprofit organizations, or public prosecutors, fire departments, and state and local environmental regulators, or staff of community-based nonprofit organizations, public prosecutors, fire departments, and state and local environmental regulators.

(b) With the concurrence of the commission, peace officers may participate in the course or courses of training.

(c) The course or courses of instruction shall, at a minimum, do all of the following:

(1) Provide an understanding of the requirements of environmental laws.

(2) Teach enforcement investigative techniques that will facilitate the prosecution of environmental law violations.

(3) Provide environmental enforcement training materials.

(d) The secretary shall not award a grant to, or enter into a contract with, the California District Attorneys Association for development and implementation of courses of instruction pursuant to this section.

SEC. 34. Section 14308 of the Penal Code is amended to read:

14308. (a) The secretary may award grants to public and private entities for training public prosecutors, peace officers, firefighters, community-based nonprofit organizations, and state or local environmental regulators in the investigation and enforcement of environmental laws.

(b) The secretary may award local assistance grants as follows for the enforcement of environmental laws:

(1) To local environmental regulators.

(2) To community-based nonprofit organizations.

(3) To local environmental regulators jointly with community-based nonprofit organizations.

(c) The secretary may allow local environmental regulators to subgrant funding to community-based nonprofit organizations.

(d) Grant funding awarded to community-based nonprofit organizations either directly by the secretary or through a subgrant pursuant to this section may be used to address environmental violations that occur in or disproportionately impact disadvantaged communities, to support the inclusion of residents of disadvantaged communities in environmental enforcement efforts, for the identification and investigation of environmental violations, and for the development and litigation of environmental enforcement cases.

SEC. 35. Section 18005 of the Penal Code is amended to read:

18005. (a) An officer to whom a weapon is surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or

proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court.

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, or is used in a manner as to constitute a nuisance under Section 19190, 21390, 21590, or 29300, or subdivision (a) of Section 25700 without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed pursuant to subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4.

(c) No stolen weapon shall be destroyed pursuant to subdivision (a) unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonably ascertained.

(d) If the weapon was evidence in a criminal case, the weapon shall be retained as required by Chapter 13 (commencing with Section 1417) of Title 10 of Part 2.

SEC. 36. Section 18275 of the Penal Code is amended to read:

18275. (a) Any firearm or other deadly weapon that has been taken into custody and held by any of the following law enforcement authorities for longer than 12 months, and has not been recovered by the owner or person who had lawful possession at the time it was taken into custody, shall be considered a nuisance and destroyed as provided in subdivision (a) of Section 18005:

(1) A police, university police, or sheriff's department.

(2) A marshal's office.

(3) A peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2.

(4) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2.

(5) A peace officer, as defined in subdivision (d) of Section 830.31.

(6) A peace officer, as defined in Section 830.5.

(b) If a firearm or other deadly weapon is not recovered within 12 months due to an extended hearing process as provided in Section 18420, it is not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

SEC. 37. Section 34010 of the Penal Code is amended to read:

34010. Any law enforcement agency that retains custody of any firearm pursuant to Section 34005, or that destroys a firearm pursuant to Sections 18000 and 18005, shall notify the Department of Justice, and, if applicable, the superior court and any parties to any civil or criminal action related to the firearm, of the retention or destruction. This notification shall consist of a complete description of each firearm, including the name of the manufacturer or brand name, model, caliber, and serial number.

SEC. 38. Section 607 of the Welfare and Institutions Code is amended to read:

607. (a) The court may retain jurisdiction over a person who is found to be a ward or dependent child of the juvenile court until the ward or dependent child attains 21 years of age, except as provided in subdivisions (b), (c), (d), and (e).

(b) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707, until that person attains 23 years of age, or two years from the date of commitment to a secure youth treatment facility pursuant to Section 875, whichever occurs later, subject to the provisions of subdivision (c).

(c) The court may retain jurisdiction over a person who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707 until that person attains 25 years of age, or two years from the date of commitment to a secure youth treatment facility pursuant to Section 875, whichever occurs later, if the person, at the time of adjudication of a crime or crimes, would, in criminal court, have faced an aggregate sentence of seven years or more.

(d) The court shall not discharge a person from its jurisdiction who has been committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice while the person remains under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, including periods of extended control ordered pursuant to Section 1800.

(e) The court may retain jurisdiction over a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707, who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person attains 25 years of age, unless the court that committed the person finds, after notice and hearing, that the person's sanity has been restored.

(f) The court may retain jurisdiction over a person while that person is the subject of a warrant for arrest issued pursuant to Section 663.

(g) Notwithstanding subdivisions (b), (c), and (e), a person who is committed by the juvenile court to the Department of Corrections and Rehabilitation, Division of Juvenile Justice on or after July 1, 2012, but before July 1, 2018, and who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b) of Section 707 shall be discharged upon the expiration of a two-year period of control, or when the person attains 23 years of age, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5. This subdivision does not apply to a person who is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, or to a person who is confined in a state hospital or other appropriate public or private mental health facility, by a court prior to July 1, 2012, pursuant to subdivisions (b), (c), and (e).

(h) (1) Notwithstanding subdivision (g), a person who is committed by the juvenile court to the Department of Corrections and Rehabilitation,

Division of Juvenile Justice, on or after July 1, 2018, and who is found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (c) of Section 290.008 of the Penal Code or subdivision (b) of Section 707 of this code, shall be discharged upon the expiration of a two-year period of control, or when the person attains 23 years of age, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5.

(2) A person who, at the time of adjudication of a crime or crimes, would, in criminal court, have faced an aggregate sentence of seven years or more, shall be discharged upon the expiration of a two-year period of control, or when the person attains 25 years of age, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5.

(3) This subdivision does not apply to a person who is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, or to a person who is confined in a state hospital or other appropriate public or private mental health facility, by a court prior to July 1, 2018, as described in subdivision (g).

(i) The amendments to this section made by Chapter 342 of the Statutes of 2012 apply retroactively.

(j) This section does not change the period of juvenile court jurisdiction for a person committed to the Division of Juvenile Justice prior to July 1, 2018.

(k) This section shall become operative July 1, 2021.

SEC. 39. Section 726 of the Welfare and Institutions Code is amended to read:

726. (a) In all cases in which a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over the ward or dependent child by any parent or guardian and shall, in its order, clearly and specifically set forth all those limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(2) That the minor has been tried on probation while in custody and has failed to reform.

(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian.

(b) Whenever the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the minor, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational or developmental services decisions for themselves, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) or (6) of subdivision (b) of Section 727.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member, as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child in matters related to developmental services.

(c) An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. The limitations applicable to conflicts of interest for educational rights holders shall also apply to authorized representatives for developmental services decisions pursuant to subdivision (b) of Section 4701.6. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias their ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because the foster parent receives compensation for the provision of services pursuant to this section.

(1) If the court limits the parent's educational rights pursuant to subdivision (a), the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child and who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child and paragraphs (1) to (5), inclusive, of subdivision (b) do not apply, and the child has either been referred to the local educational agency for special education and related services or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(2) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access

to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, before each review hearing held under Article 10 (commencing with Section 360), provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(3) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b)(2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

If the court appoints a developmental services decisionmaker pursuant to this section, they shall have the authority to access the child's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(d) (1) If the minor is removed from the physical custody of the minor's parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the middle term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

(2) As used in this section and in Section 731, "maximum term of imprisonment" means the middle of the three time periods set forth in paragraph (3) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

(3) If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.

(4) If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the middle term of imprisonment prescribed by law.

(5) "Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in a secure youth treatment facility pursuant to Section 875, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Justice.

(6) This section does not limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

SEC. 40. Section 730 of the Welfare and Institutions Code is amended to read:

730. (a) (1) When a minor is adjudged a ward of the court on the ground that they are a person described by Section 602, the court may order any of the types of treatment referred to in Section 727, and as an additional alternative, may commit the minor to a juvenile home, ranch, camp, or forestry camp. If there is no county juvenile home, ranch, camp, or forestry camp within the county, the court may commit the minor to the county juvenile hall. In addition, the court may also make any of the following orders:

(A) Order the ward to make restitution, to pay a fine up to two hundred fifty dollars ($250) for deposit in the county treasury if the court finds that the minor has the financial ability to pay the fine, or to participate in uncompensated work programs.

(B) Commit the ward to a sheltered-care facility.

(C) Order that the ward and the ward's family or guardian participate in a program of professional counseling as arranged and directed by the probation officer as a condition of continued custody of the ward.

(D) Order placement of the ward at the Pine Grove Youth Conservation Camp if the ward meets the placement criteria, the county has entered into a contract with the Department of Corrections and Rehabilitation, either directly or through another county, the department has found the ward amenable, and there is space and resources available for the placement. The county probation department shall receive approval from the department prior to transporting the ward to the camp. The department shall immediately notify the county probation department if the ward is no longer amenable for continued camp placement and coordinate the immediate return of the ward to the county of jurisdiction.

(2) A court shall not commit a juvenile to any juvenile facility for a period that exceeds the middle term of imprisonment that could be imposed upon an adult convicted of the same offense.

(b) When a ward described in subdivision (a) is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, the court may make any and all reasonable orders for the conduct of the ward including the requirement that the ward go to work and earn money for the support of the ward's dependents or to

effect reparation and in either case that the ward keep an account of the ward's earnings and report the same to the probation officer and apply these earnings as directed by the court. The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.

(c) When a ward described in subdivision (a) is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, and is required as a condition of probation to participate in community service or graffiti cleanup, the court may impose a condition that if the minor unreasonably fails to attend or unreasonably leaves prior to completing the assigned daily hours of community service or graffiti cleanup, a law enforcement officer may take the minor into custody for the purpose of returning the minor to the site of the community service or graffiti cleanup.

(d) When a minor is adjudged or continued as a ward of the court on the ground that the ward is a person described by Section 602 by reason of the commission of rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code, the court shall order the minor to complete a sex offender treatment program, if the court determines, in consultation with the county probation officer, that suitable programs are available. In determining what type of treatment is appropriate, the court shall consider all of the following: the seriousness and circumstances of the offense, the vulnerability of the victim, the minor's criminal history and prior attempts at rehabilitation, the sophistication of the minor, the threat to public safety, the minor's likelihood of reoffending, and any other relevant information presented. If ordered by the court to complete a sex offender treatment program, the minor shall pay all or a portion of the reasonable costs of the sex offender treatment program after a determination is made of the ability of the minor to pay.

(e) This section shall become operative July 1, 2021.

SEC. 41. Section 875 of the Welfare and Institutions Code is amended to read:

875. (a) In addition to the types of treatment specified in Sections 727 and 730, commencing July 1, 2021, the court may order that a ward who is 14 years of age or older be committed to a secure youth treatment facility for a period of confinement described in subdivision (b) if the ward meets all of the following criteria:

(1) The juvenile is adjudicated and found to be a ward of the court based on an offense listed in subdivision (b) of Section 707 that was committed when the juvenile was 14 years of age or older.

(2) The adjudication described in paragraph (1) is the most recent offense for which the juvenile has been adjudicated.

(3) The court has made a finding on the record that a less restrictive, alternative disposition for the ward is unsuitable. In determining this, the court shall consider all relevant and material evidence, including the recommendations of counsel, the probation department, and any other agency

or individual designated by the court to advise on the appropriate disposition of the case. The court shall additionally make its determination based on all of the following criteria:

(A) The severity of the offense or offenses for which the ward has been most recently adjudicated, including the ward's role in the offense, the ward's behavior, and harm done to victims.

(B) The ward's previous delinquent history, including the adequacy and success of previous attempts by the juvenile court to rehabilitate the ward.

(C) Whether the programming, treatment, and education offered and provided in a secure youth treatment facility is appropriate to meet the treatment and security needs of the ward.

(D) Whether the goals of rehabilitation and community safety can be met by assigning the ward to an alternative, less restrictive disposition that is available to the court.

(E) The ward's age, developmental maturity, mental and emotional health, sexual orientation, gender identity and expression, and any disabilities or special needs affecting the safety or suitability of committing the ward to a term of confinement in a secure youth treatment facility.

(b) In making its order of commitment for a ward, the court shall set a baseline term of confinement for the ward that is based on the most serious recent offense for which the ward has been adjudicated. The baseline term of confinement shall represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community. The baseline term of confinement for the ward shall be determined according to offense-based classifications that are approved by the Judicial Council, as described in subdivision (h). Pending the development and adoption of offense-based classifications by the Judicial Council, the court shall set a baseline term of confinement for the ward utilizing the discharge consideration date guidelines applied by the Department of Corrections and Rehabilitation, Division of Juvenile Justice prior to its closure and as set forth in Sections 30807 to 30813, inclusive, of Title 9 of the California Code of Regulations. These guidelines shall be used only to determine a baseline confinement time for the ward and shall not be used or relied on to modify the ward's confinement time in any manner other than as provided in this section. The court may, pending the adoption of Judicial Council guidelines, modify the initial baseline term with a deviation of plus or minus six months. The baseline term shall also be subject to modification in progress review hearings as described in subdivision (e).

(c) (1) In making its order of commitment, the court shall additionally set a maximum term of confinement for the ward based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation. The maximum term of confinement shall represent the longest term of confinement in a facility that the ward may serve subject to the following:

(A) A ward committed to a secure youth treatment facility under this section shall not be held in secure confinement beyond 23 years of age, or two years from the date of the commitment, whichever occurs later. However, if the ward has been committed to a secure youth treatment facility based on adjudication for an offense or offenses for which the ward, if convicted in adult criminal court, would face an aggregate sentence of seven or more years, the ward shall not be held in secure confinement beyond 25 years of age, or two years from the date of commitment, whichever occurs later.

(B) The maximum term of confinement shall not exceed the middle term of imprisonment that can be imposed upon an adult convicted of the same offense or offenses. If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the maximum term of confinement shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.

(C) Precommitment credits for time served must be applied against the maximum term of confinement as set pursuant to this subdivision.

(2) For purposes of this section, "maximum term of confinement" has the same meaning as "maximum term of imprisonment," as defined in paragraph (2) of subdivision (d) of Section 726.

(d) (1) Within 30 judicial days of making an order of commitment to a secure youth treatment facility, the court shall receive, review, and approve an individual rehabilitation plan that meets the requirements of paragraph (2) for the ward that has been submitted to the court by the probation department and any other agencies or individuals the court deems necessary for the development of the plan. The plan may be developed in consultation with a multidisciplinary team of youth service, mental and behavioral health, education, and other treatment providers who are convened to advise the court for this purpose. The prosecutor and the counsel for the ward may provide input in the development of the rehabilitation plan prior to the court's approval of the plan. The plan may be modified by the court based on all of the information provided.

(2) An individual rehabilitation plan shall do all of the following:

(A) Identify the ward's needs in relation to treatment, education, and development, including any special needs the ward may have in relation to health, mental or emotional health, disabilities, or gender-related or other special needs.

(B) Describe the programming, treatment, and education to be provided to the ward in relation to the identified needs during the commitment period.

(C) Reflect, and be consistent with, the principles of trauma-informed, evidence-based, and culturally responsive care.

(D) The ward and their family shall be given the opportunity to provide input regarding the needs of the ward during the identification process stated

in subparagraph (A), and the opinions of the ward and the ward's family shall be included in the rehabilitation plan report to the court.

(e) (1) The court shall, during the term of commitment, schedule and hold a progress review hearing for the ward not less frequently than once every six months. In the review hearing, the court shall evaluate the ward's progress in relation to the rehabilitation plan and shall determine whether the baseline term of confinement is to be modified. The court shall consider the recommendations of counsel, the probation department and any behavioral, educational, or other specialists having information relevant to the ward's progress. At the conclusion of each review hearing, upon making a finding on the record, the court may order that the ward remain in custody for the remainder of the baseline term or may order that the ward's baseline term or previously modified baseline term be modified downward by a reduction of confinement time not to exceed six months for each review hearing. The court may additionally order that the ward be assigned to a less restrictive program, as provided in subdivision (f).

(2) The ward's confinement time, including time spent in a less restrictive program described in subdivision (f), shall not be extended beyond the baseline confinement term, or beyond a modified baseline term, for disciplinary infractions or other in-custody behaviors. Any infractions or behaviors shall be addressed by alternative means, which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile facilities generally.

(3) The court shall, at the conclusion of the baseline confinement term, including any modified baseline term, hold a probation discharge hearing for the ward. For a ward who has been placed in a less restrictive program described in subdivision (f), the probation discharge hearing shall occur at the end of the period, or modified period, of placement that has been ordered by the court. At the discharge hearing, the court shall review the ward's progress toward meeting the goals of the individual rehabilitation plan and the recommendations of counsel, the probation department, and any other agencies or individuals having information the court deems necessary. At the conclusion of the hearing, the court shall order that the ward be discharged to a period of probation supervision in the community under conditions approved by the court, unless the court finds that the ward constitutes a substantial risk of imminent harm to others in the community if released from custody. If the court so finds, the ward may be retained in custody in a secure youth treatment facility for up to one additional year of confinement, subject to the review hearing and probation discharge hearing provisions of this subdivision and subject to the maximum confinement provisions of subdivision (c).

(4) If the ward is discharged to probation supervision, the court shall determine the reasonable conditions of probation that are suitable to meet the developmental needs and circumstances of the ward and to facilitate the ward's successful reentry into the community. The court shall periodically review the ward's progress under probation supervision and shall make any

additional orders deemed necessary to modify the program of supervision in order to facilitate the provision of services or to otherwise support the ward's successful reentry into the community. If the court finds that the ward has failed materially to comply with the reasonable orders of probation imposed by the court, the court may order that the ward be returned to a juvenile facility or to a placement described in subdivision (f) for a period not to exceed either the remainder of the baseline term, including any court-ordered modifications, or six months, whichever is longer, and in any case not to exceed the maximum confinement limits of subdivision (c).

(f) (1) Upon a motion from the probation department or the ward, the court may order that the ward be transferred from a secure youth treatment facility to less restrictive program, such as a halfway house, a camp or ranch, or a community residential or nonresidential service program. The purpose of a less restrictive program is to facilitate the safe and successful reintegration of the ward into the community. The court shall consider the transfer request at the next scheduled treatment review hearing or at a separately scheduled hearing. The court shall consider the recommendations of the probation department on the proposed change in placement. Approval of the request for a less restrictive program shall be made only upon the court's determination that the ward has made substantial progress toward the goals of the individual rehabilitation plan described in subdivision (d) and that placement is consistent with the goals of youth rehabilitation and community safety. In making its determination, the court shall consider both of the following factors:

(A) The ward's overall progress in relation to the rehabilitation plan during the period of confinement in a secure youth treatment facility.

(B) The programming and community transition services to be provided, or coordinated by the less restrictive program, including, but not limited to, any educational, vocational, counseling, housing, or other services made available through the program.

(2) In any order transferring the ward from a secure youth treatment facility to a less restrictive program, the court may require the ward to observe any conditions of performance or compliance with the program that are reasonable and appropriate in the individual case and that are within the capacity of the ward to perform. The court shall set the length of time the ward is to remain in a less restrictive program, not to exceed the remainder of the baseline or modified baseline term, prior to a probation discharge hearing described in subdivision (e). If, after placement in a less restrictive program, the court determines that the ward has materially failed to comply with the court-ordered conditions of placement in the program, the court may modify the terms and conditions of placement in the program or may order the ward to be returned to a secure youth treatment facility for the remainder of the baseline term, or modified baseline term, and subject to further periodic review hearings, as provided in subdivision (e) and to the maximum confinement provisions of subdivision (c). If the ward is returned to the secure youth treatment facility under the provisions of this paragraph,

the ward's baseline or modified baseline term shall be adjusted to include credit for the time served by the ward in the less restrictive program.

(g) A secure youth treatment facility, as described in this section, shall meet the following criteria:

(1) The facility shall be a secure facility that is operated, utilized, or accessed by the county of commitment to provide appropriate programming, treatment, and education for wards having been adjudicated for the offenses specified in subdivision (a).

(2) The facility may be a stand-alone facility, such as a probation camp or other facility operated under contract with the county, or with another county, or may be a unit or portion of an existing county juvenile facility, including a juvenile hall or probation camp, that is configured and programmed to serve the population described in subdivision (a) and is in compliance with the standards described in paragraph (3).

(3) The Board of State and Community Corrections shall by July 1, 2023, review existing juvenile facility standards and modify or add standards for the establishment, design, security, programming and education, and staffing of any facility that is utilized or accessed by the court as a secure youth treatment facility under the provisions of this section. The standards shall be developed by the board with the coordination and concurrence of the Office of Youth and Community Restoration established by Section 2200. The standards shall specify how the facility may be used to serve or to separate juveniles, other than juveniles described in subdivision (a) serving baseline confinement terms, who may also be detained in or committed to the facility or to some portion of the facility. Pending the final adoption of these modified standards, a secure youth treatment facility shall comply with applicable minimum standards for juvenile facilities in Title 15 and Title 24 of the California Code of Regulations.

(4) A county proposing to establish a secure youth treatment facility for wards described in subdivision (a) shall notify the Board of State and Community Corrections of the operation of the facility and shall submit a description of the facility to the board in a format designated by the board. Commencing July 1, 2022, the Board of State and Community Corrections shall conduct a biennial inspection of each secure youth treatment facility that was used for the confinement of juveniles placed pursuant to subdivision (a) during the preceding calendar year. To the extent new standards are not yet in place, the board shall utilize the standards in existing regulations.

(5) In lieu of establishing its own secure youth treatment facility, a county may contract with another county having a secure youth treatment facility to accept commitments of wards described in subdivision (a).

(6) A county may establish a secure youth treatment facility to serve as a regional center for commitment of juveniles by one or more other counties on a contract payment basis.

(h) (1) By July 1, 2023, the Judicial Council shall develop and adopt a matrix of offense-based classifications to be applied by the juvenile courts in all counties in setting the baseline confinement terms described in subdivision (b). Each classification level or category shall specify a set of

offenses within the level or category that is linked to a standard baseline term of years to be assigned to youth, based on their most serious recent adjudicated offense, who are committed to a secure youth treatment facility as provided in this section. The individual baseline term of years to be assigned in each case may be derived from a standard range of years for each offense level or category as designated by the Judicial Council. The classification matrix may provide for upward or downward deviations from the baseline term and may also provide for a system of positive incentives or credits for time served. In developing the matrix, the Judicial Council shall be advised by a working group of stakeholders, which shall include representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant expertise or information on dispositions and sentencing of youth in the juvenile justice system. In the development process, the Judicial Council shall also examine and take into account youth sentencing and length-of-stay guidelines or practices adopted by other states or recommended by organizations, academic institutions, or individuals having expertise or having conducted relevant research on dispositions and sentencing of youth in the juvenile justice system.

(2) Upon final adoption by the Judicial Council, the matrix of offense-based classifications shall be applied in a standardized manner by juvenile courts in each county in cases where the court is required to set a baseline confinement term under subdivision (b) for wards who are committed to a secure youth treatment facility. The discharge consideration date guidelines of the Division of Juvenile Justice that were applied on an interim basis, as provided in subdivision (b), shall not thereafter be utilized to determine baseline confinement terms for wards who are committed to a secure youth treatment facility under the provisions of this section.

(i) A court shall not commit a juvenile to any juvenile facility, including a secure youth treatment facility as defined in this section, for a period that exceeds the middle term of imprisonment that could be imposed upon an adult convicted of the same offense or offenses.

SEC. 42. Section 1732.9 is added to the Welfare and Institutions Code, to read:

1732.9. (a) Notwithstanding any other law, immediately prior to closure of the Division of Juvenile Justice, a person 18 years of age or older who is subject to the custody, control, and discipline of the division and who has been sentenced to state prison pursuant to Section 1170 of the Penal Code for a felony committed while the person was in the custody of the division may voluntarily remain in an institution under the jurisdiction of the Department of Corrections and Rehabilitation to complete the remaining juvenile court commitment, subject to the provisions of this section, or may be returned to the county of commitment.

(b) Notwithstanding any other law, immediately prior to closure of the division, a person 18 years of age or older in the custody of the Department of Corrections and Rehabilitation pursuant to Section 1732.8 may voluntarily

remain in an institution under the jurisdiction of the Department of Corrections and Rehabilitation to complete the person's juvenile court commitment, subject to the provisions of this section.

(c) As soon as possible, the Director of the Division shall notify the juvenile court of commitment, juvenile counsel of record, and the county probation agency of a person in the custody of the Department of Corrections and Rehabilitation pursuant to Section 1732.8 of this code or Section 1170 of the Penal Code for a felony committed while in the custody of the division, that the person has remaining juvenile court commitment time that can be voluntarily served at an institution under the jurisdiction of the Department of Corrections and Rehabilitation, subject to the provisions of the section. The division shall also notify the juvenile court of commitment of the youth's most recent projected board hearing date for court consideration.

(d) Prior to deciding whether to serve the remaining commitment time in the state prison or be returned to the county of commitment, a person in the custody of the Department of Corrections and Rehabilitation pursuant to Section 1732.8 who is scheduled to be returned to the county shall meet personally with a probation officer from the county of commitment and be advised by juvenile counsel of record. The probation officer shall explain, using language clearly understandable to the person, all of the following matters:

(1) What will be expected from the person when the person returns to county jurisdiction, in terms of cooperative daily living conduct and participation in applicable counseling, academic, vocational, work experience, or specialized programming.

(2) The conditions of probation applicable to the person, if set by the court, and how those conditions will be monitored and enforced.

(3) The person's right, under this section, to voluntarily and irrevocably consent to continue to be housed in an institution under the jurisdiction of the Department of Corrections and Rehabilitation instead of being returned to county custody.

(e) A person shall not be retained at the Department of Corrections and Rehabilitation pursuant to this section until and unless the person voluntarily, intelligently, and knowingly executes a written consent to the placement, which shall be irrevocable. This consent shall be irrevocable unless the youth can demonstrate that they are in danger of suffering great bodily harm. A youth returned to the county under this subdivision shall not be subsequently returned to the Department of Corrections and Rehabilitation.

(f) Notwithstanding any other law, a person who has been returned to the county after serving a sentence imposed pursuant to Section 1170 of the Penal Code for a felony committed while the person was in the custody of the division, may be transferred to the custody of the Department of Corrections and Rehabilitation if the person consents to the transfer after having been provided with the explanations described in subdivision (d), and after consulting with the juvenile counsel of record.

(g) If a person consents to being housed in an institution under the jurisdiction of the Department of Corrections and Rehabilitation pursuant

to this section, the person shall be subject to the general rules and regulations of the department. The juvenile court of commitment shall continue to have jurisdiction over the juvenile case while the individual is in an institution under the jurisdiction of the Department of Corrections and Rehabilitation. The county probation department shall, with the assistance of the Department of Corrections and Rehabilitation, provide semiannual status reports to the court that summarize the person's progress in the department's care. However, the court shall not order or recommend any treatment, education, or other programming that is unavailable in the institution where the person is housed, and shall not deny release to a person housed in the institution based solely on the person's failure to participate in programs that were unavailable to the person.

(h) A person housed in an institution under the jurisdiction of the Department of Corrections and Rehabilitation pursuant to this section who has not attained a high school diploma or its equivalent shall participate in educational or vocational programs, to the extent the appropriate programs are available.

(i) Upon notification by the Secretary of the Department of Corrections and Rehabilitation that the person has completed the juvenile court commitment and should no longer be housed in an institution under its jurisdiction, the court of commitment shall immediately send for, take, and receive the person back into the county's jurisdiction.

(j) The county of commitment shall not be charged by the state for a person in custody of the Department of Corrections and Rehabilitation pursuant to this section while serving the person's juvenile court commitment.

(k) This section shall only apply to a person described in subdivision (a) or (b) who is in the custody of the Department of Corrections and Rehabilitation when the division closes. Additional persons shall not be subject to this section.

(*l*) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 43. Section 1732.10 is added to the Welfare and Institutions Code, to read:

1732.10. (a) Notwithstanding any other law, unless the committing court orders an alternative placement, upon closure of the Division of Juvenile Justice, the State Department of State Hospitals shall continue to provide evaluation, care, and treatment of state hospital patients referred by the division pursuant to Section 1756 and Interagency Agreement 21-00189, or a predecessor agreement, until clinical discharge, as defined in paragraph (9) of subdivision (b) is recommended by the State Department of State Hospitals, or until the patient referred by the division reaches the hospitalization release date in subdivision (e). When discharge is clinically indicated, the State Department of State Hospitals shall notify the juvenile court of commitment, juvenile counsel of record, the probation department, and the behavioral health department. The State Department of State Hospitals shall collaborate with county probation and behavioral health to

ensure continuity of care. The division shall provide contact information for the committing court, juvenile counsel of record, and related probation department for all patients in the custody of the State Department of State Hospitals upon enactment of this section and any youth placed at the State Department of State Hospitals prior to closure of the division.

(b) Notwithstanding the confidentiality provision for information and records set forth under Section 5328, for any youth referred by the division who remains a patient after closure of the division, the State Department of State Hospitals shall do the following:

(1) Collaborate with the county probation department and behavioral health department prior to the expected discharge from the state hospital to assist the county in determining the least restrictive legal alternative placement for the youth.

(2) Provide the court, juvenile counsel of record, and county probation department, upon closure of the division and annually thereafter, a copy of the finalized treatment plan specifying the youth's goals of hospitalization, assessed needs, and how the staff will assist the youth to achieve the goals and objectives.

(3) Notify the juvenile court of commitment, juvenile counsel of record, and county probation as soon as safely possible, but no later than 24 hours following any of the following:

(A) A suicide or serious attempted suicide.

(B) A serious injury or battery, with or without a weapon.

(C) An alleged sexual assault.

(D) An escape or attempted escape.

(4) Provide county probation, biannually, a synopsis of behavioral incidences, including, but not limited to, self-harm, assault, contraband, and property damage.

(5) Notify the committing court, juvenile counsel of record, and the county probation department if a youth refuses to consent to clinically necessary medication treatment and provide the court with the clinical records and testimony necessary for the court to consider an order for involuntary medication administration. Notwithstanding any other law, the State Department of State Hospitals shall utilize the process outlined in Section 410 of Title 9 of the California Code of Regulations and In re Qawi (2004) 32.Cal.4th.1 to obtain involuntary medication orders.

(6) Notify individuals covered by a youth's medical release of information, the juvenile counsel of record, the juvenile committing court, and the county probation department within 24 hours of the youth being hospitalized for a serious medical condition.

(7) Notify the youth's next of kin on record, juvenile counsel of record, the juvenile committing court, and the county probation department of the county of commitment within 24 hours, and the local county coroner and local law enforcement agencies within two hours, of the discovery of death when a youth dies during hospitalization at a state hospital, or if the death occurred immediately following transfer from a state hospital to a community medical facility.

(8) Notify the juvenile committing court, the juvenile counsel of record, and probation department if it believes the youth requires conservatorship upon discharge. For continuity of care, the State Department of State Hospitals shall accommodate any necessary access to the youth or medical records as needed for arranging conservatorship.

(9) Notify the juvenile court of commitment, juvenile counsel of record, and the county probation department when the youth is ready to discharge to the county based on the following:

(A) When the youth has improved to a degree that further hospitalization is unnecessary, or the primary illness or problem for which hospitalization was required is in substantial remission, and the remaining symptoms are those of a disorder for which hospitalization in a state hospital is not clinically necessary.

(B) When further hospitalization is unnecessary, not clinically appropriate, and will provide no further benefit.

(C) When a court has ordered an alternative placement.

(D) When the youth has reached the hospitalization release date described in subdivision (e).

(10) Provide a written discharge summary and all other pertinent medical and mental health data to the receiving juvenile court of commitment, juvenile counsel of record, and county probation department.

(c) For a youth remaining a patient in a state hospital pursuant to this section, the probation department shall do all of the following:

(1) Upon notification of discharge criteria having been met from the State Department of State Hospitals, find a placement for the patient within 45 days.

(2) Provide transportation to court appearances and from the state hospital to the county designated placement within 7 calendar days of the discharge date.

(3) Reimburse the State Department of State Hospitals for any off-site medical or surgical health care expense, if services could not be provided by the State Department of State Hospitals and prior approval was received from the county, except in cases of emergency.

(d) The county of commitment shall not be charged by the state for a person placed in a state hospital by the division prior to closure pursuant to Section 1756 or Interagency Agreement 21-00189 or a predecessor agreement, during this placement.

(e) A person in a state hospital under the provisions of Section 1756 or this section shall be released and discharged to the county of commitment no later than the person's maximum juvenile confinement time, as determined by Section 607 and all other provisions of law.

(f) Immediately prior to closure, the division shall notify the juvenile court of commitment and the juvenile counsel of record of the youth's most recent projected board hearing date for court consideration.

(g) This section shall only apply to the youth referred by the division prior to closure who remain a patient in a state hospital after closure of the division. Additional youth shall not be subject to this section.

(h) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 44. Section 1760.45 of the Welfare and Institutions Code is amended to read:

1760.45. The Department of Corrections and Rehabilitation is hereby authorized to enter into contracts with counties to meet the intent of the Legislature expressed in Senate Bill 823 (Chapter 337 of the Statutes of 2020) and Assembly Bill 145 (Chapter 80 of the Statutes of 2021) that the Pine Grove Youth Conservation Camp remain open through a state-local partnership, or other management arrangement, to train justice-involved youth in wildland firefighting skills.

(a) The department may contract with one or more counties to furnish training and rehabilitation programs, and necessary services incident thereto, at Pine Grove, for persons 18 years of age and older who are under the jurisdiction of the juvenile court and supervision of a county probation department following adjudication under Section 602 for a felony offense.

(b) Youth placed at Pine Grove pursuant to this section shall be required to comply with rules and regulations consistent with the contracts entered into by the department and participating counties.

(c) Placement of a youth at Pine Grove shall not be considered a commitment to the Division of Juvenile Justice.

(d) The department shall establish camp eligibility criteria and assess individual amenability for the initial and continued placement at Pine Grove.

SEC. 45. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 46. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 47. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure
Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment
Chapter 4.5. Trial Court Sentencing (Refs & Annos)
Article 1.5. Recall and Resentencing (Refs & Annos)

West's Ann.Cal.Penal Code § 1172.1
Formerly cited as CA PENAL § 1170.03

§ 1172.1. Recall and resentence procedures; factors considered; resentencing request

Effective: June 30, 2022
Currentness

(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.

(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.

Credits

(Formerly § 1170.03, added by Stats.2021, c. 719 (A.B.1540), § 3.1, eff. Jan. 1, 2022. Renumbered § **1172.1** and amended by Stats.2022, c. 58 (A.B.200), § 9, eff. June 30, 2022.)

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

2021 Legislation

Section 6 of Stats.2021, c. 719 (A.B.1540), provides:

"SEC. 6. Section 3.1 of this bill incorporates amendments made by Assembly Bill 124 [Stats.2021, c. 695] to Section 1170 of the **Penal Code**, as amended by Section 15 of Chapter 29 of the Statutes of 2020, in Section 1170.03 of the **Penal Code** as proposed to be added by this bill. That section of this bill shall only become operative if (1) both bills are enacted and become

effective on or before January 1, 2022, without regard to order of chaptering, (2) this bill adds Section 1170.03 to the **Penal Code**, and (3) Assembly Bill 124 [Stats.2021, c. 695] amends Section 1170 of the **Penal Code**, as amended by Section 15 of Chapter 29 of the Statutes of 2020, in which case Section 3 of this bill shall not become operative."

Addition of a section of this number by § 3 of Stats.2021, c. 719 (A.B.1540), failed to become operative under the provisions of § 6 of that Act.

For legislative findings, declarations, and intent and cost reimbursement provisions relating to Stats.2021, c. 719 (A.B.1540), see Historical and Statutory Notes under **Penal Code** § 5076.1.

2022 Legislation

Stats.2022, c. 58 (A.B.200), renumbered and amended this section without change to the text.

For severability, cost reimbursement, and urgency effective provisions relating to Stats.2022, c. 58 (A.B.200), see Historical and Statutory Notes under Government Code § 8699.

Notes of Decisions containing your search terms (0)

View all 2

West's Ann. Cal. **Penal Code** § **1172.1**, CA PENAL § **1172.1**

Current with urgency legislation through Ch. 997 of 2022 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

190 Cal.App.3d 521, 234 Cal.Rptr. 795

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.
RINCON DEL DIABLO MUNICIPAL WATER DISTRICT et al., Plaintiffs and Respondents,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.
COUNTY OF LOS ANGELES, Plaintiff and Respondent,
v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

No. B006078., No. B011941., No. B011942.
Court of Appeal, Second District, Division 5, California.
Feb 19, 1987.

SUMMARY

The trial court, in separate proceedings brought by three counties against the state for reimbursement of funds expended by the counties in complying with a state order to provide protective clothing and equipment for county fire fighters, issued writs of mandate compelling the state to reimburse the counties. Previously, the counties had filed test claims with the State Board of Control for reimbursement of similar expenses. The board determined that there was a state mandate and the counties should be reimbursed. The state did not seek judicial review of the board's decision. Thereafter, a local government claims bill, Sen. Bill No. 1261 (Stats. 1981, ch. 1090, p. 4191) was introduced to provide appropriations to pay some of the counties' claims for the state-mandated costs. After various amendments, the legislation was enacted into law without the appropriations. The counties then sought reimbursement by filing petitions for writs of mandate and complaints for declaratory relief. (Superior Court of Los Angeles County, No. C437471, Norman L. Epstein, Judge; No. C514623 and No. C515319, Jack T. Ryburn, Judge.) *522

In a consolidated appeal, the Court of Appeal affirmed with certain modifications. It held that, by failing to seek judicial review of the board's decision, the state had waived its right to contest the board's finding that the counties' expenditures were state mandated. Similarly, it held that the state was collaterally estopped from attacking the board's findings. It also held that the executive orders requiring the expenditures constituted the type of "program" that is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. The court also held that the trial courts had not ordered an appropriation in violation of the separation of powers doctrine, and that the trial courts correctly determined that certain legislative disclaimers, findings, and budget control language did not exonerate the state from its constitutionally and statutorily imposed obligation to reimburse the counties' state-mandated costs. Further, the court held that the trial courts properly authorized the counties to satisfy their claims by offsetting fines and forfeitures due to the state, and that the counties were entitled to interest. (Opinion by Eagleson, J., with Ashby, Acting P. J., and Hastings, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b)
Estoppel and Waiver § 23--Waiver--Trial and Appeal--Failure to Seek Judicial Review of Administrative Decision--Waiver of Right to Contest Findings.
In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state waived its right to contest findings made by the State Board of Control in a previous proceeding. The board found that the costs were state-mandated and that the county was entitled to reimbursement. The state failed to seek judicial review of the board's decision, and the statute of limitations applicable to such review had passed. Moreover, the state, through its agents, had acquiesced in the board's findings by seeking an appropriation to satisfy the validated claims, which, however, was rebuffed by the Legislature.

(2)
Estoppel and Waiver § 19--Waiver--Requisites.

Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable ***523** belief that it has been waived. A right that is waived is lost forever. The doctrine of waiver applies to rights and privileges afforded by statute.

[See **Cal.Jur.3d,** Estoppel and Waiver § 21; **Am.Jur.2d,** Estoppel and Waiver § 154.]

(3a, 3b, 3c, 3d)
Judgments § 81--Res Judicata--Collateral Estoppel--County's Action for Reimbursement of State-mandated Costs--Findings of State Board of Control.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state was collaterally estopped from attacking the findings made, in a previous proceeding, by the State Board of Control that the costs were state-mandated and that the county was entitled to reimbursement. The issues were fully litigated before the board. Similarly, although the state was not a party to the board hearings, it was in privity with those state agencies which did participate. Moreover, a determination of conclusiveness would not work an injustice.

(4)
Judgments § 81--Res Judicata--Collateral Estoppel--Elements.
In order for the doctrine of collateral estoppel to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the parties or their privies must be involved.

(5)
Judgments § 84--Res Judicata--Collateral Estoppel--Identity of Parties--Privity--Governmental Agents.
The agents of the same government are in privity with each other for purposes of collateral estoppel, since they represent not their own rights but the right of the government.

(6)
Judgments § 96--Res Judicata--Collateral Estoppel--Matters Concluded-- Questions of Law.
A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice.

(7)
State of California § 11--Fiscal Matters--Reimbursement to County for State-mandated Costs--New Programs.
A "new program," for purposes of determining whether the program is subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6, is one which carries out the governmental function of providing services ***524** to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

(8)
State of California § 7--Actions--Reimbursement of County Funds for State-mandated Costs--New Programs.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with state executive orders to provide protective clothing and equipment to county fire fighters, the trial court properly determined that the executive orders constituted the type of "new program" that was subject to the constitutional imperative of subvention under Cal. Const., art. XIII B, § 6. Fire protection is a peculiarly governmental function. Also, the executive orders manifest a state policy to provide updated equipment to all fire fighters, impose unique requirements on local governments, and do not apply generally to all residents and entities in the state, but only to those involved in fire fighting.

(9)
Constitutional Law § 37--Doctrine of Separation of Powers--Violations of Doctrine--Judicial Order of Appropriation.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court's judgment granting the writ was not in violation of the separation of powers doctrine. The court order did not directly compel the Legislature to appropriate funds or to pay funds not yet appropriated, but merely affected an existing appropriation.

(10)
Constitutional Law § 40--Distribution of Governmental Powers--Between Branches of Government--Judicial Power and Its Limits--Order Directing Treasurer to Pay on Already Appropriated Funds.
Once funds have been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures from such funds. Thus, a judgment which ordered the State Controller to draw warrants and directed the State Treasurer to pay on already-appropriated funds permissibly compelled performance of a ministerial duty.

(11)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to County for State-mandated Costs.
Appropriations affected by a court order need not specifically refer to the particular expenditure in question in order to be available. Thus, in a proceeding brought by a county for a writ of mandate to compel reimbursement ***525** by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds appropriated for the Department of Industrial Relations for the prevention of industrial injuries and deaths of state workers were available for reimbursement, despite the fact that the funds were not specifically appropriated for reimbursement. The funds were generally related to the nature of costs incurred by the county.

(12a, 12b)
Fires and Fire Districts § 2--Statutes and Ordinances--County Compliance With State Executive Order to Provide Protective Equipment--Federal Mandate.
A county's purchase of protective clothing and equipment for its fire fighters was not the result of a federally mandated program so as to relieve the state of its obligation (Cal. Const., art. XIII B, § 6) to reimburse the county for the cost of the purchases. The county had made the purchase in compliance with a state executive order. The federal government does not have jurisdiction over local fire departments and there are no applicable federal standards for local government structural fire fighting clothing and equipment. Hence, the county's obedience to the state executive orders was not federally mandated.

(13)
Statutes § 20--Construction--Judicial Function--Legislative Declarations.
The interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility.

(14a, 14b)
Statutes § 10--Title and Subject Matter--Single Subject Rule.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), the trial court properly invalidated, as violating the single subject rule, the budget control language of Stats. 1981, ch. 1090, § 3. The express purpose of ch. 1090 was to increase funds available for reimbursing certain claims. The budget control language, on the other hand, purported to make the reimbursement provisions of Rev. & Tax. Code, § 2207, and former Rev. & Tax. Code, § 2231, unavailable to the county. Because the budget control language did not reasonably relate to the bill's stated purpose, it was invalid.

(15)
Statutes § 10--Title and Subject Matter--Single Subject Rule.
The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in a statute's ***526** title. The rule's primary purpose is to prevent "logrolling" in the enactment of laws, which occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which might otherwise not have passed had the legislative mind been directed to them. However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose.

(16)
Statutes § 5--Operation and Effect--Retroactivity--Reimbursement to County for State-mandated Costs.
The budget control language of Stats. 1981, ch. 1090, § 3, which purported to make the reimbursement provisions of

Rev. & Tax. Code, § 2207 and former Rev. & Tax. Code, § 2231, unavailable to a county seeking reimbursement (Cal. Const., art. XIII B, § 6) for expenditures made in purchasing state-required protective clothing and equipment for county fire fighters (Cal. Admin. Code, tit. 8, §§ 3401-3409), was invalid as a retroactive disclaimer of the county's right to reimbursement for debts incurred in prior years.

(17)
State of California § 13--Fiscal Matters--Limitations on Disposal-- Reimbursement to Counties for State-mandated Costs.
The budget control language of § 28.40 of the 1981 Budget Act and § 26.00 of the 1983 and 1984 Budget Acts did not exonerate the state from its constitutional and statutory obligations to reimburse a county for the expenses incurred in complying with a state mandate to purchase protective clothing and equipment for county fire fighters. The language was invalid in that it violated the single subject rule, attempted to amend existing statutory law, and was unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget.

(18)
Constitutional Law § 4--Legislative Power to Create Workers' Compensation System--Effect on County's Right to Reimbursement.
Cal. Const., art. XIV, § 4, which vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system, does not affect a county's right to state reimbursement for costs incurred in complying with state-mandated safety orders.

(19)
Constitutional Law § 7--Mandatory, Directory, and Self-executing Provisions--Subvention Provisions--County Reimbursement for State-mandated Costs.
The subvention provisions of Cal. Const., art. XIII B, § 6, operate so as to require the state to reimburse counties for ***527** state-mandated costs incurred between January 1, 1975, and June 30, 1980. The amendment, which became effective on July 1, 1980, provided that the Legislature "may, but need not," provide reimbursement for mandates enacted before January 1, 1975. Nevertheless, the Legislature must reimburse mandates passed after that date, even though the state did not have to begin reimbursement until the effective date of the amendment.

(20)
Mandamus and Prohibition § 5--Mandamus--Conditions Affecting Issuance--Exhaustion of Administrative Remedies--County Reimbursement for State-mandated Costs.
A county's right of action in traditional mandamus to compel reimbursement for state-mandated costs did not accrue until the county had exhausted its administrative remedies. The exhaustion of remedies occurred when it became unmistakably clear that the legislative process was complete and that the state had breached its duty to reimburse the county.

(21)
Mandamus and Prohibition § 13--Mandamus--Conditions Affecting Issuance--Existence and Adequacy of Other Remedy.
A party seeking relief by mandamus is not required to exhaust a remedy that was not in existence at the time the action was filed.

(22a, 22b)
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--County's Right to Offset Fines and Forfeitures Due to State.
In a proceeding by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment for county fire fighters, the trial court did not err in authorizing the county to satisfy its claims by offsetting fines and forfeitures due to the state. The order did not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters.

(23)
Equity § 5--Scope and Types of Relief--Offset.
The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike or balance, holding himself owing or entitled only to the net difference. Although this doctrine exists independent of statute, its governing principle has been partially codified in Code Civ. Proc., § 431.70 (limited to cross-demands for money).

(24)
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Use of Statutory Offset Authority.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state ***528** order to provide protective clothing and equipment to county fire fighters, the trial court did not err in enjoining the exercise of the state's statutory offset authority (Gov. Code, § 12419.5) until the county was fully reimbursed. In view of the state's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating the county's collection efforts from occurring.

(25)
State of California § 7--Actions--Reimbursement to County for State-mandated Costs--State's Right to Revert or Dissipate Undistributed Appropriations.
In a proceeding brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the trial court properly enjoined, and was not precluded by Gov. Code, § 16304.1, from enjoining, the state from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy the court's judgment in favor of the county.

(26)
Parties § 2--Indispensable Parties--County Auditor Controller--County Action to Collect Reimbursement From State.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the county auditor-controller was not an indispensable party whose absence would result in a loss of the trial court's jurisdiction. The auditor-controller was an officer of the county and was subject to the direction and control of the county board of supervisors. He was indirectly represented in the proceedings because his principal, the county, was the party litigant. Additionally, he claimed no personal interest in the action and his pro forma absence in no way impeded complete relief

(27)
Parties § 2--Indispensable Parties--Fines and Forfeitures--County Action to Collect Reimbursement From State.
In an action brought by a county for a writ of mandate to compel reimbursement by the state for costs expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the funds created by the collected fines and forfeitures which the county was allowed to offset to satisfy its claims against the state were not "indispensable parties" to the litigation. The action was not an in rem proceeding, and the ownership of a particular stake was not in dispute. Complete relief could be afforded without including the specified funds as a party.

(28)
Interest § 4--Interest on Judgments--County Action for Reimbursement of State-mandated Costs--State Reliance on Invalid Statute.
An ***529** invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest on damages under Civ. Code, § 3287, subd. (a). Thus, in an action brought by a county for writ of mandate to compel reimbursement by the state for funds expended in complying with a state order to provide protective clothing and equipment to county fire fighters, the state could not avoid its obligation to pay interest on the funds by relying on invalid budget control language which purported to restrict payment on reimbursement claims.

(29)
Appellate Review § 127--Review--Scope and Extent--Interpretation of Statutes.
An appellate court is not limited by the interpretation of statutes given by the trial court.

(30)
Appellate Review § 162--Determination of Disposition of Cause-- Modification--Action Against State--Appropriation.
In an action against the state, an appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts.

COUNSEL
John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol

Hunter, Deputy Attorneys General, for Defendants and Appellants.
De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed together ***530** under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.[1] For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

Appeal In Case No. 2 Civil B011942

(County of Los Angeles Case)

Facts and Procedural History

County employs fire fighters for whom it purchased protective clothing and equipment, as required by title 8, California Administrative Code, sections 3401-3409, enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service." County relies on Revenue and Taxation Code section 2207[2] and former ***531** section 2231,[3] and California Constitution, article XIII B, section 6[4] to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.[5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.[6]

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate (Code Civ. Proc., § 1085) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of mandate was issued and other findings and orders made. It is from this judgment of ***532** February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.[7] ***533**

Contentions

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

Discussion

I

Issue of State Mandate

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state"

in either complying with a "new program" or providing "an increased level of service of an existing program."[8] State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202]. ***534**

As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of article XIII B, section 6.

A. *Waiver*

(1a)We initially conclude that State has waived its right to contest the Board's findings. (2)Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that it has has been waived. (*Medico-Dental etc. Co. v. Horton & Converse* (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; *Loughan v. Harger-Haldeman* (1960) 184 Cal.App.2d 495, 502-503 [7 Cal.Rptr. 581].) A right that is waived is lost forever. (*L.A. City Sch. Dist. v. Landier Inv. Co.* (1960) 177 Cal.App.2d 744, 752 [2 Cal.Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. (*People v. Murphy* (1962) 207 Cal.App.2d 885, 888 [24 Cal.Rptr. 803].)

(1b)State now contends to be an aggrieved party and seeks to dispute the Board's findings. However it failed to seek judicial review of that November 20, 1979 decision (Code Civ. Proc., § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (*Green v. Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal.Rptr. 206, 624 P.2d 256]; Code Civ. Proc., § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. *Administrative Collateral Estoppel*

(3a)We next conclude that State is collaterally estopped from attacking the Board's findings. (4)Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to apply, the issues in the two proceedings must ***535** be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People v. Sims* (1982) 32 Cal.3d 468, 484 [186 Cal.Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.) All of the elements of administrative collateral estoppel are present here.

(3b)The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (*County of Sacramento v. Loeb* (1984) 160 Cal.App.3d 446, 452 [206 Cal.Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (Gov. Code, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative

of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5)"[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (*Lerner v. Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal.Rptr. 657, 380 P.2d 97].) As we stated in our introduction of the parties in this case, the party ***536** known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781 [200 Cal.Rptr. 642]), subsequent litigation on that issue is foreclosed here. (6)A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal.Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank v. Glynn* (1971) 16 Cal.App.3d 274, 286-287 [93 Cal.Rptr. 907]; Rest.2d Judgments, § 28, p. 273.) [9]

(3d)Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum—Board or court—the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement ...." (*Coca-Cola Co. v. State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 679 [159 Cal.Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented here. State therefore is collaterally ***537** estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. *Executive Orders—A "New Program" Under Article XIII B, Section 6*

(7)The recent decision by our Supreme Court in *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6. [10] We conclude that they are.

In *State of California*, the Court concluded that the term "program" has two alternative meanings: "programs that carry out the governmental function of providing services to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." (*Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

(8)First, fire protection is a peculiarly governmental function. (*County of Sacramento v. Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal.Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107 [133 Cal.Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function. [11] ***538**

The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California*. There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

State of California only defined the scope of the word "program" as used in California Constitution, article XIII B, section 6. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (*County of Los Angeles v. Payne* (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

Issue of Whether Court Orders Exceeded Its Jurisdiction

A. *The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine*

(9)State begins its general attack on the judgment by citing the longstanding principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (Cal. Const., art. III, § 3; art. XVI, § 7; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935].) [12] State ***539** observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398 [231 Cal.Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S. F. v. Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. (*Mandel v. Myers*, *supra.*, 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (Code Civ. Proc., § 1085) is the correct method of compelling State to

perform a clear and present ministerial legal obligation. (*County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "*appropriated* by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10)By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or other similar official to make appropriate expenditures ***540** from such funds. [Citations.]" (*Mandel v. Myers*, *supra.*, 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*)*ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." (*Id.* at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (*Id.* at pp. 543-544.)

Another illustration of this principle is found in *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for $800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the $800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel*, we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11)State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel v. Myers*, *supra.*, 29 Cal.3d at pp. 543-544. Likewise, in *Committee to Defend* ***541** *Reproductive Rights v. Cory*, *supra.*, 132 Cal.App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*)*ante*) identified funds in account numbers 8350-001-001, 8350-001-452, 8350-001-453 and 8350-001-890 as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to

prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. *Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement*

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on ...." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.) ***542**

Again, in 1974, the Legislature stated: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... Sections 3401 to 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.) [13]

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a)State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182, 196-197 [203 Cal.Rptr. 258] disapproved on other grounds in *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory increased levels of service or ***543** new programs. However, under Revenue and Taxation Code section 2271, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the

California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of Revenue and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13)**(See fn. 14.)** Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate. [14]

(12b)Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not .... [¶] More specifically, in 1978, the State of California promulgated standards applicable to fire departments in California. Therefore, California standards, rather than ***544** federal OSHA standards, are applicable to fire departments in that state ...." This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not federally mandated.

(14a)The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule. [15] This legislative restriction purported to make the reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

(15)The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1196 [219 Cal.Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. (*Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159, 172-173 [28 Cal.Rptr. 724, 379 P.2d 28].)

(14b)The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction ***545** alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have

been made in connection with the enactment of a budget bill are appropriate here. "[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. 'History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" (*Planned Parenthood Affiliates v. Swoap*, *supra.*, 173 Cal.App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [211 Cal.Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

(16)The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred ... 'Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.'" (*Id.* at p. 459, quoting *Robinson v. Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal.App.3d 907, 912 [159 Cal.Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims. ***546**

(17)Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00 [16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (*Association for Retarded Citizens v. Department of Developmental Services*, *supra.*, 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement. ***547**

C. *The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement*

(18)State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers'

compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles v. State of California*, *supra.*, 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. *Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980*

(19)State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in *City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on well-settled principles of constitutional interpretation ***548** and upon a prior published opinion of the Attorney General, the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. *Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred*

(20)State collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (*County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77 [222 Cal.Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period. [17] (*Lerner v. Los Angeles City Board of Education*, *supra.*, 59 Cal.2d at p. 398.) ***549**

F. *Government Code Section 17612*'s Remedy for Unfunded Mandates Does Not Supplant the Court's Order

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in Government Code section 17612, subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that Government Code section 17612, subdivision (b) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21)A party is not required to exhaust a remedy that was not in existence at the time the action was filed. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 912, fn. 9 [141 Cal.Rptr. 133, 569 P.2d 727].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. (*Serrano v. Priest*, *supra.*, 131 Cal.App.3d at p. 201.)

Also, this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override article XIII B, section 6 and Revenue and Taxation Code section 2207 and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.) [18] ***550**

G. *The Court's Order Properly Allows County the Right of Offset*

(22a)As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante.ante*.) The fines and forfeitures are those found in Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5. [19]

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23)The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, 362 [113 Cal.Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (Code Civ. Proc., § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576[159 Cal.Rptr.1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the 'submission, approval and enforcement of

budgets....'" (*Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

(22b)The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control budget matters. The identified ***551** fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. *State's Use of its Statutory Offset Authority Was Properly Enjoined*

(24)State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante*.)[20] This order complemented that portion of the order discussed, *infra.*, which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568 [200 Cal.Rptr. 394].)

I. *The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper*

(25)State continues that the order (fn. 7, ¶ 4, *ante*)*ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates Government Code section 16304.1.[21] This section reverts undisbursed ***552** balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, *County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. *The Auditor Controller and the Specified Funds Are Not Indispensable Parties*

(26, 27)State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.[22] State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

The Auditor Controller is an officer of the County and is subject to the ***553** direction and control of the County board of supervisors. (Gov. Code, § 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. *County is Entitled to Interest*

(28)State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation...." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state...or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Civil Code section 3287, subdivision (a)." (*Olson v. Cory* (1983) 35 Cal.3d 390, 404 [197 Cal.Rptr. 843, 673 P.2d 720].)

Appeal in Case No. 2 Civil B011941

(Rincon et al. Case)

The procedural history and legal issues raised in the *Rincon et al*. appeal are essentially similar to those discussed in the County of Los Angeles matter. ***554**

County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement in the amount of $39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante*.) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.[23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento v. Loeb*, *supra.*, 160 Cal.App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.[24]

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

Appeal in Case No. 2 Civil B006078

(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here. ***555**

On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totalling $159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment

was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as $159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in *City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at p. 182.[25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6. ***556**

State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

(29)State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. (*City of Merced v. State of California*, *supra.*, 153 Cal.App.3d at p. 781.) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See Code Civ. Proc., § 389; fn. 22, *ante*.)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra.*, which we rejected as meritless. The department is part of the State of California. (Lab. Code, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. (*People v. Sims*, *supra.*, 32 Cal.3d at p. 487.)

Ross v. Superior Court, *supra.*, 19 Cal.3d at p. 899 demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld welfare benefits to qualified recipients. The County Board of Supervisors, ***557** who

were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

Modification of Judgments in All Three Appeals

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano v. Priest*, *supra.*, 131 Cal.App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Account Numbers	1985-1986 Budget Act	1986-1987 Budget Act
8350-001-001	$94,673,000	$106,153,000
8350-001-452	2,295,000	2,514,000
8350-001-453	2,859,000	2,935,000
8350-001-890	16,753,000	17,864,000

(30)An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano v. Priest*, *supra.*, 131 Cal.App.3d at pp. 198, 201.) We do so here with respect to all three judgments. ***558**

Disposition

2d Civ. B011942 (*County of Los Angeles Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: “If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts.”

(2) The words “Fish and Game Code Section 13100” are deleted from paragraph 5.

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

***2d Civ. B011941* (*Rincon et al. Case*)**

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: “If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts.”

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same

account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

***2d Civ. B006078* (*Carmel Valley et al. Case*)**

The judgment is modified as follows: ***559**

(1) The following sentences are added to paragraph 2: "The reimbursement amounts total $159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P. J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellant's petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein. ***560**

Footnotes

1 *2d Civ. B006078*: The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in Revenue and Taxation Code section 2211.

2 The pertinent parts of Revenue and Taxation Code section 2207 provide: " 'Costs mandated by the state' means any incureased costs which a local agency is required to incur as a result of the following" [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or a n incureased level of service of an existing program: [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order isued after January 1, 1973, which (i) implements or interprets a state statute

and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973 ...“

3 The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: ”The state shall reimburse each local agency for all 'costs mandated by the state', as defined in Section 2207.“ This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by Government Code section 17561. We will refer to the earlier code section.

4 The pertinent parts of section 6, article XIII B of the California Constitution, enacted by initiative measure, provide: ”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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.“ This constitutional amendment became effective July 1, 1980.

5 County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. (Gov. Code, §§ 17525, 17630.)

6 The final legislation did include appropriations for other local agencies on other types of approved claims.

7 ”1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

“2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with]this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers 8350-001-001, 8350-001-452, 8350-001-453, and 8350-001-890 as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [*sic*] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

“3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [*sic*] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of $307,685 in this case, together

with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the 'reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in Penal Code Sections 1463.02, 1463.03, 14[6] 3.5[a], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 subsequent to fiscal year 1979-80.

. . . . ."

"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of Title 8, California Administrative Code Sections 3401 through 3409."

8 This language is taken from Revenue and Taxation Code section 2207 and former section 2231. Article XIII B, section 6 refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

9 As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

10 State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

11 County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in title 8, California Administrative Code section 3402, which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

12 Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

13 When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

14 We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (*City of Sacramento v. State of California*, *supra.*, 156 Cal.App.3d at pp. 196-197.)

15 Article IV, section 9 of the California Constitution reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

16 Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in section 2209 of the Revenue and Taxation Code or subject to the provisions of section 2231 of the Revenue and Taxation Code, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the

Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

17 Technically, Statute has waived the statute of limitations defense because it was not raised in its answer. (*Ventura County Employees' Retirement Association v. Pope* (1978) 87 Cal.App.3d 938, 956 [151 Cal.Rptr. 695].)

18 We leave undecided the question of whether this type of legislation could ever be held to override California Constitution, article XIII B, section 6. The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (*County of Los Angeles v. Payne*, *supra.*, 8 Cal.2d at p. 574.)

Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

19 At oral argument, County conceded that the order authorizing offset of Fish and Game Code section 13100 fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. (Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 (1952).)

20 Government Code section 12419.5 provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 975-976 [185 Cal.Rptr. 49].)

21 Government Code section 16304.1 provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years...following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

22 Code of Civil Procedure section 389, subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

23 Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

24 Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

25 The decision in *City of Sacramento*, *supra.*, was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

43 Cal.3d 46, 729 P.2d 202, 233 Cal.Rptr. 38
Supreme Court of California

COUNTY OF LOS ANGELES
et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et
al., Defendants and Respondents.
CITY OF SONOMA et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA
et al., Defendants and Respondents

L.A. No. 32106.
Jan 2, 1987.

SUMMARY

The trial court denied a petition for writ of mandate to compel the State Board of Control to approve reimbursement claims of local government entities, for costs incurred in providing an increased level of service mandated by the state for workers' compensation benefits. The trial court found that Cal. Const., art. XIII B, § 6, requiring reimbursement when the state mandates a new program or a higher level of service, is subject to an implied exception for the rate of inflation. In another action, the trial court, on similar claims, granted partial relief and ordered the board to set aside its ruling denying the claims. The trial court, in this second action, found that reimbursement was not required if the increases in benefits were only cost of living increases not imposing a higher or increased level of service on an existing program. Thus, the second matter was remanded due to insubstantial evidence and legally inadequate findings. (Superior Court of Los Angeles County, Nos. C 424301 and C 464829, Leon Savitch and John L. Cole, Judges.) The Court of Appeal, Second Dist., Div. Five, Nos. B001713 and B003561 affirmed the first action; the second action was reversed and remanded to the State Board of Control for further and adequate findings.

The Supreme Court reversed the judgment of the Court of Appeal, holding that the petitions lacked merit and should have been denied by the trial court without the necessity of further proceedings before the board. The court held that when the voters adopted art. XIII B, § 6, their intent was not to require the state to provide subvention whenever a newly enacted statute results incidentally in some cost to local agencies, but only to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. Thus, the court held, reimbursement was not required by art. XIII B, § 6. Finally, the court held that no pro tanto repeal of Cal. Const., art. XIV, § 4 (workers' compensation), was intended or made necessary by ***47** the adoption of art. XIII B, § 6. (Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Costs to Be Reimbursed.
When the voters adopted Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities.

(2)
Statutes § 18--Repeal--Effect--"Increased Level of Service."
The statutory definition of the phrase "increased level of service," within the meaning of Rev. & Tax. Code, § 2207, subd. (a) (programs resulting in increased costs which local agency is required to incur), did not continue after it was specifically repealed, even though the Legislature, in enacting the statute, explained that the definition was declaratory of existing law. It is ordinarily presumed that the Legislature,

by deleting an express provision of a statute, intended a substantial change in the law.

[See **Am.Jur.2d,** Statutes, § 384.]

(3)
Constitutional Law § 13--Construction of Constitutions--Language of Enactment.
In construing the meaning of an initiative constitutional provision, a reviewing court's inquiry is focused on what the voters meant when they adopted the provision. To determine this intent, courts must look to the language of the provision itself.

(4)
Constitutional Law § 13--Construction of Constitutions--Language of Enactment--"Program."
The word "program," as used in Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), refers to programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on ***48** local governments and do not apply generally to all residents and entities in the state.

(5)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Governments--Increases in Workers' Compensation Benefits.
The provisions of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), have no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation benefits that employees of private individuals or organizations receive. Although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state- mandated programs or higher levels of service within the meaning of art. XIII B, § 6. Accordingly, the State Board of Control properly denied reimbursement to local governmental entities for costs incurred in providing state-mandated increases in workers' compensation benefits. (Disapproving *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], to the extent it reached a different conclusion with respect to expenses incurred by local entities as the result of a newly enacted law requiring that all public employees be covered by unemployment insurance.)

[See **Cal.Jur.3d,** State of California, § 78.]

(6)
Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts.
Controlling principles of construction require that in the absence of irreconcilable conflict among their various parts, constitutional provisions must be harmonized and construed to give effect to all parts.

(7)
Constitutional Law § 14--Construction of Constitutions--Reconcilable and Irreconcilable Conflicts--Pro Tanto Repeal of Constitutional Provision.
The goals of Cal. Const., art. XIII B, § 6 (reimbursement to local agencies for new programs and services), were to protect residents from excessive taxation and government spending, and to preclude a shift of financial responsibility for governmental functions from the state to local agencies. Since these goals can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, the adoption of art. XIII B, § 6, did not effect a pro tanto repeal of Cal. Const., art. XIV, § 4, which gives the Legislature plenary power over workers' compensation. ***49**

COUNSEL
De Witt W. Clinton, County Counsel, Paula A. Snyder, Senior Deputy County Counsel, Edward G. Pozorski, Deputy County Counsel, John W. Witt, City Attorney, Kenneth K. Y. So, Deputy City Attorney, William D. Ross, Diana P. Scott, Ross & Scott and Rogers & Wells for Plaintiffs and Appellants.
James K. Hahn, City Attorney (Los Angeles), Thomas C. Bonaventura and Richard Dawson, Assistant City Attorneys, and Patricia V. Tubert, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Appellants.
John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, for Defendants and Respondents.
Laurence Gold, Fred H. Altshuler, Marsha S. Berzon, Gay C. Danforth, Altshuler & Berzon, Charles P. Scully II, Donald C. Carroll, Peter Weiner, Heller, Ehrman, White & McAuliffe, Donald C. Green, Terrence S. Terauchi, Manatt, Phelps,

Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. (1) We conclude that when the voters adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or ***50** increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. [1]

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which ***51** employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from $231 per week to $262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from $55,000 to $75,000. No appropriation for increased state-mandated costs was made in this legislation. [2]

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in

providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207. [3] They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly ***52** excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost of living changes, they did not, in the view of the trial court, create an "increased level of service " in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922. p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from $73.50 to $168, and the maximum from $262.50 to $336. For permanent partial disability the weekly wage was raised from a minimum of $45 to $105, and from a maximum of $105 to $210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A $10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from $75,000 to $85,000 for deaths in 1983, and to $95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIIIB of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.) [4]

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or ***53** section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service" [5] described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The

Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and the failure of the Legislature by statute or the electorate in article XIII B to readopt the ***54** definition must be treated as reflecting an intent to change the law. (*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].) [6] On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma " case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. [7]

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service " phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been ***55** included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975. ch. 486, §§ 6 & 7, p. 999.) [8] Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that " "Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

(2) Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (*Lake Forest Community Assn. v. County of Orange* (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also *Eu* v. *Chacon, supra*, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been ***56** aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

(3) In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must

look to the language of the provision itself. (*ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

(4) Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term—programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not ***57** for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; *Big Sur Properties v. Mott* (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote.[9] Certainly no such intent is reflected in the language or history of article XIII B or section 6.

(5) We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation ***58** benefits that employees of private individuals or organizations receive.[10] Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are

indistinguishable in this respect from private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

IV

(6) Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (*Clean Air Constituency* v. *California State Air Resources Bd.* (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Select Base Materials v. Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (*Legislature* v. *Deukmejian* (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article XIV, section 4,[11] gives the Legislature "plenary power, unlimited by any provision of ***59** this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature.

The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural ***60** limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B *would* restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article

XIV, section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal *pro tanto*' of any state constitutional provisions which conflicted with that ***61** amendment. (*Subsequent Etc. Fund. v. Ind. Acc. Com.* (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; *Western Indemnity Co.* v. *Pillsbury* (1915) 170 Cal. 686, 695, [151 P. 398].) A *pro tanto* repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (*Methodist Hosp. of Sacramento* v. *Saylor* (1971) 5 Cal.3d 685, 691-692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. *City and County of San Francisco v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 103, 115-117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power—the disciplining of attorneys—that otherwise rests exclusively with this court?" (*Hustedt v. Workers' Comp. Appeals Bd., supra*, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

(7) A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (*Huntington Park Redevelopment Agency* v. *Martin* (1985) 38 Cal.3d 100, 109-110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage—costs which all employers must bear—neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in ***62** benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal—whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims

lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living ***63** adjustment. I agree with the Court of Appeal that this was permissible.

Appellants' petition for a rehearing was denied February 26, 1987. ***64**

Footnotes

1 The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...

The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

2 The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of $510 on which to base benefits, an unspecified appropriation was included.

3 The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

4 The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

5 The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

6 The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, *ante*). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. *California Employment Stabilization Co.* v. *Payne* (1947) 31 Cal.2d 210, 213-214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

7 We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

8 Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218-2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (*County of Orange v. Flournoy* (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)

9 Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through

revision of the Constitution is an open question. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

10 The Court of Appeal reached a different conclusion in *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

11 Section 4: "The Legislature is hereby *expressly vested with plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

729 P.2d 202, 233 Cal.Rptr. 38

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15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134, Med & Med GD (CCH) P 45,112, 97 Cal. Daily Op. Serv. 1555, 97 Daily Journal D.A.R. 2296
Supreme Court of California

COUNTY OF SAN DIEGO, Cross-complainant and Respondent,
v.
THE STATE OF CALIFORNIA et al., Cross-defendants and Appellants.

No. S046843.
Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate (Code Civ. Proc., § 1085) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, * Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that Cal. Const., art. XIII B, § 6, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of Cal. Const., art. XIII B, § 6. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least $41 million on the CMS ***69** program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c), Welf. & Inst. Code, §§ 10000, 17000) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with

George, C. J., Mosk, and Baxter, JJ., Anderson, J.,* and Aldrich, J.,† concurring. Dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.
***70** Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), 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 Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

(2a, 2b)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.
The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3)
Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.
The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const., art. VI, § 10. ***71** That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

(4)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided

prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(5a, 5b)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards-- ***72** Eligibility.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. (Disapproving *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under Welf. & Inst. Code, § 17000, extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of Welf. & Inst. Code, § 17000, but do not qualify for Medi-Cal.)

(6)
Public Aid and Welfare § 4--County Assistance--Counties' Discretion.
Counties may exercise their discretion under Welf. & Inst. Code, § 17001 (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose (Gov. Code, § 11374). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. ***73**

(7)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have

held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706] to the extent it held that Health & Saf. Code, § 1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county ***74** had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on Welf. & Inst. Code, former § 16990, subd. (a), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, Welf. & Inst. Code, former § 16990, subd. (a), did not mandate a minimum funding requirement. Nor did Welf. & Inst. Code, former § 16991, subd. (a)(5), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under Welf. & Inst. Code, § 16703, for 1988-1989. Nothing about this requirement imposed on the county a minimum funding requirement.

(9)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. ***75**

COUNSEL
Daniel E. Lungren, Attorney General, Charlton G. Holland III, Assistant Attorney General, John H. Sanders and Richard T. Waldow, Deputy Attorneys General, for Cross-defendants and Appellants.
Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

CHIN, J.

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject

to certain exceptions, to "provide a subvention of funds to reimburse" local governments "[w]henever the Legislature or any state agency mandates a new program or higher level of service ...." In this action, the County of San Diego (San Diego or the County) seeks reimbursement under section 6 from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see Welf. & Inst. Code, § 14063) [1] because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted section 6, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks ***76** reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, "the indigent in California were provided health care services through a variety of different programs and institutions." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3 (Preliminary Report).) County hospitals "provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from" other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established "a program of basic and extended health care services for recipients of public assistance and for medically indigent persons." (*Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*); *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It "represent[ed] California's implementation of the federal Medicaid program (42 U.S.C. §§ 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]" (*Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748, 751 [55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*).) "[B]y meeting the requirements of federal law," Medi-Cal "qualif [ied] California for the receipt of federal funds made available under title XIX of the Social Security Act." (*Morris*, *supra*, 67 Cal.2d at p. 738.) "Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients ...." (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code ***77** Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements "with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources"].) [2]

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of

1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report).) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." (*Morris*, *supra*, 67 Cal.2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*).) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: "The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal." (*Hall*, *supra*, 23 Cal.App.3d at p. 1061, fn. omitted.) Former section 14150.1, ***78** which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care." [3] (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*).) Under the county option, "the state agreed to assume all county health care costs ... in excess of" the county's payment. (*Id.* at p. 586.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs." [4] (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately $76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons ***79** served by a county within the 'option' plan." (*Lackner*, *supra*, 97 Cal.App.3d at p. 589; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as " '[n]oncategorically related needy person [s].' " (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided

them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (*Kinlaw, supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible ***80** under the MIP category (adult MIP's or Medically Indigent Adults).[5] (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [***81** 280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*).)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It

provides in relevant part: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. (*County of Fresno*, *supra*, 53 Cal.3d at p. 487.) Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. (*County of Fresno*, *supra*, 53 Cal.3d at p. 487; *County of Los Angeles*, *supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 "[e]ssentially" requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (Gov. Code, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, §§ 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (Gov. Code, § 17557.) The local agency must then follow certain statutory procedures to ***82** obtain reimbursement. (Gov. Code, § 17558 et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file "an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under section 1094.5 of the Code of Civil Procedure. (Gov. Code, § 17559.) Government Code section 17552 declares that these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 ...."

III. Administrative and Judicial Proceedings

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw*, *supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.[6] (*Kinlaw*, *supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a "pre-existing duty" to provide medical care to the medically indigent under section 17000. That section provides in relevant part: "Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it "was enacted prior to January 1, 1975 ...." Finally, the Commission found no mandate because the 1982 legislation "neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors" pursuant to section 17001.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory ***83** writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)[7] In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this

agreement, San Diego sought to intervene. Explaining that it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand. [8]

B. *The San Diego Action*

1. *Administrative Attempts to Obtain Reimbursement*

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (Gov. Code, § 17525.) On April 12, the Controller returned the invoice "without action," stating that "[n]o appropriation has been given to this office to allow for reimbursement" of medical costs for adult MIP's and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. ***84**

2. *Court Proceedings*

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego "from taking any action to reduce or terminate" the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under Code of Civil Procedure section 1085 against the state, the Commission, and various state officers. [9] The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs." "Under these circumstances," San Diego asserted, "denial of the County's claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act."

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it "is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991"; (2) that section 6 requires the state "to fully fund the CMS Program" (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the ***85** 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing

to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate. [10] The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San ***86** Diego's mandate claim. According to the state, in *Kinlaw*, *supra*, 54 Cal.3d 326, we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance ...." Applying this principle, the state asserts that, since "the test claim litigation was pending" in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing the state's section 6 obligations, "are available only to local agencies and school districts directly affected by a state mandate ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (*Id.* at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues." (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing Government Code section 17500, we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw*, *supra*, 54 Cal.3d at p. 331.) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (*Id.* at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ...." (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that ***87** proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues .... Los Angeles County declined a request from Alameda County that it be included in the test claim ...." (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]"

of the statutory procedure: to "avoid[] multiple proceedings ... addressing the same claim that a reimbursable state mandate has been created." (*Kinlaw*, *supra*, 54 Cal.3d at p. 333.)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from article VI, section 10 of the California Constitution. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [93 Cal.Rptr. 234, 481 P.2d 242]; *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [20 Cal.Rptr.2d 246].) That section gives "[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus ...." (Cal. Const., art. VI, § 10.) "The jurisdiction thus vested may not lightly be deemed to have been destroyed." (*Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [196 P.2d 884], overruled on another ground in *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [95 Cal.Rptr. 197, 485 P.2d 261].) "While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (*Garrison*, *supra*, at p. 436.) (2b) Here, we find no statutory provision that either "expressly provide[s]" (*id.* at p. 435) or otherwise "clearly intend[s]" (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: "Where any trust ***88** has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust." (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, "the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust." (*Dowdall*, *supra*, 183 Cal. at p. 353.) However, we further observed that "the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof." (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction "is not without jurisdiction." (*Dowdall*, *supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; *People* ex rel. *Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) ["rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void"]; *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 718 [53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in ***89** deference

to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].) [11]

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court. [12] (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [21 Cal.Rptr.2d 453]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (*County of Contra Costa*, *supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also *County of Contra Costa*, *supra*, 177 Cal.App.3d at pp. 77-78.) ***90**

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement ...." Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar*, *supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations] ...." (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar*, *supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (*Lucia Mar*, *supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6 ...." (*Lucia Mar*, *supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state

from shifting to local agencies the financial responsibility for providing public services in view of the [] ***91** restrictions on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar*, *supra*, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6 ...." (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts —an obligation the school districts did not have at the time article XIII B was adopted—it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).)

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.' " " 'In contrast,' " the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under section 17000 and its predecessors.[13] The courts have interpreted section 17000 as "impos[ing] upon counties a duty to ***92** provide hospital and medical services to indigent residents. [Citations.]" (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties "complete discretion" in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

A. *The Source and Existence of San Diego's Obligation*

1. *The Residual Nature of the Counties' Duty Under Section 17000*

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That section creates "the *residual* fund" to sustain indigents "who cannot qualify ... under any specialized aid programs." (*Mooney*, *supra*, 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [223 Cal.Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ 17000.)[14] "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.).)[15]

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it initially required counties to ***93** contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs. [16]

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under section 17000. After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under section 17000. It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under section 17000; the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of* [*MIP's*] *to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons*." (*Id.* at p. 571, italics added.) ***94**

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of section 17000. Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program ...." (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred*." (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under section 17000 for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under section 17000, counties had always borne the responsibility for providing medical care to adult MIP's.

2. *The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal*

To support its argument that it never relieved counties of their obligation under section 17000 to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." ***95** (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "Section 14150 of the Welfare and Institutions Code is repealed." (Stats. 1979, ch. 282, § 74,

p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately." (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, "[u]nder existing law, the counties pay a specified annual share of the cost of" Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that "[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal ...." (*Ibid.*) The 1979 legislation, the digest continued, "provid[ed] for state assumption of all county costs of Medi-Cal." (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as "temporary." In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as "a long-term local financing measure" (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which "[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State ...." (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: "Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated $418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs*." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal "only temporarily."

***96**

3. *State Administration of Medical Care for Adult MIP's Under Medi-Cal*

The state argues that, unlike the school program before us in *Lucia Mar*, *supra*, 44 Cal.3d 830, which "had been wholly operated, administered and financed by the state," the program for providing medical care to adult MIP's " 'has never been operated or administered by' " the state. According to the state, Medi-Cal was simply a state "reimbursement program" for care that section 17000 required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was "to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) "In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program." (*California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [106 Cal.Rptr. 555].) Medi-Cal "provided for reimbursement to both public and private health care providers for medical services rendered." (*Lackner*, *supra*, 97 Cal.App.3d at p. 581.) It further directed that, "[i]nsofar as practical," public assistance recipients be afforded "free choice of arrangements under which they shall receive basic health care." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to "prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs." (§ 14000.2.) Thus, "Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility)." (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons "a choice of medical facilities for treatment," Medi-Cal placed county health care providers "in competition with private hospitals." (*Hall*, *supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203;

Belshé, *supra*, 13 Cal.4th at p. 751; *Morris*, *supra*, 67 Cal.2d at p. 741; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, "[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State ***97** responsibility under the Medi-Cal program. [Citation.]" (*Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal "shifted to the state" the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that Penal Code section 987.9, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 "to reimburse counties for their costs under" the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because Penal Code section 987.9 merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at pp. 814-816.) Thus, the court stated, "[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program" under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under *Lucia Mar*, *supra*, 44 Cal.3d 830, the state's "decision not to reimburse the counties for their programs under [Penal Code] section 987.9" imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 817.) The court explained: "In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility." (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a ***98** method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced. [17]

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under section 17000. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: "transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public." [18] (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 56; see also *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68 [A "central purpose" of section 6 was "to prevent the state's transfer of the *cost of government* from *itself* to the local level."].) Accordingly, we view the 1982 legislation as having mandated a " 'new program' " on counties by "compelling them to accept financial responsibility in whole or in part for a program," i.e., medical care for adult MIP's, "which was funded entirely by the state before the advent of article XIII B." [19] (*Lucia Mar*, *supra*, 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.).) As we have previously explained,

the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (***99** *County of Los Angeles*, *supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, "focus[] on one phase in th[e] shifting pattern of [financial] arrangements" between the state and the counties. Under section 6, the state simply cannot "compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B ...."[20] (*Lucia Mar*, *supra*, 44 Cal.3d at p. 836.)

B. *County Discretion to Set Eligibility and Service Standards*

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds "only on those whom the *county* deems eligible *under § 17000*," "gave the county exclusive authority to determine the level and type of benefits it would provide," and required counties "to include [adult MIP's] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**"[21] (Original emphasis.) According to the state, under section 17001, "[t]he counties have ***100** complete discretion over the determination of eligibility, scope of benefits and how the services will be provided."[22]

The state exaggerates the extent of a county's discretion under section 17001. It is true "case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]" (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*).) However, there are "clear-cut limits" to this discretion. (*Ibid.*) (6) The counties may exercise their discretion "only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (Gov. Code, § 11374.)" (*Mooney*, *supra*, 4 Cal.3d at p. 679.) Thus, the counties' eligibility and service standards must "carry out" the objectives of section 17000. (*Mooney*, *supra*, 4 Cal.3d at p. 679; see also *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [261 Cal.Rptr. 545]; § 11000 ["provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program"].) County standards that fail to carry out section 17000's objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (*Morris*, *supra*, 67 Cal.2d at p. 737.) Courts, which have " 'final responsibility for the interpretation of the law,' " must strike them down. (*Id.* at p. 748.) Indeed, despite the counties' statutory discretion, "courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]" (*Robbins*, *supra*, 38 Cal.3d at p. 212.)

1. *Eligibility*

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP's. As we emphasized in *Mooney*, section 17000 requires counties to relieve and support " '*all indigent persons* lawfully resident therein, "when such persons are not supported and relieved by their relatives" or by some other means.' " (*Mooney*, *supra*, 4 Cal.3d at p. 678; see also *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory "purpose" of division 9 of the Welfare and Institutions Code, which includes ***101** section 17000, "is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed." (Italics added.) Thus, counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of section 17000 who do not receive it from other sources.[23] (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not "defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support"]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly "voided county ordinances which have attempted to redefine eligibility standards set by state statute"].)

Although section 17000 does not define the term "indigent persons," the 1982 legislation made clear that all adult MIP's fall within this category for purposes of defining a county's obligation to provide medical care.[24] As part of its exclusion of adult MIP's, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c)(1), to require that a county board of supervisors, in applying for MISA funds, "assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to Section 17000 ...." (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that "[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, "counties had to include [Medically Indigent Adults] in their [section] 17000 eligibility" standards. By requiring counties to make all adult MIP's eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under section 17000, the Legislature established that all adult MIP's are "indigent persons" for purposes of the counties' duty to provide medical care under section 17000. Otherwise, the counties could not comply with their promise. ***102**

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it "operative only until June 30, 1985, unless a later enacted statute extends or deletes that date."[25] As we have explained, the subdivision established that adult MIP's are "indigent persons" within the meaning of section 17000 for medical care purposes. As we have also explained, section 17000 requires counties to relieve and support *all* "indigent persons." Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP's from eligibility for medical services, section 17000 has that effect.[26]

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP's as "indigent persons" within the meaning of section 17000 for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal program, which covered only categorically linked persons, it "declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered" by Medi-Cal, "whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties' Medi-Cal cost share would not leave counties "with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal," the Legislature also created the county option. (*Hall*, *supra*, 23 Cal.App.3d at p. 1061.) Through the county option, "the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases." (*Lackner*, *supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all "indigent persons" entitled to medical care under section 17000, and required the state to share in the financial responsibility for providing that care.

In adding adult MIP's to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This ***103** description was consistent with prior judicial decisions that, for purposes of a county's duty to provide "indigent persons" with hospitalization, had defined the term to include a person "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." (*Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [54 P.2d 510].)

Moreover, the fate of amendments to section 17000 proposed at the same time suggests that, in the Legislature's view, the category of "indigent persons" entitled to medical care under section 17000 extended even *beyond* those eligible for Medi-Cal as MIP's. The June 17, 1971, version of Assembly Bill No. 949 amended section 17000 by adding the following: "however, the health needs of such persons shall be met under [Medi-Cal]." (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: "The proposed amendment to Section 17000, ... which would

have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend section 17000 in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under section 17000, we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under section 17000 to continue to provide services to those eligible under section 17000 but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. ***104** (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829 [25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of section 17000 and would have taken corrective action if it disagreed with that construction. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under section 17000 to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under section 17000 for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population. [27]

2. *Service Standards*

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. Section 17000 requires in general terms that counties "relieve and support" indigent persons. Section 10000, which sets forth the purpose of the division containing section 17000, declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care ...." (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*).)

Courts construing section 17000 have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just ***105** emergency care. [Citation.]" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [18 Cal.Rptr.2d 487]; see also *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under Section 17000"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather*, *supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health ...." (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke*, *supra*, 213 Cal.App.3d at page 404, which held that section 17000 requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent

significant illness or significant disability, or to alleviate severe pain"].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under Welfare and Institutions Code section 17000.[28] As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people "is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county." (Stats. 1974, ch. 810, § 3, p. 1765.) The express "purpose and intent" of the act that contained former subdivision (c) was "to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled." (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,[29] former subdivision (c) "[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county." (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.) Summary Dig., p. 130; see also *Gardner v. County of Los Angeles*, *supra*, 34 Cal.App.4th at p. 216; ***106** *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided "be *comparable* to that enjoyed by the nonindigent"].)[30] "For the 1990-91 fiscal year," the Legislature qualified this obligation by providing: "nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs." (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.[31]

VI. Minimum Required Expenditure

(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least $41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on Welfare and Institutions Code section 16990, subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's "ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award." ***107**

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at Rev. & Tax. Code, § 30121 et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 248, 254 [279 Cal.Rptr. 325, 806 P.2d 1360].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, "at a minimum," to "maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year," adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least $41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds "for allocation to counties *participating* in" the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments "upon application of the county assuring that it will comply with" applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: "To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988." (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through Revenue and Taxation Code section 30125, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 "shall be used to supplement existing levels of service and not to fund existing levels of service." (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to ***108** seek CHIP funds did so voluntarily.[32] Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally "establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA)." (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under section 16703 for fiscal year 1988-1989.[33] Nothing about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a $41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., §§ 10000, 17000, and Health & Saf. Code, § 1442.5, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. ***109**

VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under Code of Civil Procedure section 1085 was an improper vehicle for challenging the Commission's position. It asserts that, under Government Code section 17559, review by administrative mandamus under Code of Civil Procedure section 1094.5 is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under Code of Civil Procedure section 1085 because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. "[M]andamus pursuant to [Code of Civil Procedure] section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]" (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under Code of Civil Procedure section 1085 as one brought under Code of Civil Procedure section 1094.5 and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (*Woods, supra*, 28 Cal.3d at

pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal ...." (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman*, *supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh*, *supra*, 14 Cal.App.4th at p. 1584.) As the state concedes, even under Code of Civil Procedure section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. ***110**

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under Code of Civil Procedure section 170.6. We will not review this ruling, however, because it is reviewable only by writ of mandate under Code of Civil Procedure section 170.3, subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under Code of Civil Procedure section 904.1, subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.[34] (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256 Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment. (*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc.*, *supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees ...." This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is ***111** remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J.,* and Aldrich, J.,†]]]] concurred.

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new

program or higher level of service on any local government," the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state "may, but need not," provide such reimbursement *if the state mandate was enacted before January 1, 1975*. (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (*Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 677-678 ***112** [94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor "were provided in different ways and were funded by the state, county, and federal governments in varying amounts." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (42 U.S.C. § 1396 et seq.; see *Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons "linked" to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara* v. *Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called "noncategorically linked" persons, or "medically indigent persons." (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) ***113** Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of "medically indigent persons" that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties

through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category "to the extent that state funds are provided" (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of "medically indigent persons" from Medi-Cal eligibility mandated a "new program or higher level of service" within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. ***114** The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against the state for reimbursement of the county's expenditures for medical care to the indigent. [1] The majority holds that the county is entitled to such reimbursement. I disagree.

II

Article XIII B, section 6 of the California Constitution provides: "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 program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates:* [¶] ... [¶] *(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*" (Italics added.) [2]

Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Viloria* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of "[l]egislative mandates enacted prior to January 1, 1975," rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of "medically indigent persons" from Medi-Cal did not meet California Constitution, article XIII B, section 6 's requirement of imposing on local government "a new program or higher level of service," and therefore did not entitle the counties to reimbursement from the state under section 6 of article XIII B. The counties' legal obligation to provide medical care arises from section 17000, not from the subsequently enacted ***115** 1982 legislation. The majority itself concedes that the 1982 legislation merely "trigger[ed] the counties' responsibility to provide medical care as providers of last resort under section 17000." (Maj. opn., *ante,* at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under section

17000 to furnish such care. (*Cooke* v. *Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; *Madera Community Hospital* v. *County of Madera* (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on ***116** the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal [that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id*., § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal. (See *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees*." (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources

prove insufficient to ***117** reimburse the counties under section 6 of article XIII B of the California Constitution for the "new program or higher level of service" of providing medical care to the poor under section 17000. In that event, the state may be required to modify this "new program or higher level of service" in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file "in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c); see maj. opn., *ante,* at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's assumption thereafter of some of the resulting financial burden to the counties did not repeal section 17000' s mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing ***118** and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their section 17000 obligations to provide for the poor, and whether to continue to impose the obligations of section 17000 on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under section 17000, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. ***119**

Footnotes

* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, The Medi-Cal Program: A Brief Summary of Major Events (Mar. 1990) p. 1 (Summary of Major Events).)

3 Former section 14150.1 provided in relevant part: "[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county .... If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county ...." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)

4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, "a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals .... Financial responsibility for nonlinked individuals ... remained with the counties." (*Lackner*, *supra*, 97 Cal.App.3d at p. 581.)

5 In this opinion, the terms "adult MIP's" and "Medically Indigent Adults" refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.

6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.

7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)

8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would "cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal" that "[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.

9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to "the state" include these officers.

10 The judgment dismissed all of San Diego's other claims.

11 In *Garamendi*, *supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego "might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim."

13 "County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents." (*Mooney* v . *Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

14 See also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526] (construing former section 2500); *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support"); *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [196 Cal.Rptr. 602]; *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [128 Cal.Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").

15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and *Cooke*, *supra*, 213 Cal.App.3d 401. (Dis. opn., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons " 'meeting all eligibility standards for the Medi-Cal program.' " (*Madera*, *supra*, 155 Cal.App.3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera*'s holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (*Madera*, *supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that "[t]he county obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera*, *supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (*Cooke*, *supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

17 Because *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)

19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing section 17000 programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)

20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000 and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service .... The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

22 Section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

23 We disapprove *Bay General*, *supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under section 17000 extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of section 17000 but do not qualify for Medi-Cal.

24 Our conclusion is limited to this aspect of a county's duty under section 17000. We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under section 17000.

25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)

26 Given our analysis, we express no opinion about the statement in *Cooke*, *supra*, 213 Cal.App.3d at page 412, footnote 9, that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute ...."

27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under section 17000. On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under section 17000 extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

28 The state argues that former subdivision (c) is irrelevant to our determination because, like section 17000, it "predate[d] 1975." Our previous analysis rejecting this argument in connection with section 17000 applies here as well.

29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

30 We disapprove *Cooke*, *supra*, 213 Cal.App.3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county ... were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.

31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service ...." Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.

33 Former section 16991, subdivision (a)(5), provided in full: "If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the

sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn., *ante,* at pp. 86-90.)

2 Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92
Supreme Court of California

COUNTY OF FRESNO, Plaintiff and Appellant,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S015637.
Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under Cal. Const., art. XIII B, § 6 (state must provide subvention of funds to reimburse local governments for costs of state- mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under Gov. Code, § 17556, subd. (d), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that Gov. Code, § 17556, subd. (d), was facially constitutional under Cal. Const., art. XIII B, § 6. It held art. XIII B was not intended to reach beyond taxation, and § 6 was included in art. XIII B in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that art. XIII B, § 6 was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that Gov. Code, § 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, ***483** Panelli, Kennard, JJ., and Best (Hollis G.), J.,* concurring. Separate concurring opinion by Arabian, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.
In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal. Const., art. XIII B, § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.), the trial court properly found that Gov. Code, § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. Gov. Code, § 17556, subd. (d), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov. Code, § 17556, subd. (d), is facially constitutional under Cal. Const., art. XIII B, § 6.

[See **Cal.Jur.3d (Rev),** Municipalities, § 361; 9 **Witkin,** Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

COUNSEL

Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.

B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. ***484**

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

MOSK, J.

We granted review in this proceeding to decide whether section 17556, subdivision (d), of the Government Code (section 17556(d)) is facially valid under article XIII B, section 6, of the California Constitution (article XIII B, section 6).

Article XIII B, section 6, provides: "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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov. Code, § 17500.) It created a "quasi-judicial body" (*ibid.*) called the Commission on State Mandates (commission) (*id.,* § 17525) to "hear and decide upon [any] claim" by a local government that the local government "is entitled to be reimbursed by the state for costs" as required by article XIII B, section 6. (Gov. Code, § 17551, subd. (a).) It defined "costs" as "costs mandated by the state"—"any increased costs" that the local government "is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program" within the meaning of article XIII B, section 6. (Gov. Code, § 17514.) Finally, in section 17556(d) it declared that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

For the reasons discussed below, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6. ***485**

I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). (Health & Saf. Code, § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.,* § 25500.) It requires local governments to implement its provisions. (*Id.,* § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.,* § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called "test" or initial claim with the commission (Gov. Code, § 17521) seeking reimbursement from the State of California (State) under article XIII B, section 6. After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, section 17556(d) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that section 17556(d) is unconstitutional under article XIII B, section 6. While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a "program" under the rationale of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter

alia, that mandate under Code of Civil Procedure section 1094.5 was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that section 17556(d) is constitutional under article XIII B, section 6. It did not address the question whether the Act constituted a "program" under *County of Los Angeles*. Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under *County of Los Angeles, supra,* 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6. ***486**

(1) We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitutional under article XIII B, section 6.

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra,* 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id.,* § 2). (See *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 446.) It defines the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes ...." (Cal. Const., art. XIII B, § 8, subd. (b).) It defines "proceeds of taxes" as including "all tax revenues and the proceeds to ... government from," inter alia, "regulatory licenses, user charges, and user fees *to the extent that such proceeds exceed the costs reasonably borne by* [*government*] *in providing the regulation, product, or service* ...." (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but ***487** *taxes*" for purposes here. (*County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such

revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.

The County argues to the contrary. It maintains that section 17556(d) in essence creates a new exception to the reimbursement requirement of article ***488** XIII B, section 6, for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting section 17556(d) the Legislature created a new exception to the reimbursement requirement of article XIII B, section 6. As explained, the Legislature effectively—and properly—construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, section 17556(d) is indeed inconsistent with article XIII B, section 6. Its contention is in substance as follows: the source of section 17556(d) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into article XIII B, section 6, but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent: "the state may not arbitrarily declare that it is not going to comply with Section 6 ... if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra,* 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [section 17556(d)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program." ***489**

The County appears to be making one or both of the following arguments: (1) the commission applies section 17556(d) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of section 17556(d) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of section 17556(d).

III. Conclusion

For the reasons set forth above, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J.,* concurred.

ARABIAN, J.,

Concurring.

I concur in the determination that Government Code section 17556, subdivision (d)[1] (section 17556(d)), does not offend article XIII B, section 6, of the California Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

Article XIII B, section 6, unequivocally commands that "the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service" except as specified therein. Article XIII B does not define this reference to "costs." (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of "costs mandated by the state" when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 (§ 17556, subds. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from ***490** former Revenue and Taxation Code section 2253.2. (§ 17556, subds. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that "the Legislature effectively—and properly—construed the term 'costs' as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach." (Maj. opn., *ante,* at p. 488*ante,* at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word "except" should not be necessary to construe the result for what it clearly is. In this circumstance, "I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." (*In re Deborah C.* (1981) 30 Cal.3d 125, 141 [177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.).)

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. "[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand." (*Rose v. State of California* (1942) 19 Cal.2d 713, 723 [123 P.2d 505]; see also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that "the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden ...." (*People v. Coleman* (1854) 4 Cal. 46, 49.) "Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the ***491**

Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra,* 37 Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin, supra,* 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] [" 'fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]' "]; *Terminal Plaza Corp. v. City* ***492** *and County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56; see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to

local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure.[2] (See ***493** *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only "to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service ...."

The self-executing nature of article XIII B does not alter this analysis. "It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]" (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) " ' "Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." [Citations.]' " (*Id.,* at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not "merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly." (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates no conflict with the constitutional directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

"[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.' [Citation.]" (*Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) ***494**

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.[3] Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. ***495**

Footnotes

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

1 Unless otherwise indicated, all further statutory references are to the Government Code.

2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]"].)

3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel, supra,* 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside, supra,* 31 Cal.2d 619.

55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

REDEVELOPMENT AGENCY OF THE CITY OF SAN MARCOS, Plaintiff and Appellant,
v.
CALIFORNIA COMMISSION ON STATE MANDATES, Defendant and Respondent;
CALIFORNIA DEPARTMENT OF FINANCE, Intervener and Respondent.

No. D026195.
Court of Appeal, Fourth District, Division 1, California.
May 30, 1997.

SUMMARY

The trial court denied a petition for a writ of administrative mandate brought by a city's redevelopment agency that challenged the California Commission on State Mandates' denial of the agency's test claim under Gov. Code, § 17550 et seq. (reimbursement of costs mandated by the state). In its claim, the agency sought a determination that the State of California should reimburse the agency for moneys transferred into its lowand moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, of the Community Redevelopment Law. Those statutes require a 20 percent deposit of the particular form of financing received by the agency (tax increment financing generated from its project areas) for purposes of improving the supply of affordable housing. The agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under Cal. Const., art. XIII B, § 6. The trial court found that the source of funds used by the agency was exempt, under Health & Saf. Code, § 33678, from the scope of Cal. Const., art. XIII B, § 6. (Superior Court of San Diego County, No. 686818, Sheridan E. Reed and Herbert B. Hoffman, Judges.)

The Court of Appeal affirmed. It held that under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt ***977** from the scope of Cal. Const., art. XIII B, § 6. Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3. (Opinion by Huffman, J., with Work, Acting P. J., and McIntyre, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 11--Fiscal Matters--Subvention:Words, Phrases, and Maxims--Subvention.
"Subvention" generally means a grant of financial aid or assistance, or a subsidy.

(2)
State of California § 11--Fiscal Matters--Subvention--Judicial Rules.
Under Gov. Code, § 17559, review by administrative mandamus is the exclusive method of challenging a decision of the California Commission on State Mandates to deny a subvention claim. The determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, is a question of law. On appellate review, the following standards apply: Gov. Code, § 17559, governs the proceeding below and requires that the trial court review the decision of the commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, the appellate court is generally confined to inquiring whether substantial evidence supports the trial court's findings and judgment. However, the appellate court independently reviews the trial court's legal conclusions

about the meaning and effect of constitutional and statutory provisions.

(3a, 3b)
State of California § 11--Fiscal Matters--Subvention--State-mandated Costs--Statutory Set-aside Requirement for Local Redevelopment Agency's Tax Increment Financing.
The California Commission on State Mandates properly denied a test claim brought by a city's redevelopment agency seeking a determination that the state should reimburse the agency for moneys transferred into its lowand ***978** moderate-income housing fund pursuant to Health & Saf. Code, §§ 33334.2 and 33334.3, which require a 20 percent deposit of the particular form of financing received by the agency, i.e., tax increment financing generated from its project areas. Under Health & Saf. Code, § 33678, which provides that tax increment financing is not deemed to be the "proceeds of taxes," the source of funds used by the agency was exempt from the scope of Cal. Const., art. XIII B, § 6 (subvention). Although Cal. Const., art. XIII B, § 6, does not expressly discuss the source of funds used by an agency to fund a program, the historical and contextual context of this provision demonstrates that it applies only to costs recovered solely from tax revenues. Because of the nature of the financing they receive (i.e., tax increment financing), redevelopment agencies are not subject to appropriations limitations or spending caps, they do not expend any proceeds of taxes, and they do not raise general revenues for the local entity. Also, the state is not transferring any program for which it was formerly responsible. Therefore, the purposes of state subvention laws are not furthered by requiring reimbursement when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of Health & Saf. Code, §§ 33334.2 and 33334.3.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(4)
Constitutional Law § 10--Construction of Constitutional Provisions-- Limitations on Legislative Powers.
The rules of constitutional interpretation require a strict construction of a constitutional provision that contains limitations and restrictions on legislative powers, because such limitations and restrictions are not to be extended to include matters not covered by the language used.

(5)
State of California § 11--Fiscal Matters--Subvention--Purpose of Constitutional Provisions.
The goal of Cal. Const., arts. XIII A and XIII B, is to protect California residents from excessive taxation and government spending. A central purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government of state-mandated costs), is to prevent the state's transfer of the cost of government from itself to the local level.

COUNSEL
Higgs, Fletcher & Mack and John Morris for Plaintiff and Appellant.
Gary D. Hori for Defendant and Respondent. ***979**
Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

HUFFMAN, J.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov. Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for moneys transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code [1] sections 33334.2 and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (1)**(See fn. 2)**The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6; all further references to articles are to the California Constitution). [2] (Cal. Const., art. XVI, § 16; § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (Code Civ. Proc., § 1094.5; Gov. Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the

scope of section 6, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for lowand moderate-income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm. ***980**

I. Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (Gov. Code, § 17500 et seq.)[3] The Commission hearing consisted of oral argument on the points and authorities presented.

(2) Under Government Code section 17559, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 [61 Cal.Rptr.2d 134, 931 P.2d 312].) On appellate review, we apply these standards: "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810 [53 Cal.Rptr.2d 521].)

II. Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here: "Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which 'imposes a limit on the power of state and local governments to ***981** adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIII B to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]" (*County of San Diego v. State of California*, *supra*, 15 Cal.4th at pp. 80-81.)

Section 6, part of article XIII B and the provision here at issue, requires that 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 program* or increased level of service ....' " (*County of San Diego v. State of California*, *supra*, 15 Cal.4th at p. 81, italics added.) Certain exceptions are then stated, none of which is relevant here.[4]

In *County of San Diego v. State of California*, *supra*, 15 Cal.4th at page 81, the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B. (*County of San Diego v. State of California*, *supra*, at p. 81.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (***982** *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100,

106 [211 Cal.Rptr. 133, 695 P.2d 220]), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme: "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (Health & Saf. Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, county, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf. Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)" (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017 [214 Cal.Rptr. 626].) [5]

In *Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pages 1016-1018, the court determined that by enacting section 33678, the Legislature interpreted article XIII B of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute "proceeds of taxes" subject to article XIII B appropriations limits. (*Brown v. Community Redevelopment Agency*, *supra*, at p. 1019). [6] This ruling was based on section 33678, providing in pertinent part: "This section implements and fulfills the intent ... of Article XIII B and ***983** Section 16 of Article XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ...* or any statutory provision enacted in implementation of Article XIII B. *The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*" (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451 [170 Cal.Rptr. 232], the court defined "proceeds of taxes" in this way: "Under article XIII B, with the exception of state subventions, the items that make up the scope of ' "proceeds of taxes" ' concern charges levied to raise *general revenues* for the local entity. ' "Proceeds of taxes," ' in addition to 'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees [*only*] *to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service....*' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*" (Italics added.) [7]

(3a) In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and ***984** accordingly we need not discuss the alternate grounds of decision stated by the Commission. [8]

III. Housing Fund Allocations: Reimbursable Costs?

1. *Arguments*

The Agency takes the position that the language of section 33678 is simply inapplicable to its claim for subvention

of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre-1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante*.*ante*.) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, *for purposes of appropriations limitations*, tax increment financing is not deemed to be the "proceeds of taxes." (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1017-1020.) The Agency would apply a "plain meaning" rule to section 6 (see, e.g., *Davis v. City of* Berkeley (1990) 51 Cal.3d 227, 234 [272 Cal.Rptr. 139, 794 P.2d 897]) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [280 Cal.Rptr. 92, 808 P.2d 235], the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 "was designed to protect the tax revenues of local governments from state mandates that ***985** would require expenditure of such revenues." (*County of Fresno v. State of California*, *supra*, at p. 487.) Based on the language and history of the measure, the court stated, "Article XIII B of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*Ibid.*, original italics.) Interpreting section 6, the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. *Interpretation of Section 6*

Here, the Agency contends the authority of *County of Fresno v. State of California*, *supra*, *53* Cal.3d 482, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read section 6 in light of its historical and textual context. (4) The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pp. 1816-1817.)

(5) The goals of articles XIII A and XIII B are to protect California residents from excessive taxation and government spending. (*County of Los Angeles v. State of California*, *supra*, 15 Cal.4th at p. 81.) A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) (3b) The related goals of these enactments require us to read the term "costs" in section 6 in light of the enactment as a whole. The "costs" for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the ***986** assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016-1017.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which section 6 was designed to protect? (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.)

3. *Relationship of Appropriations Limitations and Subvention*

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIII B. In *County of Placer v. Corin*, *supra*, 113 Cal.App.3d at page 447, the court described the discipline imposed by article XIII B in this way: "[A]rticle XIIIB does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.' " [9]

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "*general revenues* for the local entity." (*County of Placer v. Corin*, *supra*, 113 Cal.App.3d at p. 451, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially ***987** responsible. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817 [38 Cal.Rptr.2d 304].) [10]

For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIII B appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIII B. (*Brown v. Community Redevelopment Agency*, *supra*, 168 Cal.App.3d at pp. 1016-1020.) Section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues*." (*County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable "cost" under section 6. We therefore need not interpret any remaining portions of section 6.

Disposition

The judgment is affirmed.

Work, Acting P. J., and McIntyre, J., concurred.

Appellant's petition for review by the Supreme Court was denied September 3, 1997.

Footnotes

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

2 " 'Subvention' generally means a grant of financial aid or assistance, or a subsidy. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest

in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194-1199 [51 Cal.Rptr.2d 100].) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69 [266 Cal.Rptr. 139, 785 P.2d 522], the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov. Code, § 17514, definition of "costs mandated by the state," using the same "new program or higher level of service" language of section 6.)

5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of lowand moderate-income housing, as well as expanding employment opportunities and improving the social environment.

6 The term of art, "proceeds of taxes," is defined in article XIII B, section 8, as follows: (c) " *'Proceeds of taxes' shall include, but not be restricted to, all tax revenues* and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)

7 The issues before the court in *County of Placer v. Corin*, *supra*, 113 Cal.App.3d 443 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. Section 6 is not discussed; the court's analysis of other concepts found in article XIII B is nevertheless instructive.

8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.

9 The term of art, "appropriations subject to limitation," is defined in article XIII B, section 8, as follows: [¶] (b) " 'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes." (Italics added.)

10 We disagree with respondents that the legislative history of sections 33334.2 and 33334.3 is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats. 1976, ch. 1337, § 23, pp. 6070-6071.) As stated in *City of San Jose v. State of California*, *supra*, 45 Cal.App.4th at pages 1817-1818, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

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54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66
Supreme Court of California

FRANCES KINLAW et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S014349.
Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to Code Civ. Proc., § 526a, against the state, alleging that it had violated Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature (Gov. Code, § 17500 et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under Cal. Const., art. XIII B, § 6, were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.
Gov. Code, § 17500 et seq., creates an administrative forum for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, and establishes ***327** procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (Gov. Code, § 17612). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6.

(2)
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.
In an action by medically indigent adults and taxpayers seeking to enforce Cal. Const., art. XIII B, § 6, for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy (Gov. Code, § 17500 et seq.) by which affected local agencies could enforce their constitutional right under art. XIII B, § 6 to reimbursement for the cost of state mandates di not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under art. XIII B, § 6; unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further

action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See **Cal.Jur.3d,** State of California, § 78; 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1127 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

COUNSEL

Stephen D. Schear, Stephen E. Ronfeldt, Armando M. Menocal III, Lois Salisbury, Laura Schulkind and Kirk McInnis for Plaintiffs and Appellants. ***328**

Catherine I. Hanson, Astrid G. Meghrigian, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of article XIII B (hereafter, section 6) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to Code of Civil Procedure section 526a and as persons affected by the alleged failure of the state to comply with section 6. The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under section 6 are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

Section 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: ***329**

"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 program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

A complementary provision, section 3 of article XIII B, provides for a shift from the state to the local agency of a portion of the spending or "appropriation" limit of the state when responsibility for funding an activity is shifted to a local agency:

"The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount."

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services

to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time section 6 was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly ***330** situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi- Cal program to the counties without adequate reimbursement violated the California Constitution. [1]

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission). [2]

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of section 6. Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of section 6. [3] ***331**

III Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6. (§ 17500.) The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in section 17500:

"The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state- mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*" (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, "State-Mandated Costs," which commences with section 17500, the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state-mandated program (§§ 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. (§ 17525.)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554), [4] establishes the method of ***332** payment of claims (§§ 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates (§§ 17562, 17600, 17612, subd. (a).)

Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies [5] and school districts [6] are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided only through this statutory procedure. (§§ 17550, 17552.)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a "test claim." (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting "parameters and guidelines" for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations ***333** bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subds. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a "local government claims bill." If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in section 17500: "It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ..." And section 17550 states: "Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter."

Finally, section 17552 provides: "This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6. ***334**

IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under section 6 to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge.

(*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]; *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]; *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of section 6 independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. Section 6 provides that the "state shall provide a subvention of funds *to reimburse ... local governments* ...." (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement section 6. That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under section 6. Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost ***335** of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind. Nothing in article XIII B or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: "Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose."

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under section 6. That test-claim statute expressly provides that not only the claimant, but also "any other interested organization or individual may participate" in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must "provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, *and any other interested person.*" (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive. [7]

The alternative relief plaintiffs seek—reinstatement to Medi-Cal pending further action by the state—is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists ***336** and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.) [8]

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the

question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard. [9]

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the ***337** Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs—citizens, taxpayers, and persons in need of medical care—allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned ***338** itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds. [1]

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about $40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than $20 million per year. The county has inadequate funds to discharge its new obligation

for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated ...." "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need ...." "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people ...."

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of article XIII B, and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of article XIII B, which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda ***339** County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. *Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with article XIII B.*

Plaintiffs first claim standing as taxpayers under Code of Civil Procedure section 526a, which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..." As in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates article XIII B. A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9 [270 Cal.Rptr. 796, 793 P.2d 2], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under article XIII B. The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce section 6 of article XIII B.

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.[2] Such an action may be brought by any person "beneficially interested" in the issuance of the writ. (Code Civ. Proc., § 1086.) In *Carsten* ***340** *v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, Administrative Law Treatise (1958) p. 291.) Cases applying this standard include *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520

[170 Cal.Rptr. 724], which held that low- income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner v. City Council, supra,* 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: *Carsten v. Psychology Examining Com., supra,* 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; *Parker v. Bowron* (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, ***341** plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under Government Code section 17563 "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention. [3]

This argument would be sound if the county were already meeting its obligations to MIA's under Welfare and Institutions Code section 17000. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by Welfare and Institutions Code section 17000, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under section 17000 of the Welfare and Institutions Code. If it refused, an action in mandamus would lie to compel performance. (See *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with article XIII B ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right ***342** and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

Green v. Obledo presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that "[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety." (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra,* 29 Cal.3d 126, 144, and concluded that "[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication." (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. *Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.*

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to "hear and decide upon [any] claim" by a local government that it "is entitled to be reimbursed by the state" for costs under article XIII B. (***343** Gov. Code, § 17551, subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.[4] I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that "[t]his chapter shall provide the sole and exclusive procedure by which *a local agency or school district* may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that "any other interested organization or individual may participate" in the commission hearing. Under these circumstances the Legislature's choice of words—"the sole and exclusive procedure by which a local agency or school district may claim reimbursement"—limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*—"the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432. Here defendants contend that the counties' right of action under Government Code sections 17551-17552 impliedly excludes ***344** any citizen's remedy; in *Common Cause* defendants claimed the Attorney General's right of action under Elections Code section 304 impliedly excluded any citizen's remedy. We replied that "the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations]." (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a

right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that "[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program." (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, article XIII B was enacted to protect taxpayers, not governments. Sections 1 and 2 of article XIII B establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. Section 6 of article XIII B prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce article XIII B, and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to article XIII B. The drafters of article XIII B and the voters who enacted it would not accept that the state Legislature—the principal body regulated by the article—could establish a procedure ***345** under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce article XIII B. An example is the Brown-Presley Trial Court Funding Act (Gov. Code, § 77000 et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation.[5] The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of article XIII B.

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to ***346** determine the amount of the mandate—which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation—in this case, the medically indigent—and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. *Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.*

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent decision in *Dix v. Superior Court, supra,* 53 Cal.3d 442 (hereafter *Dix*). In *Dix,* the victim of a crime sought to challenge the trial court's decision to recall a sentence under Penal Code section 1170. We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning

the trial court's authority to recall a sentence under Penal Code section 1170, subdivision (d). We explained that the sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" (53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues—standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix.* The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante,* p. 330, fn. 2*ante,* p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. ***347**

The majority, however, notes that various state officials—the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research—did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante,* p. 336, fn. 9*ante,* p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae. [6]

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix.* Judges rarely recall sentencing under Penal Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. *Conclusion as to standing.*

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude ***348** that plaintiffs have standing both as persons "beneficially interested" under Code of Civil Procedure section 1086 and under the doctrine of *Green v. Obledo, supra,* 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. *State funding of care for MIA's.*

Welfare and Institutions Code section 17000 requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources. [7] From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully

met through other sources, the counties had no duty under Welfare and Institutions Code section 17000 to meet those needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time article XIII B became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when article XIII B became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was ***349** initially relatively constant, generally more than $400 million per year. By 1990, however, state funding had decreased to less than $250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its article XIII B "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About $1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. *The function of article XIII B.*

Our recent decision in *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the function of article XIII B and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

"At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' (*City of Sacramento, supra,* 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument ***350** in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.,* § 2). [8] (See *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes ....' (Cal. Const., art. XIII B, § 8, subd. (b).)" (*County of Fresno, supra,* 53 Cal.3d at p. 486.)

Under section 3 of article XIII B the state may transfer financial responsibility for a program to a county if the state

and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount.[9] Absent such an agreement, however, section 6 of article XIII B generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of article XIII B. It does so by requiring that "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 cost of such program or increased level of service ...."[10]

"Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles* [v. *State of California* (1987)] 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax ***351** revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra,* 53 Cal.3d at p. 487.)

C. *Applicability of article XIII B to health care for MIA's.*

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of section 6 of article XIII B. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when article XIII B took effect. The purpose of article XIII B supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and article XIII B are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. Article XIII B, enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not county financing for these programs. Article XIII B further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that article XIII B was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under article XIII B, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when article XIII B was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of article XIII B.

Our decisions interpreting article XIII B demonstrate that the state's subvention requirement under section 6 is not vitiated simply because the ***352** "program" existed before the effective date of article XIII B. The alternate phrase of section 6 of article XIII B, " 'higher level of service[,]' ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.*' " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues

imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility continued until June 28, 1981, when Education Code section 59300 (hereafter section 59300), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under section 6 of article XIII B. The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by section 59300 imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that section 59300 called for only an " 'adjustment of costs' " of educating the severely handicapped, and that "*a shift in the funding of an existing program is not a new program or a higher level of service*" within the meaning of article XIII B. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIIIA, which severely limited the taxing ***353** power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control [11] of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*" (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar,* prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830: "[B]ecause section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—*an obligation the school districts did not have at the time article XIII B was adopted*—it calls for plaintiffs to support a 'new program' within the meaning of section 6." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of ***354** article XIII B. The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily" [12] suspended when article XIII B became effective. I fail to see the distinction between a case—*Lucia Mar*—in which no existing statute as of 1979 imposed an obligation on the local government and one—this case—in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of section 6 of article XIII B does not depend upon when the program was created, but upon who had the burden of funding it when article XIII B went into effect. Our conclusion in *Lucia Mar* that the

educational program there in issue was a "new" program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor. *Lucia Mar* determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal. [13] Both are correct, but irrelevant to this case. [14] The county's obligation to MIA's is defined by Welfare and Institutions Code section 17000, not by the former Medi-Cal program. [15] If the ***355** state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately $1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to sections 1 and 3 of article XIII B. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of article XIII B which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce article XIII B both to those persons whom it was designed to protect—the citizens and taxpayers—and to those harmed by its violation—the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate article XIII B and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. ***356**

Footnotes

1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce section 6.

2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (Code Civ. Proc., § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California,* No. B049625.)

3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.

An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce section 6.

All further statutory references are to the Government Code unless otherwise indicated.

4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)

5 " 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

6 " 'School district' means any school district, community college district, or county superintendant of schools." (§ 17519.)

7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of section 6 before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because section 6 creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action. (See, e.g., *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care .... They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action." (Maj. opn., *ante,* p. 336, fn. 8*ante,* p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 56 [107 Cal.Rptr. 214] (overruled on other grounds in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 127-128 [109 Cal.Rptr. 724].)

3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

4 The majority emphasizes the statement of purpose of Government Code section 17500: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under section 6 of article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."

The "existing system" to which Government Code section 17500 referred was the Property Tax Relief Act of 1972 (Rev. & Tax. Code, §§ 2201-2327), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 *shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate*; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent

notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)

"As used in this chapter, 'state-mandated local program' *means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution,* or Section 17561 of the Government Code, or both." (Gov. Code, § 77005, italics added.)

6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

7 Welfare and Institutions Code section 17000 provides that "[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

8 Article XIII B, section 1 provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."

9 Section 3 of article XIII B reads in relevant part: "The appropriations limit for any fiscal year ... shall be adjusted as follows:

"(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ..."

10 Section 6 of article XIII B further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.

11 The state notes that, in contrast to the program at issue in *Lucia Mar,* it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar,* while appropriate to the facts of that case, was not intended to establish a rule limiting article XIII B, section 6, to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

12 The state's repeated emphasis on the “temporary” nature of its funding is a form of post hoc reasoning. At the time article XIII B was enacted, the voters did not know which programs would be temporary and which permanent.

13 It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905].)

14 Certain language in *Madera Community Hospital v. County of Madera, supra,* 155 Cal.App.3d 136, however, is questionable. That opinion states that the “Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds,* notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden.” (P. 151.) Welfare and Institutions Code section 17000 by its terms, however, requires the county to provide support to residents only “when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.” Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

15 The county's right to subvention funds under article XIII B arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program “ 'mandated' ” by the state; i.e., that Alameda County has any option other than to pay these costs. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 836-837.)

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 1. Legislative Intent (Refs & Annos)

West's Ann.Cal.Gov.Code § 17500

§ 17500. Legislative findings and declarations

Effective: January 1, 2005
Currentness

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIIIB of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIIIB of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIIIB of the California Constitution.

Credits
(Added by Stats.1984, c. 1459, § 1. Amended by Stats.2004, c. 890 (A.B.2856), § 2.)

Notes of Decisions (10)

West's Ann. Cal. Gov. Code § 17500, CA GOVT § 17500
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 2. General Provisions (Refs & Annos)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

Currentness

"Costs mandated by the state" means 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 XIIIB of the California Constitution.

Credits

(Added by Stats.1984, c. 1459, § 1.)

Notes of Decisions (16)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514
Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

End of Document

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or Preempted Prior Version Held Unconstitutional by California School Boards Assn. v. State of California, Cal.App. 3 Dist., Mar. 09, 2009

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010
Currentness

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:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) 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.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

Editors' Notes

VALIDITY

A prior version of this section was held unconstitutional as impermissibly broad, in the decision of California School Boards Assn. v. State of California (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.

Notes of Decisions (35)

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17564

§ 17564. Claims under specified dollar amount; claims for direct and indirect costs

Effective: January 1, 2008
Currentness

(a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($1,000). However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines or reasonable reimbursement methodology and claiming instructions.

(c) Claims for direct and indirect costs filed pursuant to a legislatively determined mandate pursuant to Section 17573 shall be filed and paid in the manner prescribed in the Budget Act or other bill, or claiming instructions, if applicable.

Credits
(Added by Stats.1986, c. 879, § 9. Amended by Stats.1992, c. 1041 (A.B.1690), § 4; Stats.1999, c. 643 (A.B.1679), § 6; Stats.2002, c. 1124 (A.B.3000), § 30.9, eff. Sept. 30, 2002; Stats.2004, c. 890 (A.B.2856), § 23; Stats.2007, c. 329 (A.B.1222), § 9.)

West's Ann. Cal. Gov. Code § 17564, CA GOVT § 17564
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Ann.Cal.Gov.Code § 17573

§ 17573. Requests regarding reimbursements; limitations tolled; joint requests; contents; time period; term; statute adoption requirements; notice of actions taken; stay of proceedings

Effective: January 1, 2008
Currentness

(a) Notwithstanding Section 17551, the Department of Finance and a local agency, school district, or statewide association may jointly request of the chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees in each house of the Legislature that consider the State Budget, that the Legislature (1) determine that a statute or executive order, or portion thereof, mandates a new program or higher level of service requiring reimbursement of local governments pursuant to Section 6 of Article XIII B of the California Constitution, (2) establish a reimbursement methodology, and (3) appropriate funds for reimbursement of costs. For purposes of this section, "statewide association" includes a statewide association representing local agencies or school districts, as defined in Sections 17518 and 17519.

(b) The statute of limitations specified in Section 17551 shall be tolled from the date a local agency, school district, or statewide association contacts the Department of Finance or responds to a Department of Finance request to initiate a joint request for a legislatively determined mandate pursuant to subdivision (a), to (1) the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted pursuant to subdivision (a), or (2) the date on which the Department of Finance, or a local agency, school district, or statewide association notifies the other party of its decision not to submit a joint request. A local agency, school district, or statewide association, or the Department of Finance shall provide written notification to the commission of each of these dates.

(c) A joint request made under subdivision (a) shall be in writing and include all of the following:

(1) Identification of those provisions of the statute or executive order, or portion thereof, that mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution, a proposed reimbursement methodology, and the period of reimbursement.

(2) A list of eligible claimants and a statewide estimate for the initial claiming period and annual dollar amount necessary to reimburse local agencies or school districts to comply with that statute or executive order that mandates a new program or higher level of service.

(3) Documentation of significant support among local agencies or school districts for the proposed reimbursement methodology, including, but not limited to, endorsements by statewide associations and letters of approval from local agencies or school districts.

(d) A joint request authorized by this section may be submitted to the Legislature pursuant to subdivision (a) at any time after enactment of a statute or issuance of an executive order, regardless of whether a test claim on the same statute or executive order is pending with the commission. If a test claim is pending before the commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this section.

(e)(1) If the Legislature accepts the joint request and determines that those provisions of the statute or executive order, or portion thereof, mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution, it shall adopt a statute declaring that the statute or executive order, or portion thereof, is a legislatively determined mandate and specify the term and period of reimbursement and methodology for reimbursing eligible local agencies or school districts. If no term is specified in the statute, then the term shall be five years, beginning July 1 of the year in which the statute is enacted.

(2) For the purpose of this subdivision, "term" means the number of years specified in the statute adopted pursuant to this subdivision for reimbursing eligible local agencies or school districts for a legislatively determined mandate.

(f) When the Legislature adopts a statute pursuant to paragraph (1) of subdivision (e) on a mandate subject to subdivision (b) of Section 6 of Article XIIIB of the California Constitution, the Legislature shall do either of the following:

(1) Appropriate in the Budget Act the full payable amount for reimbursement to local agencies that has not been previously paid.

(2) Suspend the operation of the mandate pursuant to Section 17581 or repeal the mandate.

(g) The Department of Finance, or a local agency, school district, or statewide association shall notify the commission of actions taken pursuant to this section, as specified below:

(1) Provide the commission with a copy of any communications regarding development of a joint request under this section and a copy of a joint request when it is submitted to the Legislature.

(2) Notify the commission of the date of (A) the Legislature's action on a joint request in the Budget Act, or (B) the Department of Finance's decision not to submit a joint request on a specific statute or executive order.

(h) Upon receipt of notice that a joint request has been submitted to the Legislature on the same statute or executive order as a pending test claim, the commission may stay its proceedings on the pending test claim upon the request of any party.

(i) Upon enactment of a statute declaring a legislatively determined mandate, enactment of a reimbursement methodology, and appropriation for reimbursement of the full payable amount that has not been previously paid in the Budget Act, all of the following shall apply:

(1) The Controller shall prepare claiming instructions pursuant to Section 17558, if applicable.

(2) The commission shall not adopt a statement of decision, parameters and guidelines, or statewide cost estimate on the same statute or executive order unless a local agency or school district that has rejected the amount of reimbursement files a test claim or takes over a withdrawn test claim on the same statute or executive order.

(3) A local agency or school district accepting payment for the statute or executive order, or portion thereof, that mandates a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution shall not be required to submit parameters and guidelines if it is the successful test claimant pursuant to Section 17557.

Credits
(Added by Stats.2007, c. 329 (A.B.1222), § 11.)

West's Ann. Cal. Gov. Code § 17573, CA GOVT § 17573
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

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 June 21, 2023, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued June 21, 2023**
- **Test Claim filed by the County of Los Angeles on December 16, 2022**

  Criminal Procedure: Resentencing, 22-TC-03
  Statutes 2021, Chapter 719, Section 3.1 (AB 1540); Penal Code Sections 1170.03, 1170.1 (recodified as Penal Code Section 1172.1 by Statutes 2022, Chapter 58, Section 9 (AB 200), effective June 30, 2022), and 5076.1, effective January 1, 2022
  County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 21, 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: 6/9/23

Claim Number: 22-TC-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Michael Cantrall, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
webmaster@cpda.org

Peter Chang, *California Department of Justice*
1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550
Phone: (916) 324-8835
peter.chang@doj.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Graciela Martinez, President, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
gmartinez@pubdef.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

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

Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Kim Stone, Legislation, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
kim@stoneadvocacy.com

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

RECEIVED
July 18, 2023
Commission on State Mandates

DEPARTMENT OF FINANCE

Gavin Newsom ▪ Governor
915 L Street ▪ Sacramento CA ▪ 95814-3706 ▪ www.dof.ca.gov

July 18, 2023

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Finance Comment: Test Claim 22-TC-03, Criminal Procedure: Resentencing

Dear Director Halsey:

The Department of Finance (Finance) has completed its review of test claim 22-TC-03 submitted to the Commission on State Mandates (Commission) by the County of Los Angeles (Claimant), in which the Claimant alleges it incurred reimbursable, state-mandated costs associated with Chapter 719, Statutes of 2021 (Assembly Bill 1540). For the reasons detailed below, Finance asserts the Claimant is seeking state reimbursement for costs that are not state-reimbursable.

Prior to enactment of AB 1540, statute as added by AB 1812 (Chapter 36, Statutes of 2018) authorized a process for the resentencing of inmates sentenced to state prison, or sentenced to county jail for certain felonies. AB 1812 allowed the judge who issued the original sentence to recall the sentence and resentence the inmate within 120 days, to a term not longer than the original term. AB 1812 also allowed judges to resentence inmates to shorter terms upon the recommendation of the secretary of the Board of Parole Hearings (Board) or of the county correctional administrator (CCA), as appropriate.

AB 1812 did not require hearings for resentencing recommendations, and it did not require that inmates be provided legal counsel during the resentencing process.

AB 1540 amended the resentencing process established by AB 1812 in several ways. The amendments that are relevant to this test claim are as follows:

- AB 1540 allows resentencing recommendations to also be issued by the Secretary of the Department of Corrections and Rehabilitation (CDCR), the district attorney that prosecuted the case, or the state Attorney General (AG) if the Department of Justice prosecuted the case.
- For a resentencing recommendation made by the Board, the CCA, the CDCR, the district attorney, or the AG, AB 1540 requires the court to provide notice to the inmate, to set a status conference on the recommendation within 30 days of receipt, and to then hold a hearing on the resentencing recommendation.

- For a resentencing recommendation made by the judge that issued the original sentence, AB 1540 states that hearings shall be held, but that the hearings for an approved resentencing can be waived upon stipulation of all parties.
- AB 1540 requires that the inmate be provided legal counsel during the resentencing hearings.

The Claimant states the Los Angeles County District Attorney's Office (DA) incurred $343,694 in costs in 2021-22 related to AB 1540. The Claimant further estimates the DA will incur costs of $576,985 in 2022-23. The test claim states that none of these costs are related to DA-recommended resentencings.

The Claimant states the Los Angeles County Public Defender's Office (PD) incurred $101,166 in costs in 2021-22 related to AB 1540. The Claimant further estimates the PD will incur costs of $584,000 in 2022-23, of which $475,000 is for DA-recommended resentencings and $109,000 is for CDCR-recommended resentencings.

Finance asserts that costs incurred by the Claimant do not qualify for state reimbursement because AB 1540 falls within the exception providing that statutes that change the penalty for a crime or infraction do not give rise to state reimbursable mandates.

Finance also asserts that any costs incurred by the DA in relation to DA-recommended resentencing requests are not state-reimbursable, because they are incurred at the discretion of the Claimant, and we acknowledge the Claimant states it is not seeking reimbursement for these costs in the test claim.

Finance further asserts that any costs incurred by the PD in relation to DA-recommended resentencings are not state-reimbursable. These costs are being incurred by one part of County government because of the discretionary actions of another part of County government. Consequently, these costs are not state-mandated and do not qualify for state reimbursement.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst at (916) 445-3274.
Sincerely,

Teresa Calvert

TERESA CALVERT
Program Budget Manager

Recipient's Email Address

Heather.Halsey@csm.ca.gov
Jill.Magee@csm.ca.gov

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 20, 2023, I served the:

- **Finance's Comments on the Test Claim filed on July 18, 2023**

  Criminal Procedure: Resentencing, 22-TC-03
  Statutes 2021, Chapter 719, Section 3.1 (AB 1540); Penal Code Sections 1170.03, 1170.1 (recodified as Penal Code Section 1172.1 by Statutes 2022, Chapter 58, Section 9 (AB 200), effective June 30, 2022), and 5076.1, effective January 1, 2022
  County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 20, 2023 at Sacramento, California.

David Chavez

David Chavez
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-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Michael Cantrall, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
webmaster@cpda.org

Peter Chang, *California Department of Justice*
1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550
Phone: (916) 324-8835
peter.chang@doj.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Graciela Martinez, President, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
gmartinez@pubdef.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932

Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Kim Stone, Legislation, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
kim@stoneadvocacy.com

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

November 29, 2023

Exhibit C

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Fernando Lemus
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Criminal Procedure: Resentencing, 22-TC-03
Penal Code Section 1170.03 As Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[1]
County of Los Angeles, Claimant

Dear Mr. Hill and Mr. Lemus:

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 December 20, 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.[2]

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 https://www.csm.ca.gov/dropbox.shtml 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

[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754) amended section 1172.1 to remove a comma.

[2] 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.

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.

Hearing

This matter is set for hearing on **Friday, January 26, 2024** at 10:00 a.m. The Proposed Decision will be issued on or about January 12, 2024.

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,

Heather Halsey
Executive Director

ITEM ___

TEST CLAIM

DRAFT PROPOSED DECISION

Penal Code Section 1170.03

As Added by Statutes 2021, Chapter 719,
Section 3.1 (AB 1540)[1]

Criminal Procedure: Resentencing

22-TC-03

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

The test claim statute, Statutes 2021, chapter 719, added Penal Code section 1170.03. Penal Code Section 1170.03 establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "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.[2]

Staff finds that the test claim statute does not impose costs mandated by the state because the statute changes the penalty for a crime within the meaning of Government Code section 17556(g). Staff recommends that the Commission deny this Test Claim.

---

[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

[2] Penal Code section 1170.03(a)(1).

Procedural History

The claimant filed the Test Claim on December 16, 2022.[3] The Department of Finance (Finance) filed comments on the Test Claim on July 18, 2023.[4] The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on November 29, 2023.[5]

Commission Responsibilities

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

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[6]

Claims

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

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551 provides that local government test claims shall be filed "not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result	*Timely filed* - The test claim statute became effective on effective January 1, 2022, and the Test Claim was filed on December 16, 2022, within 12 months following the effective date of the test claim statute.[8]

[3] Exhibit A, Test Claim, filed December 16, 2022.

[4] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023.

[5] Exhibit C, Draft Proposed Decision, issued November 29, 2023.

[6] *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.

[8] Exhibit A, Test Claim, filed December 16, 2022.

Issue	Description	Staff Recommendation
	of a statute or executive order, whichever is later."[7]	
Does the test claim statute impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514?	The test claim statute establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. Upon receipt of a resentencing recommendation, the court is required to provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel for the defendant.[9] The court may not deny a resentencing recommendation or reject a stipulation by the parties to recall and resentence a defendant "without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection."[10] The test claim statute provides a	*Deny* - There are no costs mandated by the state pursuant to Government Code section 17556(g). As a direct result of the test claim statute, all defendants who receive a resentencing recommendation will be appointed counsel and have an opportunity at a hearing to present arguments in favor of the court recalling the original sentence and resentencing the defendant to a new sentence that accounts for time already served and any changes in law that reduce the original sentence. By guaranteeing all defendants who receive a recommendation for resentencing a court hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute changes the penalties for the crimes committed by these defendants.[14]

[7] Government Code section 17551(c) (Stats. 2007, ch. 329); California Code of Regulations, title 2, section 1183.1(c).

[9] Penal Code section 1170.03(b)(1).

[10] Penal Code section 1170.03(a)(8).

[14] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

Issue	Description	Staff Recommendation
	presumption in favor of recalling and resentencing the defendant upon receipt of the recommendation, which may only be overcome if the court finds the defendant is an unreasonable risk of danger to public safety.[11] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not previously been sentenced," and provided the new sentence, if any, is no greater than the initial sentence.[12] The statute outlines the information and evidence reviewed by the courts, and requires the court to account for time already served when resentencing the defendant.[13]	

Staff Analysis

A. The Test Claim Was Timely Filed.

Government Code section 17551 provides that local government test claims shall be filed "not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[15]

[11] Penal Code section 1170.03(b)(2).

[12] Penal Code section 1170.03(a)(1).

[13] Penal Code section 1170.03(a)(2)-(5).

[15] Government Code section 17551(c) (Stats. 2007, ch. 329); California Code of Regulations, title 2, section 1183.1(c).

The test claim statute became effective on effective January 1, 2022, and the Test Claim was filed on December 16, 2022, within 12 months following the effective date of the test claim statute.[16] Therefore, the Test Claim was timely filed.

B. 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.

Penal Code section 1170.03 as added by the test claim statute, establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. Upon receipt of a resentencing recommendation, the court is required to provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel for the defendant.[17] The court may not deny a resentencing recommendation or reject a stipulation by the parties to recall and resentence a defendant "without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection."[18] The test claim statute provides a presumption in favor of recalling and resentencing the defendant upon receipt of the recommendation, which may only be overcome if the court finds the defendant is an unreasonable risk of danger to public safety.[19] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not previously been sentenced," and provided the new sentence, if any, is no greater than the initial sentence.[20] In recalling and resentencing the defendant, the court is required to apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion to eliminate disparity of sentences.[21] The court may also reduce a defendant's term of imprisonment by modifying the sentence, or vacating the conviction and impose judgment on lesser included offenses with the concurrence of the parties.[22] The court may consider post-conviction factors that support a finding "that continued incarceration is no longer in the interest of justice;" whether the defendant has experienced psychological, physical, or childhood trauma; or "if the defendant was a youth … at the

[16] Exhibit A, Test Claim, filed December 16, 2022.

[17] Penal Code section 1170.03(b)(1).

[18] Penal Code section 1170.03(a)(8).

[19] Penal Code section 1170.03(b)(2).

[20] Penal Code section 1170.03(a)(1).

[21] Penal Code section 1170.03(a)(2).

[22] Penal Code section 1170.03(a)(3).

time of the commission of the crime."[23] In addition, if the defendant's original sentence is recalled and the defendant is resentenced, "[c]redit shall be given for time served."[24]

Under prior law, there were no procedural requirements for if and how a court would respond to a resentencing recommendation, and many courts issued notices rejecting the resentencing recommendation without a hearing or an opportunity for the defendant to be heard.[25]

The claimant contends that the test claim statute imposes new requirements on county district attorneys and public defenders to participate in the hearing procedures established by the state, and the Senate Appropriations Committee acknowledged that the statute would create "unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests."[26]

Staff finds that county district attorneys and public defenders are required to participate in the hearings required by the test claim statute. However, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g) and, therefore, does not impose any costs mandated by the state. As a direct result of the test claim statute, all defendants who receive a resentencing recommendation will be appointed counsel and have an opportunity at a hearing to present arguments in favor of the court recalling the original sentence and resentencing the defendant to a new sentence that accounts for time already served and any changes in law that reduce the original sentence. In *County of San Diego v. Commission on State Mandates*, which addressed the Commission's decision in *Youth Offender Parole Hearings* (YOPH), the court found that the test claim statute changed the penalty for a crime pursuant to Government Code section 17556(g) "by changing the manner in which the original sentences operate and guaranteeing youth offenders the chance to obtain release on parole."[27] The same is true here. By guaranteeing all defendants who receive a recommendation for resentencing a court hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute changes the penalties for the crimes committed by these defendants.[28]

Therefore, there are no costs mandated by the state.

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[23] Penal Code section 1170.03(a)(4).

[24] Penal Code section 1170.03(a)(5).

[25] Exhibit X (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

[26] Exhibit X (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

[27] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[28] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

Conclusion

Based on the forgoing analysis, staff 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.

Staff Recommendation

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

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 1170.03, as Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[29] Filed on December 16, 2022 County of Los Angeles, Claimant	Case No.: 22-TC-03 *Criminal Procedure: Resentencing* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 26, 2024*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on January 26, 2024. [Witness list will be included in the adopted Decision.]

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

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

Member	**Vote**
Lee Adams, County Supervisor	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Sarah Olsen, Public Member	

[29] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

Member	Vote
Regina Evans, Representative of the State Controller, Vice Chairperson	
Spencer Walker, Representative of the State Treasurer	

Summary of the Findings

Penal Code section 1170.03, as added by the test claim statute Statutes 2021, chapter 719, establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. Upon receipt of a resentencing recommendation, the court is required to provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel for the defendant.[30] The court may not deny a resentencing recommendation or reject a stipulation by the parties to recall and resentence a defendant "without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection."[31] The test claim statute provides a presumption in favor of recalling and resentencing the defendant upon receipt of the recommendation, which may only be overcome if the court finds the defendant is an unreasonable risk of danger to public safety.[32] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not previously been sentenced," and provided the new sentence, if any, is no greater than the initial sentence.[33] In recalling and resentencing the defendant, the court is required to apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion to eliminate disparity of sentences.[34] The court may also reduce a defendant's term of imprisonment by modifying the sentence, or vacating the conviction and impose judgment on lesser included offenses with the concurrence of the parties.[35] The court may consider post-conviction factors that support a finding "that continued incarceration is no longer in the interest of justice;" whether the defendant has experienced psychological, physical, or childhood trauma; or "if the defendant was a youth … at the time of the commission of the crime."[36] In addition, if the defendant's

[30] Penal Code section 1170.03(b)(1).

[31] Penal Code section 1170.03(a)(8).

[32] Penal Code section 1170.03(b)(2).

[33] Penal Code section 1170.03(a)(1).

[34] Penal Code section 1170.03(a)(2).

[35] Penal Code section 1170.03(a)(3).

[36] Penal Code section 1170.03(a)(4).

original sentence is recalled and the defendant is resentenced, "[c]redit shall be given for time served."[37]

Under prior law, there were no procedural requirements for if and how a court would respond to a resentencing recommendation, and many courts issued notices rejecting the resentencing recommendation without a hearing or an opportunity for the defendant to be heard.[38]

The claimant contends that the test claim statute imposes new requirements on county district attorneys and public defenders to participate in the hearing procedures established by the state, and the Senate Appropriations Committee acknowledged that the statute would create "unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests."[39]

The Commission finds that county district attorneys and public defenders are required to participate in the hearings required by the test claim statute. However, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g) and, therefore, does not impose any costs mandated by the state. As a direct result of the test claim statute, all defendants who receive a resentencing recommendation will be appointed counsel and have an opportunity at a hearing to present arguments in favor of the court recalling the original sentence and resentencing the defendant to a new sentence that accounts for time already served and any changes in law that reduce the original sentence. In *County of San Diego v. Commission on State Mandates*, which addressed the Commission's Decision in *Youth Offender Parole Hearings* (YOPH), the court found that the test claim statute changed the penalty for a crime pursuant to Government Code section 17556(g) "by changing the manner in which the original sentences operate and guaranteeing youth offenders the chance to obtain release on parole."[40] The same is true here. By guaranteeing all defendants who receive a recommendation for resentencing a court hearing and the chance to have their original sentence recalled and new, reduced sentence imposed, the test claim statute changes the penalties for the crimes committed by these defendants.[41]

Accordingly, 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, and this Test Claim is denied.

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[37] Penal Code section 1170.03(a)(5).

[38] Exhibit X (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

[39] Exhibit X (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

[40] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[41] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

COMMISSION FINDINGS

I. Chronology

01/01/2022 Penal Code section 1170.03 was added by Statutes 2021, Chapter 719, section 3.1 and became effective.

12/16/2022 The claimant filed the Test Claim.[42]

07/18/2023 The Department of Finance (Finance) filed comments on the Test Claim.[43]

11/29/2023 Commission staff issued the Draft Proposed Decision.[44]

II. Background

A. The History of Resentencing Recommendations Under Penal Code Section 1170(d)(1).

Since 1968, the state corrections department has had the authority to recommend that the courts "recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced."[45] A resentencing recommendation creates "an exception to the common law rule that the court loses resentencing jurisdiction once execution of sentence has begun."[46] The new sentence may not be greater than the one originally imposed, but the court has discretion to "impose any otherwise permissible new sentence, which may include consideration of facts that arose after [the defendant] was committed to serve the original sentence."[47] When the Legislature moved to a determinate sentencing system, this ability was moved to Penal Code section 1170(c), reading:

> When a defendant subject to this section has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the sentencing court may, at any time upon the recommendation of the Director of Corrections, the Community Release Board, or the court may, within 120 days of the date of commitment, on its own motion recall and resentence the defendant in the same manner as if he had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the

[42] Exhibit A, Test Claim, filed December 16, 2022.

[43] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023.

[44] Exhibit C, Draft Proposed Decision, issued November 29, 2023.

[45] See Penal Code section 1168, as amended by Statutes 1967, chapter 850, section 1.

[46] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 445.

[47] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 465.

> Judicial Counsel so as to eliminate disparity of sentences and promote uniformity of sentencing. Credit shall be given for time served.[48]

Later on, the powers of the Director of Corrections and Community Release Board to make resentencing recommendations were transferred to the California Department of Corrections and Rehabilitation (CDCR) Secretary and the Board of Parole Hearings, and moved to Penal Code section 1170(d)(1).[49]

Although the CDCR and Board of Parole Hearings have been able to make resentencing recommendations for any reason they see fit for decades, until fairly recently as explained below, it was a rarely used power.[50] Even if the CDCR or Board of Parole Hearings made a resentencing recommendation, the recommendation only gave the courts the ability to recall a sentence and resentence the defendant. It did not require the courts take any specific actions in response to the recommendation, even though other subdivisions within Penal Code section 1170 did specifically require the appointment of counsel for the defendant and holding hearings.[51] Penal Code section 1170(d)(1) provided no guidance to the courts for how they should handle resentencing recommendations.[52] Caselaw firmly established that section 1170(d)(1) "merely authorizes the court to recall a prison sentence and commitment and resentence the defendant under certain conditions. It is permissive, not mandatory."[53]

B. Using Resentencing Recommendations as a Method for Reducing Prison Populations.

In 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5 percent of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare.[54] As part of the efforts to address prison overcrowding, funding was allocated for the CDCR to identify people within its custody with a demonstrated history of rehabilitation and issue recommendations that the courts reevaluate their sentences.

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[48] See Penal Code section 1170(c), as amended by Statute 1976, chapter 1139, section 273.

[49] See Penal Code section 1170(d), as amended by Statute 2007, chapter 3, section 3, and Penal Code section 1170(d)(1), as amended by Statute 2012, chapter 828, section 2.

[50] Exhibit X (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 7.

[51] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 458 (comparing former section 1170(d) with disparate sentencing review in former section 1170(f)(1)).

[52] Exhibit X (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 7.

[53] *People v. Delson* (1984) 161 Cal.App.3d 56, 62.

[54] Exhibit X (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 4.

The CDCR established new policies for when it is willing to consider making a resentencing recommendation and began issuing resentencing recommendations more regularly.[55] The Legislature also expanded the list of agencies with authority to recommend a defendant be resentenced to include the district attorney of the county where the defendant was sentenced and the county correctional administrator for defendants that were being held in county jail.[56]

Before the test claim statute went into effect, Penal Code section 1170(d)(1) read:

> 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 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.

C. Impetus Behind the Removal of the Courts Discretion Regarding Whether to Act On or Respond to Resentencing Recommendations.

As the CDCR and district attorneys began actively utilizing their ability to make resentencing recommendations, problems with the way the system was originally designed became apparent. Most courts had never encountered a resentencing recommendation before. With prior caselaw that held the courts were not obligated to

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[55] See 15 California Code of Regulations section 3076.1.

[56] See Penal Code section 1170(d), as amended by Statutes 2015, chapter 378, section 2 (adding county correctional administrators), and Statutes 2018, chapter 1001, section 1 (adding district attorneys).

act on the authority granted to them under Penal Code section 1170(d)(1), many courts issued *suo motu* notices rejecting the resentencing recommendation without a hearing or any opportunity for defendants to address whatever concerns the court may have with resentencing them, or simply chose to ignore the recommendation completely, essentially denying resentencing without giving the defendant a decision they could appeal. The CDCR Office of Research found that of the 1,603 resentencing recommendations the CDCR issued in the 2019-2020 year, only 1,133 (71 percent of total cases) received any response from the court, and of those only 475 (30 percent of total cases) resulted in the court choosing to resentence the defendant.[57]

Further issues arose when defendants tried to challenge the courts' decisions not to follow the CDCR's recommendations. Multiple appellate courts reaffirmed that 1170(d)(1) did not require courts to hold hearings, appoint counsel, or resentence a defendant under any specific circumstances.[58] "The Secretary's recommendation letter is but an invitation to the court to exercise its equitable jurisdiction. It furnishes the court with the jurisdiction it would not otherwise possess to recall and resentence; it does not trigger a due process right to a hearing, let alone any right to the recommended relief."[59] One appellate court even incorrectly held that changes in law that would have affected what crimes the defendant was charged with could not be retroactively applied during resentencing because 1170(d)(1) "says nothing about 'reopening' a judgment that has been final for years."[60] At the same time however, it was found to be an abuse of discretion to deny resentencing without giving the defendant a chance to address the reasons for the decision, and that courts should provide notice to the parties of their intent to resentence a defendant that includes the tentative resentencing order and a statement of the reasons for the decision, and give the parties a chance to object to the tentative resentencing and request a hearing at which the defendant would have a right to counsel.[61] If the Legislature intended to use resentencing recommendations as a tool to address unjust sentences and reduce prison sentences, it needed to amend the law to provide courts with clearer guidance on the procedures they must follow when responding to a resentencing recommendation.

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[57] Exhibit X (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66. The Committee on Revision of the Penal Code was created in 2019 and is part of the California Law Revision Commission. (Gov. Code, §§ 8280, et seq., as amended by Statute 2019, Chapter 25, section 2.)

[58] *People v. McCallum* (2020) 55 Cal.App.5th 202, 215-216; *People v. Fraizer* (2020) 55 Cal.App.5th 858, 866; *People v. Williams* (2021) 65 Cal.App.5th 828, 834.

[59] *People v. Fraizer* (2020) 55 Cal.App.5th 858, 866.

[60] *People v. Federico* (2020) 50 Cal.App.5th 318 (depublished by *People v. Federico* (2022) 511 P.3d 191).

[61] *People v. McCallum* (2020) 55 Cal.App.5th 202, 218-219; *People v. Williams* (2021) 65 Cal.App.5th 828, 834.

In 2020, the Committee on Revision of the Penal Code advised changes to Penal Code section 1170(d)(1) to clarify what courts must do when responding to a resentencing recommendation and expand the ability to consider resentencing.

> Despite these expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the parties, appointing counsel, or giving parties an opportunity to be heard. The law does not require a court to give any specific reason for denying a resentencing request.[62]

The Committee recommended changes to Penal Code section 1170(d)(1) that included: (1) establishing judicial procedures that require notice, an initial status conference within 60 days, written reasons for the court's decisions, and in the case of resentencings that are recommended by law enforcement, appointed counsel; (2) establishing a presumption in favor of resentencing when recommended by a law enforcement agency because of an unjust sentence or because of the defendant's "exceptional rehabilitative achievement while incarcerated"; and (3) expanding "second look" resentencing to allow anyone who has served more than 15 years to request reconsideration of their sentence by establishing that their sentence is no longer in the interest of justice.[63]

D. The Test Claim Statute

In 2021, the Legislature enacted the test claim statute, moving the resentencing procedure found in section 1170(d)(1) to its own Penal Code section, 1170.03, effective January 1, 2022.[64] The bill's author noted that:

> Courts are currently left to sift through a statute that does not provide adequate structure for the resentencing process, leaving many requests languishing in limbo, or worse -denied without reason. The changes contained in AB 1540 strengthen common procedural problems to address

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[62] Exhibit X (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

[63] Exhibit X (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 65.

[64] Statutes 2021, chapter 719, § 3.1 (AB 1540). Statutes 2022, chapter 58 (AB 200) later renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

equity and due process concerns in how courts should handle second look sentencing requests.[65]

The newly added Penal Code section 1170.03 provides:

> (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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> (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:
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> (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

[65] Exhibit X (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, pages 3-4.

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.

The California District Attorneys Association opposed the enactment of the test claim statute, stating that section 1170.18(c)'s definition of "unreasonable risk to public safety," which requires an unreasonable risk the defendant will commit a new violent felony, would be too difficult for prosecutors to prove. It asserted that:

> AB 1540 would shift the burden of proof from a standard which allows the court to grant a petition when the evidence shows that the inmate's continued incarceration is no longer in the interest of justice, to an impossible-to-rebut standard that would require the court to grant every petition 'unless there is evidence beyond a reasonable doubt that the

> defendant is likely to commit a future violent crime.' This would not only impose the highest standard of proof in the inverse but would require the impossible – the ability to not only accurately predict the future, but to do so beyond a reasonable doubt. There will never be proof beyond a reasonable doubt of the future conduct of any human being because no human is possessed of such ability.[66]

However, the Assembly Committee on Public Safety noted this was exactly how the statute was intended to work, as it explained:

> This bill would require a court to presume that it is appropriate to recall and resentence a defendant that has been referred by CDCR, BPH, the county sheriff, or the prosecuting agency, unless a court finds an unreasonable risk that the defendant would commit a violent felony, as specified. That is a fairly high bar. However, these are cases which have already been vetted as being appropriate for recall and resentencing by the law enforcement agencies recommending recall and resentencing. Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence).[67]

III. Positions of the Parties

A. County of Los Angeles

The claimant is seeking reimbursement for district attorneys' activities while representing the People when the CDCR makes a resentencing recommendation, and public defenders' activities when representing defendants in both CDCR- and district attorney-recommended resentencings.

The claimant acknowledges that district attorneys already had activities they must perform when making a resentencing recommendation under prior law, and explicitly disclaimed it is not seeking reimbursement for district attorneys' activities when district attorneys make a resentencing recommendation.[68] In contrast, the claimant asserts that the courts were not required under prior law to hold hearings for CDCR-recommended resentencings, and district attorneys were not required to participate in any hearings the courts chose to hold for CDCR-recommended resentencings.[69] Now, when the CDCR makes a resentencing recommendation, the deputy district attorney

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[66] Exhibit X (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, page 7.

[67] Exhibit X (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, page 6.

[68] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[69] Exhibit A, Test Claim, filed December 16, 2022, pages 11-12.

assigned to the case must review the recommendation and any supplemental attachments that were provided by the CDCR, contact any victims of the defendant to inform them of their right to be heard in the proceedings, review the defendant's prison files, prepare a written response either concurring with or objecting to the CDCR's recommendation, and participate in multiple hearings throughout the process.[70]

Regarding public defenders, the claimant asserts that under prior law the courts were not required to appoint counsel or hold hearings for recommended resentencings.[71] Public defenders were therefore not required to represent defendants during resentencing under prior law, although they did voluntarily participate sporadically if they were aware of a resentencing recommendation and the courts permitted them to represent the defendant.[72] The public defenders' Post-Conviction Unit handles district attorney-recommended resentencings, while CDCR-recommended resentencings are handled by public defenders throughout the county.[73] As part of acting as appointed counsel for a defendant, public defenders must contact their client to discuss their case, and must gather prison records, risk assessment scores, prison central files, medical and mental health records, and any records of schooling or programming the defendant participated in while in prison.[74] The public defenders must review the case and prepare a sentencing memorandum they submit to the district attorney and courts.[75]

The claimant states that in fiscal year 2021-2022, the district attorneys' office incurred $343,694 in increased costs and public defenders incurred $101,166 working on resentencings under the test claim statute.[76] The district attorney's office estimates incurring approximately $576,985 during the 2022-2023 fiscal year.[77] The public defender's office estimates $584,000 for fiscal year 2022-2023, of which it noted approximately $475,000 came from district attorney-recommended resentencings, while the remaining $109,000 came from CDCR-recommended resentencings.[78] The estimated statewide costs are $2,136,981 for district attorneys, and $2,160,000 for public defenders.[79] The claimant also identified several one-time grants that in the event this is found to be a reimbursable state-mandated program, would offset costs.[80]

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[70] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[71] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[72] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[73] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[74] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[75] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[76] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[77] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[78] Exhibit A, Test Claim, filed December 16, 2022, page 24 (Declaration of Sung Lee).

[79] Exhibit A, Test Claim, filed December 16, 2022, page 13.

[80] Exhibit A, Test Claim, filed December 16, 2022, page 13.

The claimant did not respond to Finance's comments.

B. Department of Finance

Finance argues that the Test Claim should be denied because the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g) and, thus, there are no costs mandated by the state.[81] In the event that 17556(g) does not apply, Finance asserts that the activities required for district attorney-recommended resentencings, including those imposed on public defenders, are not mandated by the state and therefore not reimbursable, because they are the result of local discretionary actions.[82]

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."[83] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[84]

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.[85]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or

[81] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023, page 2.

[82] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023, page 2.

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

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

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

b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[86]

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.[87]

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.[88]

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.[89] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[90] 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."[91]

A. The Test Claim Was Timely Filed.

Government Code section 17551 provides that local government test claims shall be filed "not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[92]

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[86] *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).

[87] *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.

[88] *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.

[89] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

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

[91] *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].

[92] Government Code section 17551(c) (Stats. 2007, ch. 329); California Code of Regulations, title 2, section 1183.1(c).

The test claim statute became effective on effective January 1, 2022, and the Test Claim was filed on December 16, 2022, within 12 months following the effective date of the test claim statute.[93] Therefore, the Test Claim was timely filed.

B. 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.

1. The Test Claim Statute Requires Activities of the County District Attorneys and Public Defenders.

The test claim statute requires that when a court receives a recommendation for the recall and resentencing of a defendant from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, the court shall provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel.[94] A recall and resentencing recommendation creates a presumption in favor of resentencing that may only be overcome if the defendant is an unreasonable risk of danger to public safety, as defined by Penal Code section 1170.18.[95] The court may recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant 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.[96] Recalling and resentencing may be granted without a hearing when stipulated by the parties, but the court may not deny resentencing or reject a stipulation without first holding a hearing where the parties will have an opportunity to address the basis for the intended denial or rejection.[97] A court may choose to hold a hearing remotely using remote technology unless counsel requests their physical presence in court.[98] The court must state on the record its reasons for granting or denying resentencing.[99] When recalling and resentencing a defendant, the court shall apply the sentencing rules of the Judicial Counsel and apply any changes in law that reduce sentences or provide judicial discretion so as to eliminate disparity and promote uniformity of sentencing.[100] The court may reduce a defendant's term of imprisonment by modifying the sentence, or may vacate the defendant's conviction and impose

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[93] Exhibit A, Test Claim, filed December 16, 2022.

[94] Penal Code section 1170.03(b)(1).

[95] Penal Code section 1170.03(b)(2). Section 1170.18's definition of an unreasonable risk of danger to public safety is an unreasonable risk that they will commit a new violent felony within the meaning of Penal Code section 667(e)(2)(C)(iv).

[96] Penal Code section 1170.03(a)(1).

[97] Penal Code section 1170.03(a)(7), (8).

[98] Penal Code section 1170.03(a)(8).

[99] Penal Code section 1170.03(a)(6).

[100] Penal Code section 1170.03(a)(2).

judgment on any included lesser offenses or lesser related offenses if it is with the concurrence of both the defendant and the prosecuting attorney.[101] During resentencing, the court may consider postconviction factors including but not limited to: the defendant's disciplinary record and record of rehabilitation; evidence that reflects whether age, time served, or diminished physical capacity have reduced the defendant's risk for future violence; and evidence that reflects circumstances have changed so that continued incarceration is no longer in the interest of justice.[102] The court shall also consider whether the defendant has experienced psychological, physical, or childhood trauma, if the defendant was a victim of intimate partner violence or human trafficking, or if the defendant was a youth at the time of committing their offense, and whether any of those circumstances were a contributing factor in committing the offense.[103] Credit shall be given for time served, and the new sentence can be no greater than the original sentence.[104]

The hearing procedures established by the test claim statute require participation by county public defenders and district attorneys, and the Senate Appropriations Committee acknowledged that the statute would create "unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests."[105] The test claim statute requires the court to appoint counsel for a defendant when it receives a resentencing recommendation, and the role of appointed counsel to indigent defendants falls to a public defender.[106] Although the statute does not explicitly state that district attorneys are required to participate in resentencing, it does require that a court's decision to vacate the original conviction and impose judgment on any lesser included or lesser related offenses be with the concurrence of both the defendant and the prosecuting attorney. The presumption in favor of resentencing would also require the district attorney to make a case to the court when the defendant presents an unreasonable risk to public safety. It would be a dereliction of a district attorney's duty if they did not represent the People in a criminal proceeding.[107]

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[101] Penal Code section 1170.03(a)(3).

[102] Penal Code section 1170.03(a)(4).

[103] Penal Code section 1170.03(a)(4).

[104] Penal Code section 1170.03(a)(1), (5).

[105] Exhibit X (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

[106] Counties have always had the duty to provide indigent defense counsel in criminal cases and the right to counsel "applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake," including at sentencing hearings. (Pen. Code, § 987.2; Gov. Code, § 27706; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 815 citing *Gideon v. Wainwright* (1963) 372 U.S. 335; *People v. Bauer* (2012) 212 Cal.App.4th 150, 155.)

[107] *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1388.

Accordingly, the test claim statute imposes requirements on counties. However, the Commission makes no findings on whether these activities are mandated by the state or are the result of discretionary actions by the county, or whether the test claim statute imposes a new program or higher level of service because, as described below, the test claim statute does not result in costs mandated by the state.

2. The Test Claim Statute Does Not Result in Costs Mandated by the State Because the Test Claim Statute Changes the Penalty for a Crime Under Government Code Section 17556(g).

Government Code section 17556 provides that "[t]he commission shall not find costs mandated by the state, as defined by 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… 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."[108] This exception to the reimbursement requirement is intended to allow the state to address public safety issues involving crimes, without having to consider whether reimbursement to local government would be required under article XIII B, section 6, as a result of its actions.

The Fourth District Court of Appeal considered the application of Government Code section 17556(g) in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625 (YOPH). In that case, the Commission denied a Test Claim seeking reimbursement for *Franklin* proceedings related to youth offender parole hearings. The test claim statute required the Board of Parole Hearings to hold parole hearings at statutory periods for youthful offenders serving lengthy prison sentences who were under 26 years old when they committed their crimes, and to consider certain youth-related factors that may have contributed to them committing their offense.[109] The purpose of the statutes was to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when the person shows he or she has been rehabilitated and gained maturity.[110] The statutes effectively reformed the parole eligibility date of a youth offender's original sentence, at times amounting to "de facto" life sentences, so that the longest possible term of incarceration before parole eligibility is 25 years.[111] To accomplish this purpose, the courts created a procedure called a *Franklin* proceeding for preserving evidence of those youth-related factors in the court record for future parole hearings, and county public defenders and district attorneys sought reimbursement for their costs in participating in these *Franklin* proceedings. The

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[108] Government Code Section 17556(g).

[109] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 635.

[110] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 633.

[111] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

Commission denied the Test Claim on two counts: the state did not require the counties to hold *Franklin* proceedings, and even if it did, the requirement to hold youth offender parole hearings for youthful defendants changed the penalties for those defendants' crimes pursuant to Government Code section 17556(g) by capping the number of years the offender may be imprisoned before becoming eligible for release on parole and, therefore, there were no costs mandated by the state.[112]

The County of San Diego raised several arguments in support of its writ, including that Government Code section 17556(g) did not apply since the test claim statutes do not vacate the original sentence or require resentencing proceedings and, thus, the penalties for the crimes were not changed.[113] The court disagreed with the County, finding that the test claim statutes changed the penalty for a crime within the meaning of Government Code section 17556(g) as follows:

> It is true the Test Claim Statutes do not vacate youth offenders' sentences, nor do they require resentencing proceedings. (*Franklin, supra*, 63 Cal.4th at p. 278, 202 Cal.Rptr.3d 496, 370 P.3d 1053; *People v. White* (2022) 86 Cal.App.5th 1229, 1238–1239, 302 Cal.Rptr.3d 863.) But these facts do not mean the Test Claim Statutes effect no change on the penalties suffered by youth offenders. The Test Claim Statutes "change[ ] the manner in which the juvenile offender's original sentence *operates* by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole. The Legislature has effected this change *by operation of law*, with no additional resentencing procedure required." (*Franklin*, at pp. 278–279, 202 Cal.Rptr.3d 496, 370 P.3d 1053, italics added; *id.* at p. 281, 202 Cal.Rptr.3d 496, 370 P.3d 1053 ["by operation of law, [the defendant] is entitled to a parole hearing and possible release after 25 years of incarceration"].) In short, by changing the manner in which the original sentences operate, and guaranteeing youth offenders the chance to obtain release on parole, the Test Claim Statutes—by operation of law—alter the penalties for the crimes perpetrated by eligible youth offenders.[114]

The court also found that although the test claim statutes did not guarantee the defendant would be granted parole, it did guarantee the chance to obtain release on parole. "As a direct result of the Test Claim Statutes, most youth offenders are statutorily *eligible for parole* at a youth offender parole hearing conducted during the 15th, 20th, or 25th year of incarceration, depending on the term of incarceration

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[112] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 638.

[113] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[114] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

included within the youth offender's original sentence."[115] Thus, by operation of law, the statutes at issue in that case "alter[ed] the penalties for the crimes perpetrated by eligible youth offenders."[116]

As a direct result of the test claim statute here, original criminal sentences are recalled or vacated and the defendant is resentenced with a new penalty and, thus, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g). Like the *County of San Diego* case, the test claim statute does not guarantee a recall and resentencing and may not necessarily result in a reduced sentence. Courts are required to apply current laws and sentencing rules that *may* reduce the sentence or allow for greater judicial discretion when receiving a resentencing recommendation, and a new sentence can be no greater than the sentence that was originally imposed, but the Legislature was clear that it did not intend to impede on the court's ability to determine an appropriate sentence.[117] However, to paraphrase the Court of Appeal in the *County of San Diego* YOPH case, by guaranteeing all defendants who receive a recommendation for resentencing a hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute alters the penalties for the crimes committed by the defendants.[118] As stated above, the test claim statute provides a presumption in favor of resentencing when a recommendation is received, which makes it significantly more likely a court will grant resentencing, which did not exist under prior law.[119] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not

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[115] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640 (Emphasis added).

[116] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[117] Exhibit X (1), Assembly Committee on Public Safety, Analysis of AB 1540, as amended April 22, 2021, page 6, ("Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence)."). See also, *People v. Braggs* (2022) 85 Cal.App.5th 809, 820, finding that the presumption in favor of recall and resentencing refers to the decision whether to grant resentencing at all, and does not apply to determining the appropriate new sentence.

[118] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[119] Penal Code section 1170.03(b)(2), which states: "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."

previously been sentenced."[120] In recalling and resentencing the defendant, the court may reduce a defendant's term of imprisonment by modifying the sentence, or vacate the conviction and impose judgment on lesser included offenses with the concurrence of the parties.[121] The court may also consider post-conviction factors that support a finding "that continued incarceration is no longer in the interest of justice" or "if the defendant was a youth … at the time of the commission of the crime."[122] In addition, "[c]redit shall be given for time served."[123] Thus, the test claim statute changes the penalties for the crimes committed by the defendants.

Moreover, the claimed activities "relate directly to the enforcement of the crime or infraction" as required by Government Code section 17556(g). In *County of San Diego*, the court found that an activity directedly related to enforcing a crime or infraction if "it plays an indispensable role" in the Legislature's scheme that changes the penalty for a crime.[124] Here, the Legislature's intent was to address a significant flaw in the previous resentencing law by establishing a hearing procedure to respond to resentencing recommendations and to ensure the defendant's rights and the rights of the People are protected.[125] The hearing procedure to recall and resentence a defendant and the claimed activities to participate in the hearing process pursuant to the test claim statute therefore play an indispensable role in the change of the penalty for a crime.

Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(g).

V. Conclusion

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

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[120] Penal Code section 1170.03(a)(1).

[121] Penal Code section 1170.03(a)(3).

[122] Penal Code section 1170.03(a)(4).

[123] Penal Code section 1170.03(a)(5).

[124] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

[125] Exhibit X (1), Assembly Committee on Public Safety, Analysis of AB 1540, as amended April 22, 2021, page 7 "However, this increase in referrals has revealed several procedural issues that AB 1540 (Ting) seeks to address."

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 November 29, 2023, I served the:

- **Current Mailing List dated November 27, 2023**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued November 29, 2023**

  Criminal Procedure: Resentencing, 22-TC-03
  Penal Code Section 1170.03 As Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[1]
  County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 29, 2023 at Sacramento, California.

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

[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754) amended section 1172.1 to remove a comma.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/27/23

Claim Number: 22-TC-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csm.ca.gov

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Michael Cantrall, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
webmaster@cpda.org

Peter Chang, *California Department of Justice*
1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550
Phone: (916) 324-8835
peter.chang@doj.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Mike Gomez, Revenue Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3240
mgomez@newportbeachca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Graciela Martinez, President, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
gmartinez@pubdef.lacounty.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814

Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Kim Stone, Legislation, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
kim@stoneadvocacy.com

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814

Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

Exhibit D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

OSCAR VALDEZ
AUDITOR-CONTROLLER

CONNIE YEE
CHIEF DEPUTY AUDITOR-CONTROLLER

ASSISTANT AUDITOR-CONTROLLERS

MAJIDA ADNAN
ROBERT G. CAMPBELL

December 19, 2023

Via Drop Box

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RESPONSE TO THE COMMISSION ON STATE MANDATES' PROPOSED DRAFT DECISION ON THE COUNTY'S CRIMINAL PROCEDURE: RESENTENCING TEST CLAIM

The County of Los Angeles ("Claimant") submits the attached Comments in response to the Commission on State Mandates' Proposed Draft Decision on our *Criminal Procedure: Resentencing, 22-TC-03* Test Claim.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at flemus@auditor.lacounty.gov.

Very truly yours,

Oscar Valdez
Auditor-Controller

OV:CY:RA:RC:FL

Attachment

RESPONSE TO THE COMMISSION ON STATE MANDATES' PROPOSED DRAFT DECISION ON THE COUNTY'S CRIMINAL PROCEDURE: RESENTENCING TEST CLAIM

I. Adherence to Article XIII B, Section 6 Requires That the Commission Find in Favor of Claimant

Article XIII B, section 6(a) of the California Constitution states that the Legislature must provide a subvention of funds whenever it mandates a new program on a local government. Further, article XIII B, section 6(b) states that the Legislature may, but need not, provide a subvention of funds for legislative mandates that define a new crime or change an existing definition of a crime.[1] Article XIII B, section 6 was added to the California Constitution following a voter-passed initiative aimed at curtailing efforts by the State to enact legislation that imposed programs which shifted the financial burdens from the State to local government. Indeed, voters were told that section 6 of Proposition 4 was intended to prevent State attempts to "force programs on local governments without the state paying for them."[2]

In making its decisions, the Commission on State Mandates (Commission) must strictly construe article XIII B, section 6 of the California Constitution, and limit its power to what is constitutionally permissible. Since Assembly Bill (AB) 1540 did not define a new crime or change the existing definition of a crime, the exemption as stated in article XIII B, section 6 of the California Constitution does not apply.

II. Assembly Bill 1540 Did Not Change the Penalty and, Therefore, No Bar Exists to Reimbursement

Government Code (GC) § 17556(g) intended to implement the provisions of section 6(a)(2) of article XIII B of the California Constitution, which reads in relevant part that "the commission shall not find costs mandated by the state, … if, after a hearing, the commission finds any one of the following: …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*."[3]

AB 1540 added Penal Code § 1170.03, which requires Claimant to perform non-enforcement related activities, including[4]: (1) preparing for hearings related to sentencing cases submitted by the California Department of Corrections and Rehabilitation (CDCR); (2) acting as appointed counsel in response to a recommendation from CDCR; and (3) acting as appointed counsel for individuals after a sentence has been invalidated.

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[1] California Constitution article XIII B, section 6.
[2] Ballot Pamp., Special Statewide Elec., (Nov. 6, 1979) p. 18 [cited in *City of San Jose v. State of California* (1996) 45 Ca.App.4th 1802, 1817]
[3] Government Code § 17556(g) – emphasis added.
[4] Penal Code § 1170.03 was subsequently renumbered, effective July 1, 2022, as Penal Code §1172.1 by AB 200, Sec. 8.

Therefore, the Commission has not met its burden in showing that the activities described in AB 1540 changed the penalty as it relates directly to the enforcement of the crime.

Further, the Commission's reliance on the San Diego appellate decision involving the Youth Offender Parole Hearing (YOPH) test claim is inapplicable to the test claim statute.[5] There, the court determined that the YOPH statute changed the penalty for crimes because the statute explicitly changed the eligibility date for parole. AB 1540 makes no specific penalty change, but rather outlines procedures courts must follow based on recommendations from the CDCR and District Attorney. Therefore, unlike with the San Diego appellate decision, GC § 17556(g) does not apply since the test claim statute made no changes to the penalties for crimes.

III. Conclusion

Claimant disagrees with the Commission's broad interpretation of GC § 17556(g) and urges the Commission to find that the exemption does not apply. Under the requirement to construe subvention exceptions narrowly, GC § 17556(g) provides no basis for excepting the State from its subvention obligation. Furthermore, Claimant asserts that the narrowly tailored exemption as stated in article XIII B, section 6 of the California Constitution does not apply to this test claim. If the Commission determines that the exemption applies, Claimant requests that the Commission exercise its discretion to reimburse Claimant for the substantial costs incurred to Claimant by the enactment of AB 1540.

[5] *County of San Diego v. Commission on State Mandates* YOPH (2023) 91 Cal.App.5th 625, 641.

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 December 22, 2023, I served the:

- **Current Mailing List dated December 6, 2023**
- **Claimant's Comments on the Draft Proposed Decision filed December 20, 2023**

  Criminal Procedure: Resentencing, 22-TC-03
  Penal Code Section 1170.03 As Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[1]
  County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 22, 2023 at Sacramento, California.

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

[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754) amended section 1172.1 to remove a comma.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/6/23

Claim Number: 22-TC-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csm.ca.gov

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*
Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Michael Cantrall, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
webmaster@cpda.org

Peter Chang, *California Department of Justice*
1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550
Phone: (916) 324-8835
peter.chang@doj.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
P one: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Margaret Demauro, Finance Director, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
mdemauro@applevalley.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Mike Gomez, Revenue Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3240
mgomez@newportbeachca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Eric Lawyer, Legislative Advocate, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8112
elawyer@counties.org

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Graciela Martinez, President, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
gmartinez@pubdef.lacounty.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Jessica Sankus, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Michaela Schunk, Legislative Coordinator, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
mschunk@counties.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Kim Stone, Legislation, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
kim@stoneadvocacy.com

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814

Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

Date of Hearing: April 27, 2021
Counsel: David Billingsley

Exhibit E

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1540 (Ting) – As Amended April 22, 2021

SUMMARY: Requires the court to provide counsel for the defendant when there is recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. Creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above. Specifically, **this bill**:

1) Establishes additional rules and procedures for the existing process for courts when CDCR, BPH, Sheriff, or District Attorney, or the Attorney General recommend that a sentence of convicted defendant be recalled and that the defendant be resentenced.

2) Requires the court considering the resentencing to apply the sentencing rules of the Judicial Council and any changes in the law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

3) Allows the resentencing court to, 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; and

   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.

4) Specifies that 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.

5) Requires the court to give credit for time served.

6) Requires the court state on the record the reasons for its decision to deny resentencing.

7) Specifies that the court may state its decision to grant resentencing on the record or in writing.

8) Provides that resentencing may be granted without a hearing upon a stipulation by the parties.

9) States that 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.

10) States that if a hearing is held the defendant shall appear at the hearing by video unless counsel requests their physical presence in court.

11) Specifies that if a resentencing request is from CDCR, BPH, Sherriff, a District Attorney, or the Attorney General, all of the following shall apply:

    a) The court shall provide notice to the defendant and set an initial conference within 30 days;

    b) The court's order setting the conference shall also appoint counsel to represent the defendant; and,

    c) 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 because the court finds an unreasonable risk that the defendant would commit a violent felony, as specified.

12) Makes Legislative Findings and Declarations.

13) Makes technical and conforming changes.

EXISTING LAW:

1) Provides that the purpose of imprisonment for crime is punishment; that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances; and that the elimination of disparity, and the provision of uniformity, of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as determined by the Legislature, to be imposed by the court with specified discretion. (Pen. Code, § 1170, subd. (a)(1).)

2) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)

3) Provides that the court can recall the defendant's sentence within 120 days of the defendant's commitment, or at any time upon a recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings (for prison sentences) or the county correctional administrator (for jail sentences) and impose a new sentence. (Pen. Code, § 1170, subd. (d)(1).) Provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the

court. (Pen. Code, § 1170.1(d).)

4) Allows a defendant who was a minor at the time he or she received a sentence of life without the possibility of parole to petition the court for a new sentence after completing 15 years imprisonment. (Pen. Code, § 1170, subd. (d)(2)(A)(i).)

5) Allows the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings to make a recommendation to the sentencing court that a defendant's sentenced be recalled and that he or she be given a new sentence for medical reasons. (Pen. Code, § 1170, subd. (e)(1).)

6) Provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, Rule 4.406(b)(4).)

7) Provides that, in exercising discretion to select one of the three authorized prison terms referred to in statute, "the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal. Rules of Court, Rule 4.420(b).)

8) Requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, Rule 4.409.)

9) Prohibits the sentencing court from using a fact charged and found as an enhancement as a reason for imposing the upper term unless the court exercises its discretion to strike the punishment for the enhancement. (Cal. Rules of Court, Rule 4.420(c).)

10) Prohibits the sentencing court from using a fact that is an element of the crime to impose a greater term. (Cal. Rules of Court, Rule 4.420(d).)

11) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.421.)

12) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.423.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's Penal Code allows for law enforcement authorities to request a person be resentenced if the circumstances have changed since the original sentencing and/or if the person's incarceration is no longer in the interest of justice. Although the requests for resentencing are made by law enforcement authorities, the ultimate decision to recall a person's sentence and reduce their punishment remains with the courts. Courts are currently left to sift through a statute that does not provide adequate structure for the resentencing process, leaving many requests languishing in limbo, or worse -

denied without reason. The changes contained in AB 1540 strengthen common procedural problems to address equity and due process concerns in how courts should handle second look sentencing requests."

2) **Determinate Sentencing**: Most felonies are punished under the Determinate Sentencing Law (DSL). (Pen. Code, § 1170.) The DSL covers felonies for which three specified terms are provided in statute; crimes declared to be felonies but for which there is no specified term; and crimes simply made punishable by imprisonment in the state prison or in the county jail pursuant to realignment. The latter two categories are punishable by 16 months (low term), 2 years (middle term), or 3 years (upper term). (Pen. Code, § 18.)

   Under the DSL, where three terms are specified, the court is free to choose any of the three terms, using valid discretion. The judge must still state reasons for the term selected. (Pen. Code, § 1170, subd. (b); see also Cal. Rules of Court, rules 4.406(b)(4) , 4.420(e).) "[T]he sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal. Rules of Court, rule 4.420(b), see also Pen. Code, § 1170, subd. (b).) The Rules of Court list both aggravating factors and mitigating factors. In each category there are factors relating to the crime and factors relating to the defendant. (See Cal. Rules of Court, rule 4.421 and rule 4.423.)

   Currently, under Penal Code section 1170, subdivision (d), a trial court may recall a defendant's sentence and "impose any otherwise permissible new sentence, which may include consideration of facts that arose after [the defendant] was committed to serve the original sentence." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 465.) The new sentence cannot be greater than the original sentence. (Pen. Code, § 1170, subd. (d)(1).) The court's recall of a sentence for resentencing on the recommendation of the county correctional administrator, the Secretary of the CDCR, or the Board of Parole Hearings, or the county correctional administrator may occur at any time. However, a trial court's recall for resentencing on its own motion must occur within 120 days after the commitment date. (Pen. Code, § 1170, subd. (d)(1).)

3) **Prison Over-Crowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

   CDCR's weekly report, as of April 7, 2021, on the prison population notes that the in-state

adult institution population is currently 92,028 inmates, which amounts to approximately 103.7% of design capacity. (https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/04/Tpop1d210407.pdf)

Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

California has announced it is closing two prisons and it possible more prisons could be closed in coming years. California has declared that Deuel Vocational Institution in Tracy and California Correctional Center in Susanville will be closed. According to the Legislative Analyst's Office, the state could close a total of five prisons by 2025, which in turn could save an estimated $1.5 billion in annual spending. The corrections department, which has a budget of $16 billion, oversees 34 prisons and more than 50,000 employees. (https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Feb%2022%20Sub%205%20Agenda.pdf).

By allowing prisoners to request a recommendation for resentencing from the district attorney, this bill may result in more prisoners being resentenced to less time, thereby reducing California's prison population.

4) **Committee on the Revision of the Penal Code Recommendation on Resentencing:** On January 1, 2020, the Committee on Revision of the Penal Code (Committee) was formed. The Committee has seven members. Five are appointed by the Governor for four-year terms. One is an assembly member selected by the speaker of the assembly; the last is a senator selected by the Senate Committee on Rules. The Governor selects the Committee's chair

The principal duties of the Committee include establishing alternatives to incarceration that will aid in the rehabilitation of offenders and improving the system of parole and probation. The Committee made several recommendations to improve the criminal justice system in its 2020 Annual Report and Recommendations. One of the 10 recommendations made by the Committee was to establish a judicial process for "second look" resentencing. The recommendation builds on California's existing law allowing incarcerated individuals to be resentenced in the interest of justice. (http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf)

California has expanded the statute governing resentencing to allow certain law enforcement officials, including the Secretary of CDCR or the district attorney of the county of conviction, to request that a person be resentenced at any time for any reason. A court that receives such a request is vested with authority to recall the person's sentence and issue a new, reduced punishment, if "circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice."

The Committee noted that despite these expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the

parties, appointing counsel, or giving parties an opportunity to be heard. (Id.)

With respect recall and resentencing, the Committee recommended the following:

a) Establish judicial procedures for evaluating resentencing requests;

    i) In all cases, require notice, initial conference within 60 days, and written reasons for court decisions.

    ii) For all cases initiated by law enforcement, require appointment of counsel.

b) Establish that resentencing is presumed if law enforcement officials recommend resentencing because a sentence is unjust or because of a person's exceptional rehabilitative achievement while incarcerated; and

c) Expand "second look" sentencing opportunities by allowing any person who has served more than 15 years to request a reconsideration of sentence by establishing that "continued incarceration is no longer in the interest of justice." (Id.)

This bill is a response to the Committee's recommendations on resentencing. Consistent with the Committee's recommendations, this bill would require a court to appoint the defendant an attorney when the recommendation for recall and resentencing is made by BPH, CDCR, county sheriff housing the defendant, or the prosecuting agency. In those same cases, the court would be required to set an initial conference within 30 days and there would be a presumption in favor of recall and resentencing.

The Legislature has made a number of changes in the law over the past few years providing courts more discretion to dismiss enhancements. Those changes in the law potentially would give a court more flexibility to resentence if the law at the time of resentencing was applied. This bill directs the court to apply the sentencing rules of the Judicial Council and any changes in the law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. Based on that directive, it appears the court would apply the law at the time of resentencing, rather than the law as it was at the time of the defendant's initial sentence. However, this bill provides a court broad discretion regardless of the timeframe of the applicable law. Under the provisions of this bill, the court is not limited by the charge(s) on which the defendant was convicted. The court could sentence the defendant on lesser included or lesser related offenses. That would provide the court a wide range of option in selecting a new sentence.

This bill would require a court to presume that it is appropriate to recall and resentence a defendant that has been referred by CDCR, BPH, the county sheriff, or the prosecuting agency, unless a court finds an unreasonable risk that the defendant would commit a violent felony, as specified. That is a fairly high bar. However, these are cases which have already been vetted as being appropriate for recall and resentencing by the law enforcement agencies recommending recall and resentencing. Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence).

5) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "Penal Code section 1170(d)(1) has existed for decades, but was given a renewed focus in 2018 when two bills passed that granted district attorneys the ability to make these referrals and provided CDCR with funds to make recommendations. Since then, CDCR has made close to 2,000 recommendations and an increasing number of district attorneys are making use of the process. However, this increase in referrals has revealed several procedural issues that AB 1540 (Ting) seeks to address.

"For example, right now large numbers of referrals are being ignored or denied by the courts without any input from either side. This is in part because Penal Code § 1170(d)(1) doesn't provide guidance on how the courts should handle these types of recommendations. Incarcerated individuals also often don't have access to lawyers, and, in many cases, have no idea they have been recommended.

"AB 1540 (Ting) seeks to address these issues so that Penal Code § 1170(d)(1) can be fully and fairly applied. It will do this by ensuring that an incarcerated person receives notice of their referral; establishing court deadlines and the right to counsel; providing a presumption in favor of resentencing for all law enforcement referrals; and clarifying that a judge can reduce a charge to a lesser-included or lesser-related offense. AB 1540 (Ting) will also give the Attorney General's office the power to recommend a person for resentencing when they prosecuted the case and make Penal Code § 1170(d)(1) its own Penal Code section to clarify the law."

6) **Argument in Opposition**: According to the *California District Attorneys Association*, ". . . , AB 1540 would shift the burden of proof from a standard which allows the court to grant a petition when the evidence shows that the inmate's continued incarceration is no longer in the interest of justice, to an impossible-to-rebut standard that would require the court to grant every petition "unless there is evidence beyond a reasonable doubt that the defendant is likely to commit a future violent crime." This would not only impose the highest standard of proof in the inverse but would require the impossible – the ability to not only accurately predict the future, but to do so beyond a reasonable doubt. There will never be proof beyond a reasonable doubt of the future conduct of any human being because no human is possessed of such ability. Moreover, the proposed standard only contemplates the commission of a future "violent" crime. This, by definition, precludes consideration of the likelihood that the inmate will commit future non-violent crimes such as domestic violence, rape by intoxication or child molestation which are highly likely to be repeated in the absence of successful rehabilitation.

"Finally, AB 1540 would apply not only to convictions at trial but also to convictions resulting from plea bargain and would preclude the prosecution and court from withdrawing their end of the original plea agreement when resentencing was granted. Freeing the inmate of the obligations of a plea agreement while continuing to bind the court and prosecution will have negative consequences. Neither prosecutors nor the court will be willing to enter into plea bargains that entail reduced sentences or dismissal of charges when the defendant will not be bound by his or her end of the agreement."

7) **Related Legislation**:

a) AB 1245 (Cooley), would authorize a petition for resentencing by a defendant who has served at least 15 years of their sentence and has at least 24 months of their sentence remaining. AB 1245 is awaiting hearing in the Assembly Public Safety Committee.

b) AB 124 (Kamlager), would authorize the court to resentence an inmate upon a motion by the inmate and would require the court, when resentencing an inmate, to consider if the inmate experienced intimate partner violence, commercial sex trafficking, commercial sexual exploitation, or human trafficking. AB 124 is awaiting hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 865 (Levine), Chapter 523, Statutes of 2018, authorized the court, under specified conditions, to resentence any person who was sentenced for a felony conviction prior to January 1, 2016, and who is, or was, a member of the United States military and who may be suffering from specified mental health problems as a result of his or her military service.

b) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires starting on January 1, 2021, and subject to an appropriation in the annual Budget Act, that the DOJ, on a monthly basis, review the records in the statewide criminal justice databases grant relief to persons who identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.

c) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allowed the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
ACLU California Action
Alliance for Boys and Men of Color
American Friends Service Committee
Anti-recidivism Coalition
Asian Americans Advancing Justice - California
Asian Prisoner Support Committee
Bend the Arc: Jewish Action
California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
Californians for Safety and Justice
Cat Clark Consulting Services LLC
Communities United for Restorative Youth Justice (CURYJ)
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights

Essie Justice Group
Felony Murder Elimination Project
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Initiate Justice
Prison Yoga Project
Prisoner Advocacy Network
Prosecutors Alliance California
Re:store Justice
Root & Rebound
Rubicon Programs
San Francisco District Attorney's Office
San Francisco Public Defender
San Mateo County Participatory Defense
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Smart Justice California
Special Circumstances Conviction Project
Starting Over INC.
Success Stories Program
Survived & Punished
The Dream Corps
The Transformative In-prison Workgroup
The W. Haywood Burns Institute
Transgender, Gendervariant, Intersex Justice Project
Uncommon Law
Urban Peace Movement
We the People - San Diego
Western Center on Law & Poverty
White People 4 Black Lives
Young Women's Freedom Center

2 private individuals

Oppose

California District Attorneys Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1540 (Ting) - Criminal procedure: resentencing

Version: July 12, 2021
Urgency: No
Hearing Date: August 16, 2021
Policy Vote: PUB. S. 4 - 1
Mandate: Yes
Consultant: Shaun Naidu

Bill Summary: AB 1540 would prohibit the court from denying resentencing of an incarcerated person without a hearing whose sentence the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), or a specified local authority has recommended to the court be recalled and the person be resentenced. It also would create a presumption favoring recall and resentencing when the motion is based on the recommendation of one of the entities described above.

Fiscal Impact:

- Unknown, potentially-significant workload cost pressures to the courts to hold additional hearings for petitions that they otherwise would deny without a hearing under existing law. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates $118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)

- Unknown, potentially-significant workload costs in the thousands of dollars to CDCR to supervise and transport individuals in state custody to attend resentencing hearings that absent this measure would not have taken place. Actual costs would depend on the number of incarcerated persons who receive a hearing because of this measure and for whom remote/video appearances at the proceedings are not exercised. (General Fund)

- Unknown, potentially-significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests. While this measure would require the court to appoint counsel to represent the defendant, it is unclear if this mandate would require state reimbursement. Resentencing could be deemed a change to an element of the crime—the punishment in this instance—and statutes that change an element of a crime are not subject to reimbursement. If this measure is found to be a reimbursable mandate, however, the extent of which would be determined by the Commission on State Mandates. (Local funds, General Fund)

- Unknown potential savings annually in reduced state incarceration costs for individuals whom the courts resentence to a shorter term of imprisonment and/or release from state facilities to the extent there are successful resentencing recommendations after a hearing that would have been denied without a hearing under existing law. The FY 2020-2021 per capita cost to detain a person in a state prison is $112,691 annually, with an annual marginal rate per person of over $13,000. Actual savings would depend on the number of individuals who are

resentenced to a shorter term of incarceration in state prison because of this measure. Aside from marginal cost savings per individual, however, CDCR would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

Background: According to the analysis of this bill by the Senate Committee on Public Safety:

> As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal. 3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Id.*)
>
> However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. (*Id*; Pen. Code, § 1170, subd. (d).) Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. (Pen. Code, § 1170, subd. (d)(1).) In addition, the Director of CDCR, and BPH, the county correctional administrator, or the district attorney, can make a recommendation for resentencing at any time. (*Id.*) The statute that provides this authority does not provide any additional procedural guidelines of how a court should proceed, such as whether a hearing is required or whether the defendant should be appointed counsel.

Proposed Law: This bill would:

- Require the court to state its reasons for a resentencing decision on the record.
- Require the court, when it receives a request for resentencing to do the following:
  - Provide notice to the defendant.
  - Set a status conference within 30 days of the receipt of the request.
  - Appoint counsel for the defendant.
- Allow the court to grant a resentencing without a hearing, if the parties are in agreement.
- Create a presumption favoring recall and resentencing the defendant in the hearings when the recommendation for resentencing is made by CDCR, BPH, the district attorney or the administrator of the county jail, as relevant.

Related Legislation: AB 2942 (Ting, Ch. 1001, Stats. 2018) allowed the court to recall and resentence a person upon the recommendation of the district attorney of the county in which the person was sentenced and allowed a person incarcerated in state prison who has served at least a specified amount of their sentence to request the district attorney to recommend resentencing.

AB 1156 (Brown, Ch. 378, Stats. 2015) applied various provisions of law relating to persons convicted of a felony and sentenced to the state prison to persons sentenced to county jail pursuant to the 2011 Realignment Legislation.

-- END --

ANNUAL REPORT AND RECOMMENDATIONS

Committee on Revision of the Penal Code

2020

Table of Contents

RECOMMENDATIONS

Executive Summary

When the Legislature and Governor Gavin Newsom established the Committee on Revision of the Penal Code, California launched its first concerted effort in decades to thoroughly examine its criminal laws. The Legislature gave the Committee special data-gathering powers, directing it to study all aspects of criminal law and procedure and to make recommendations to "simplify and rationalize" the state's Penal Code.

This is the Committee's first report, and it details 10 reforms recommended unanimously by Committee members. Our recommendations span California's entire criminal legal system, ranging from traffic court to parole consideration for people serving life sentences. If enacted, these reforms would impact almost every person involved in California's criminal system and, we believe, measurably improve safety and justice throughout the state.

Our recommendations follow a year of studying California's criminal punishments. We were guided by testimony from 56 expert witnesses, extensive public comment, staff research, and over 50 hours of public hearings and Committee deliberation. We believe the recommendations represent broad consensus among a wide array of stakeholders, including law enforcement, crime victims, civil rights leaders, and people directly impacted by the legal system. The report contains extensive support for each recommendation, including empirical research, experiences from other jurisdictions, and available data on California's current approach to these issues.

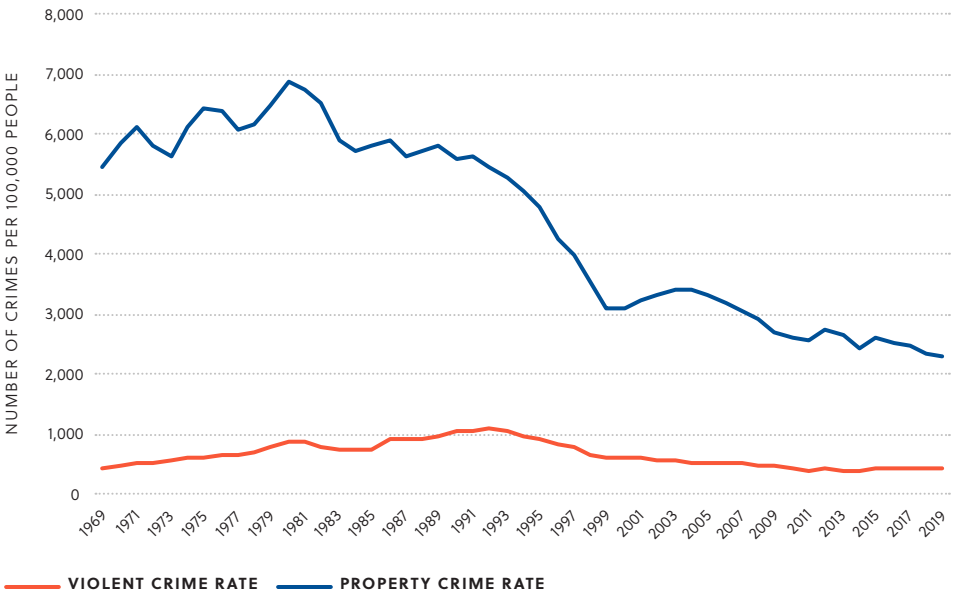
The recommendations are:

1. Eliminate incarceration and reduce fines and fees for certain traffic offenses.
2. Require that short prison sentences be served in county jails.
3. End mandatory minimum sentences for nonviolent offenses.
4. Establish that low-value thefts without serious injury or use of a weapon are misdemeanors.
5. Provide guidance for judges considering sentence enhancements.
6. Limit gang enhancements to the most dangerous offenses.
7. Retroactively apply sentence enhancements previously repealed by the Legislature.
8. Equalize custody credits for people who committed the same offenses, regardless of where or when they are incarcerated.
9. Clarify parole suitability standards to focus on risk of future violent or serious offenses.
10. Establish judicial process for "second look" resentencing.

Introduction

According to the most recent data from the California Department of Justice, California has the lowest crime rates since comprehensive statewide statistics were first recorded in 1969.[1] This continues a 30-year trend of steadily decreasing crime rates.[2] At the same time, the state has enacted laws that markedly reduced the number of people incarcerated in its state prison system.[3] The Committee on the Revision of the Penal Code was established to rationalize and simplify California's criminal laws,[4] and we are committed to advancing policies that continue the state's course of improving public safety while simultaneously reducing unnecessary incarceration.

CRIME RATES IN CALIFORNIA



Source: California Department of Justice, *Crime in California*, Table 1 (2019).

Despite the recent public safety accomplishments and reforms, aspects of California's criminal legal system are undeniably broken. California remains under numerous court rulings that our prisons and jails are unconstitutionally overcrowded. A decade ago, the United States Supreme Court affirmed that conditions within California's state prisons constitute cruel and unusual punishment.[5] That case remains unresolved and only exacerbated by the COVID-19 pandemic.[6]

Many law enforcement and judicial leaders appeared before the Committee this year to address these problems and offer solutions that continue to protect public safety.[7] Then-president of the District Attorneys Association, Nancy O'Malley of Alameda County, encouraged expanded programs for alternatives to incarceration, including for repeat offenders.[8] Santa Clara District Attorney Jeff Rosen suggested that all prison sentences could be cut by 20% across the board.[9] Former Governor and Attorney General Jerry Brown offered that all sentence enhancements could be eliminated and

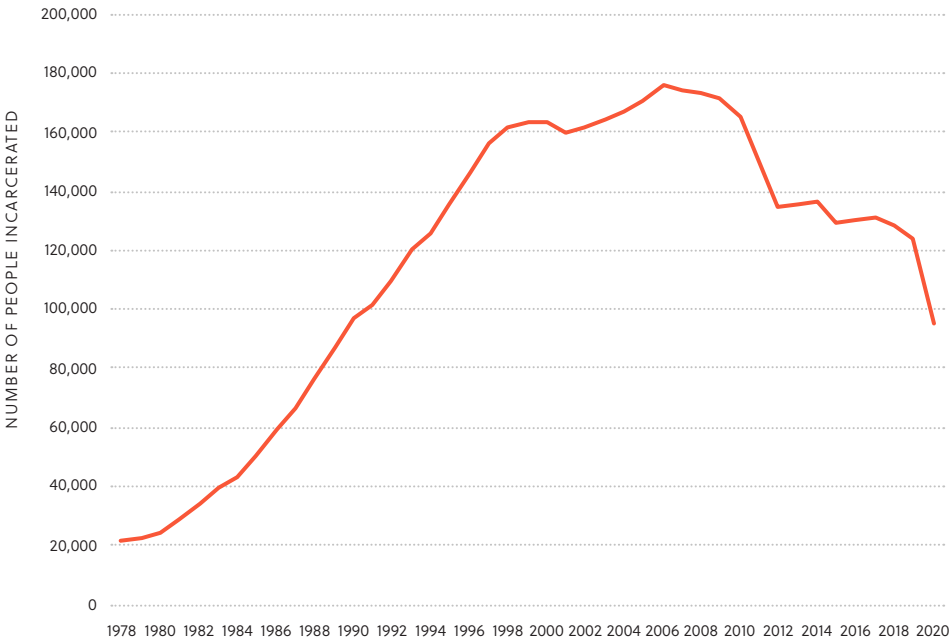
1 California Department of Justice, *Crime in California*, Table 1 (2019).
2 Magnus Lofstrom and Brandon Martin, *Crime Trends in California*, Public Policy Institute of California (Oct. 2018).
3 Magnus Lofstrom, Heather Harris, and Brandon Martin, *California's Future: Criminal Justice*, Public Policy Institute of California, 1–2 (Jan. 2020).
4 Government Code § 8290.5(a).
5 *Brown v. Plata*, 563 U.S. 493 (2011).
6 "More than 4,400 of the state's 95,000 inmates currently have active infections." (Don Thompson, *California urged to move inmates to front of vaccine line*, Associated Press (Jan. 15, 2021).)
7 Videos of all Committee meetings are available at CLRC website.
8 Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 1:10:38–1:13:10.
9 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 1:24:14–1:24:50.

that more people should be granted parole.[10] Los Angeles District Attorney George Gascón questioned the rationale of sentences longer than 20 years.[11] Likewise, Superior Court Judge Richard Couzens told the Committee that it would be "fundamentally fair" to allow any person incarcerated for more than 15 years to seek a "second look" re-evaluation of his or her sentence.[12] And San Mateo County District Attorney Stephen Wagstaffe, another former president of the California District Attorneys Association, agreed that many criminal laws in California have lacked consistency or public safety justification.[13] As he explained to the Committee in October 2020, "[It's] like the Winchester Mystery House. We just keep adding rooms. There's no theme."[14]

This testimony was supported by some of the nation's leading criminologists who presented studies on the negative impact of extensive incarceration on long-term public safety, communities, families, and individuals.[15] The Committee also heard from University of California Professor Craig Haney, a national expert on criminal justice policy, who testified powerfully at the Committee's inaugural meeting in January 2020 that mismanaged criminal justice policies have undermined the general wellbeing of all members of society by increasing racial and economic disadvantage.[16]

Governor Newsom acknowledged many of these issues when he addressed the Committee, noting "jaw-dropping" racial disparities in sentencing across the state. He encouraged us to address the "deep racial overlays and the deep socioeconomic overlays that often determine the fate of so many in our system."[17]

PRISON POPULATION IN CALIFORNIA



Source: US Department of Justice, Bureau of Justice Statistics; CDCR Office of Research.

10 *Id.* at 0:17:08–0:17:55.
11 Committee on Revision of the Penal Code, Meeting on Nov. 13, 2020, 0:7:52–0:11:15.
12 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:42:00–0:43:13.
13 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:4:23–0:5:33.
14 *Id.*
15 Committee on Revision of the Penal Code, Meeting on Jun. 24, 2020; Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020.
16 Committee on Revision of the Penal Code, Meeting on Jan. 24, 2020, 1:02:04–1:03:07.
17 *Id.* at 0:1:12–0:2:00. *See also* United States Department of Justice, *One Year After Launching Key Sentencing Reforms, Attorney General Holder Announces First Drop in Federal Prison Population in More Than Three Decades* (Sep. 23, 2014) ("High incarceration rates and longer than necessary prison sentences have not played a significant role in materially improving public safety, reducing crime, or strengthening communities. In fact, the opposite is often true."); Brian Earp, Jonathan Lewis, and Carl Hart, *Racial Justice Requires Ending the War on Drugs*, The American Journal of Bioethics, 1 (2020).)

This past year has made these issues impossible to ignore. The killing of George Floyd last summer once again brought national attention to a truth that many involved in the criminal legal system know: The current system has deep racial inequity at its core. New data published for the first time in this report reveals that racial disparities may be even worse than many imagined. Data obtained by the Committee for this report confirms people of color are disproportionately punished under state laws — from traffic infractions to serious and violent felonies. In addition, the COVID-19 pandemic spotlighted the inadequate medical care and poor conditions within state prisons, including the root cause of overcrowding.

California's criminal system is also extraordinarily expensive. The 2021-22 state budget for corrections is $16 billion, the large majority of which funds California Department of Corrections and Rehabilitation operations.[18] This figure does not include expenditures for county jails. California's Director of Finance Keely Bosler appeared before the Committee in July 2020 and testified that it costs California around $83,000 per year to house a person in prison.[19] The Committee also heard from the president of Crime Victims United, Nina Salarno Besselman, who emphasized when she appeared before the Committee in October 2020 that the state's fiscal expenditures do not include sometimes immeasurable costs to crime victims and communities. Nor does the state prison budget address the cost to individuals and families otherwise impacted by the system. We heard several stories of people who were incarcerated far longer than necessary and who are now successful community members and leaders.

Lived experiences in California, newly available data, and peer-reviewed empirical research prove that our mission to maintain or improve public safety while simultaneously reducing unnecessary incarceration is possible and necessary.

In 2020, the Committee studied every level of California's system over eight public meetings, many of them two-day affairs. We heard from 56 witnesses, including Governor Newsom, former Governor Brown, Attorney General Xavier Becerra, and stakeholders from across California. Every major state law enforcement group contributed to the Committee's work and research, as did public defenders, victims' advocates, formerly incarcerated individuals, and other system-impacted people, including one person who joined a Committee meeting by video from behind prison walls.

The Committee also welcomed and heard extensive public comment at each meeting. Committee staff consulted with dozens of scholars, data analysts, and other experts from California and around the country, to whom we are grateful for their expertise and advice.

Throughout our review, the Committee discovered laws that were badly outdated, incoherent, unsupported by data, and frequently implemented harsh punishments without purpose or evidence of advancement of public safety. For example, California's robbery law—covering one of the most common crimes in California—has been unchanged since 1872 and sweeps broadly, lumping serious and violent conduct with petty thefts.[20] The state standard for determining who to release on parole also involves statutory provisions and regulations that are inconsistent with each other.[21]

18 *Governor's Proposed Budget, 2021-22*, California Department of Finance, available at State of California website.
19 Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:9:25–0:9:43.
20 Penal Code § 211.
21 Penal Code § 3041(a)(2), (b)(1); 15 CCR § 2281(a).

The 10 recommendations in this report begin to address some of the most obvious problems that the Committee found and indicate where we believe there is widespread, multi-partisan support for reform. We were steered as much as possible by available data and empirical research. This report benefits from dozens of peer-reviewed studies and original research by Committee staff and partners. We also sought out reforms that would have as broad an impact as possible with general consensus across interest groups, keeping in mind the twin goals of improving public safety and creating a more humane system.

Although our recommendations are not a one-dose panacea and will not cure the deep, systemic problems with California's criminal legal system, the recommendations in this report represent a significant start to making our system more fair, more effective in terms of protecting public safety, less racist, and less wasteful.

Of course, these recommendations are not self-executing. It is only with partnerships from the Governor, the Legislature, state agencies, and county decision-makers that any of these recommendations will make a difference. And the Committee is not naive: The issues that are addressed every day in the criminal legal system are some of the most profound and perplexing in human experience. They arouse strong passion on every side.

The Committee also worked under a self-imposed limitation for this first year with a decision to not recommend any reform that would require a voter initiative or two-thirds vote in the Legislature in order to be enacted. This meant that some of the most important issues in California's criminal legal system and laws that impacted the largest number of people — such as the Three Strikes law, life-without-parole sentences, and the death penalty — were not part of our consideration this year.

This is not the first time that California has attempted a comprehensive review of its criminal laws. In 1963, the Legislature established the Joint Legislative Committee for the Revision of the Penal Code. According to that Committee's initial report to then-Governor Ronald Reagan, its mission was to address the "inadequacies of a code which has never undergone basic, comprehensive revision since its adoption almost a century ago."[22] That same year, the Chief Justice of the California Supreme Court remarked that "although we are far along in the twentieth century, our Penal Code in many respects has scarcely entered it."[23] Members of that Committee consulted with experts, examined available data, and collaborated with colleagues from other states. Then, after six years of deliberation and study, the Committee unexpectedly and abruptly abandoned all its work and laid off its staff in 1969. None of its reforms were adopted.[24]

It has now been almost 160 years since the Penal Code has undergone comprehensive revision. Since 1963, the scope of the system, the extremity of the sentences it metes out, and society's conception of the proper response to criminal offending have all changed. But one thing has remained the same: the need for a rational Penal Code that supports a criminal system that maximizes public safety, treats everyone fairly, and helps to improve communities and lives throughout the state.

We believe the reforms recommended in this report make important strides toward achieving those goals.

22 California Joint Legislative Committee for the Revision of the Penal Code, Penal Code Revision Project, *1967 Report*, 7 (1967).
23 Quoting an address given by Chief Justice of the Supreme Court of California Phil S. Gibson on Sep. 25, 1963. (Arthur H. Sherry, *Criminal Law Revision in California*, 4 University of Michigan J. L. Reform 429, 429 (1971).)
24 "Criminal law revision had no champion in California. When the first gleam of publicity disclosed that the Penal Code Revision Project was well on the road to basic and serious law reform, no one spoke for it; it fell an easy prey to the defenders of the status quo." (*Id.* at 432, 442.)

Prefatory Notes

PUBLIC SAFETY

Public safety and furtherance of justice are twin goals of any justice system. The Committee is well aware of the great strides California has made in improving crime rates over the past 30 years. Our recommendations are designed to maintain or improve that trend, relying on the most current empirical research and data.

We incorporated key findings from researchers who have studied incarceration trends, both nationally and in California, and the effects on crime rates and recidivism.

We also relied on expertise from law enforcement leaders, including several elected district attorneys, representatives from the California State Sheriffs' Association, the California Police Chiefs Association, the Chief Probation Officers of California, the California Department of Corrections and Rehabilitation, the California Board of Parole Hearings, and the California Correctional Peace Officers Association.

As also noted, crime rates in California began dropping in the 1990s, which is a significant accomplishment. That drop did not stop when the prison population began to decrease after 2006, including in the last decade when California enacted an ambitious agenda of reforms.[25] And while the Committee is not ignorant of the spike in homicides in 2020,[26] crime continues to be at historic lows.[27] The law enforcement representatives who appeared before the Committee this year generally supported the Committee's mission of continuing to both improve public safety and eliminating unnecessary incarceration.

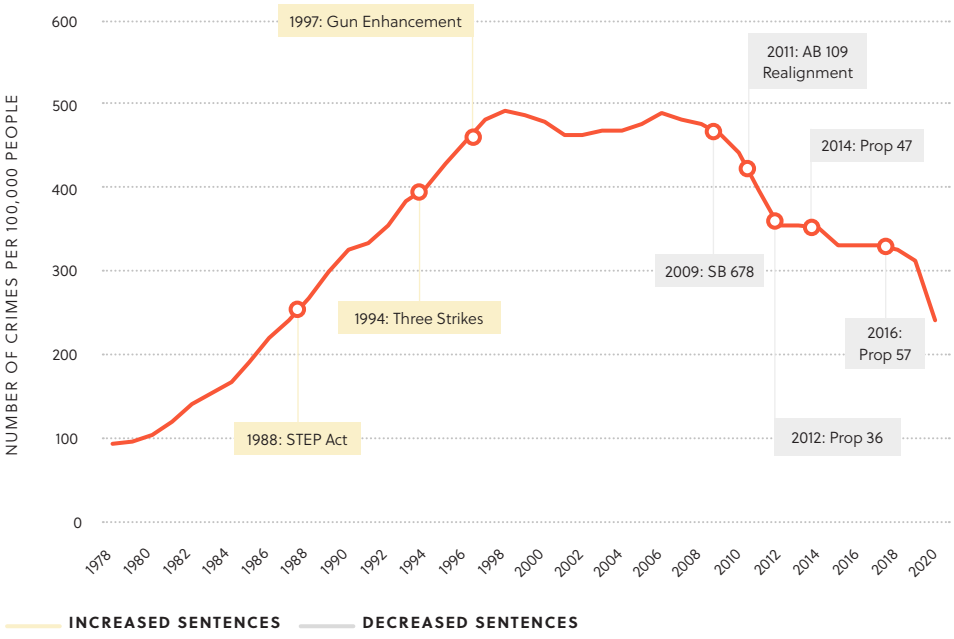
This report also benefits from valuable input from members of the California judiciary, victims' rights organizations, defense attorneys, formerly incarcerated and other system-impacted people, academics, and additional community and interest-group advocates. We believe there are wide areas of common ground — evidenced by empirical research — supporting reforms that improve public safety and reduce wasteful incarceration at the same time.

25 *See* Written Submission of Legislative Analyst's Office to Committee on Revision of the Penal Code, Jun. 24, 2020, available at CLRC website.
26 *See, e.g.*, Kevin Rector, *L.A. Hits 300 Homicides for first time in a decade*, Los Angeles Times (Nov. 22, 2020).
27 Mike Males, *California's 2019 Crime Rate is the Lowest in Recorded State History*, Center on Juvenile and Criminal Justice (Sep. 2020).

INCARCERATION TRENDS

Starting in the 1970s, the rate of incarceration began to rapidly increase in an unprecedented manner, both nationally and in California.[28] Between 1990 and 2009, the average length of stay for people sent to prison in California increased by 51%.[29]

PRISON INCARCERATION RATE IN CALIFORNIA



Source: U.S. Department of Justice, Bureau of Justice Statistics.

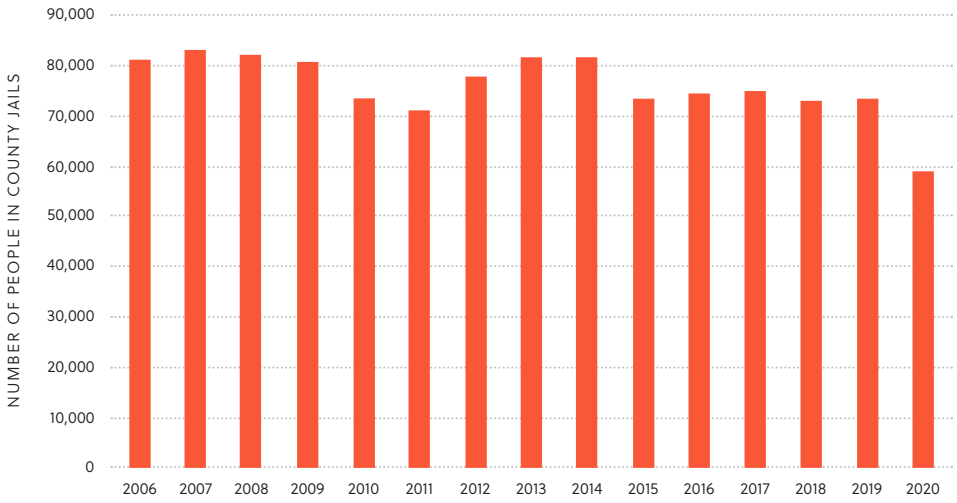
In 2019, a total of 35,390 people were sentenced to state prison[30] and over 900,000 were booked into county jails.[31]

California's prison population boom began in 1976 with the enactment of the Determinate Sentencing Law, followed by the Street Terrorism and Enforcement Act of 1988 and the Three Strikes law in 1994.[32] California's prison population more than tripled from about 50,000 inmates in 1985 to a peak of 173,000 inmates in 2006.[33] At the same time, California's prison recidivism rate was the second worst in the nation.[34]

Researchers have found that lengthy sentences and high rates of incarceration have diminishing returns in reducing crime rates.[35] This is partly because people largely "age out of crime."[36] The majority of violent crimes are committed by those less than 30 years old, and criminal involvement diminishes dramatically after age 40 and even more after age 50.[37] As University of California Professor Steven Raphael testified before the Committee in June 2020, the nationwide explosion in incarceration from 1989 to 2010 "had no measurable impact on overall violent crime rates."[38]

28 National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, DC: The National Academies Press, 34–37 (2014).
29 *Time Served: The High Cost, Low Return of Longer Prison Terms*, The Pew Center on the States (2012).
30 CDCR Office of Research, *Offender Data Points — Offender Demographics for the 24-Month Period Ending June 2019*, Table 3.3 (Oct. 2020).
31 Board of State and Community Corrections, Jail Population Dashboard.
32 CDCR Office of Research, *Offender Data Points — Offender Demographics for The 24-Month Period Ending June 2019*, Figure 1.2 (Oct. 2020).
33 Legislative Analyst's Office, *How Many Prison Inmates Are There in California?* (last updated January 2019).
34 Committee on Revision of the Penal Code, Meeting on Jan. 24, 2020, 0:35:07–0:36:10; Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 233 (May 2013); *State of Recidivism: The Revolving Door of America's Prisons*, The Pew Center on the States, 10-11 (2011).
35 *Id.* "[L]engthier terms of incarceration, beyond a few months, do not readily appear to reduce recidivism and, indeed, may increase it." (Daniel Mears, Joshua Cochran, William Bales, et al., *Recidivism and Time Served in Prison*, The Journal of Criminal Law and Criminology, 122 (2016).)
36 Robert Weisberg, Debbie Mukamal, and Jordan Segall, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford Law School Criminal Justice Center, 17 (2011).
37 *Id.* "[A]mong young adults who served more than three years in prison, longer prison stays were associated with increasing probabilities for recidivism." (Daniel Mears, Joshua Cochran, William Bales, et al., *Recidivism and Time Served in Prison*, The Journal of Criminal Law and Criminology, 121 (2016).)
38 Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 233 (May 2013).

COUNTY JAIL AVERAGE DAILY POPULATION IN CALIFORNIA



Source: California Board of State and Community Corrections.

In recent years, California voters have embraced reforms to reduce California's prison population. Beginning in 2012, voters returned to the polls every two years, overwhelmingly passing ballot measures that reformed California's Three Strikes law (Proposition 36), punishments for nonviolent offenses (Proposition 47), drug laws (Proposition 64), and prison administration (Proposition 57).[39] These reforms built on the Legislature's intervention to alleviate prison crowding in response to federal lawsuits.[40] Today, according to one survey, even most crime victims in California support further reforms to the state's criminal legal system — including 75% of victims favoring reducing sentence lengths for people in prison who are assessed as a low risk to public safety.[41]

From its height in 2006, California's prison population dropped by 27%.[42] In 2020, following emergency measures aimed at curtailing the COVID-19 pandemic, California's state prison and jail populations declined even further.[43] As of December 31, 2020, California's prison population was at a 30-year low of 95,456 people.[44] This is 45% below the prison population in 2006[45] but still significantly above the state prison's intended capacity.[46] And because some of the recent decrease in prison population was caused by pausing intake from county jails, the prison population will likely increase once intake resumes.[47]

Despite these reforms, and California's sustained decrease in crime rates, people of color — Black men in particular — and people with mental health issues continue to be incarcerated disproportionately.[48] The Committee is committed to addressing these deep rooted systemic problems. There is no reason California cannot maintain historically low crime rates while correcting glaring racial inequities in our criminal justice system.

39 *See* Written Submission of Legislative Analyst's Office to Committee on Revision of the Penal Code, 1–2 (Jun. 24, 2020), available at CLRC website.
40 *Id*. at 1.
41 "[V]ictims support alternatives to incarceration for people with mental illness in the criminal justice system and support replacing lengthy mandatory sentences with increased judicial discretion, including for people convicted of serious or violent crime that are a low risk to public safety. The survey found that victims of violent crime and serious violent crime are just as likely to support these new safety solutions as victims of lesser crimes." (*California Crime Survivors Speak*, Crime Survivors for Safety and Justice and Californians for Safety and Justice, 1–2 (2019).)
42 Generated using the Corrections Statistical Analysis Tool (CSAT), available at Bureau of Justice Statistics website.
43 The average daily population of California jails in September 2020 was 57,768; in February 2020, it was 70,841. (Board of State and Community Corrections, Jail Population Dashboard.)
44 California Department of Corrections and Rehabilitation, *Weekly Report of Population* (as of Dec. 31, 2020, midnight), available at CDCR website.
45 California prisons held 173,000 people in 2006. (Legislative Analyst's Office, *How Many Prison Inmates Are There in California?* (last updated January 2019).)
46 "California's prisons are designed to house a population just under 80,000…" (*Brown v. Plata*, 563 U.S. 493, 502 (2011).)
47 *Governor's Budget Summary, 2021–22*, 173 (Jan. 2021).
48 Committee on Revision of the Penal Code, Meeting on Jan. 24, 2020, 0:52:43–0:55:04, 0:47:10–0:51:16.

DATA COLLECTION AND ANALYSIS

One of the Committee's most important objectives is the development of an aggregated collection of administrative data related to the criminal legal system. If there was one issue that found unanimous agreement across all stakeholders, it was that the state's criminal legal policy should be based on empirical evidence.

We agree wholeheartedly with Attorney General Becerra, who appeared before the Committee in October 2020 and advised that "data should be the base of where we launch."[49] Other law enforcement and related agencies, including the California Police Chiefs Association, the Chief Probation Officers of California, and the California State Sheriffs' Association, agreed that research — particularly into the last decade of reform in California — is essential.[50] Judges from the Judicial Council, prosecutors, defense lawyers, and community activists all echoed that sentiment.[51]

Despite such widespread support for data research and empirical analysis, such information is not readily available.[52] California's criminal justice data is spread across the records of various state and local agencies, including the California Department of Corrections and Rehabilitation, the California Department of Justice, and the courts, sheriffs, prosecutors, and probation departments of California's 58 counties. California is not alone in this respect. We are aware of no other jurisdiction in the United States with a comprehensive collection of its criminal justice data.[53]

We are committed to addressing this issue. The Committee was granted special broad authority to gather data and to address the problems of incomplete and fragmented data. The Committee's enabling statute provides in part that "[a]ll state agencies, and other official state organizations, and all persons connected therewith shall give the ... Committee full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control."[54]

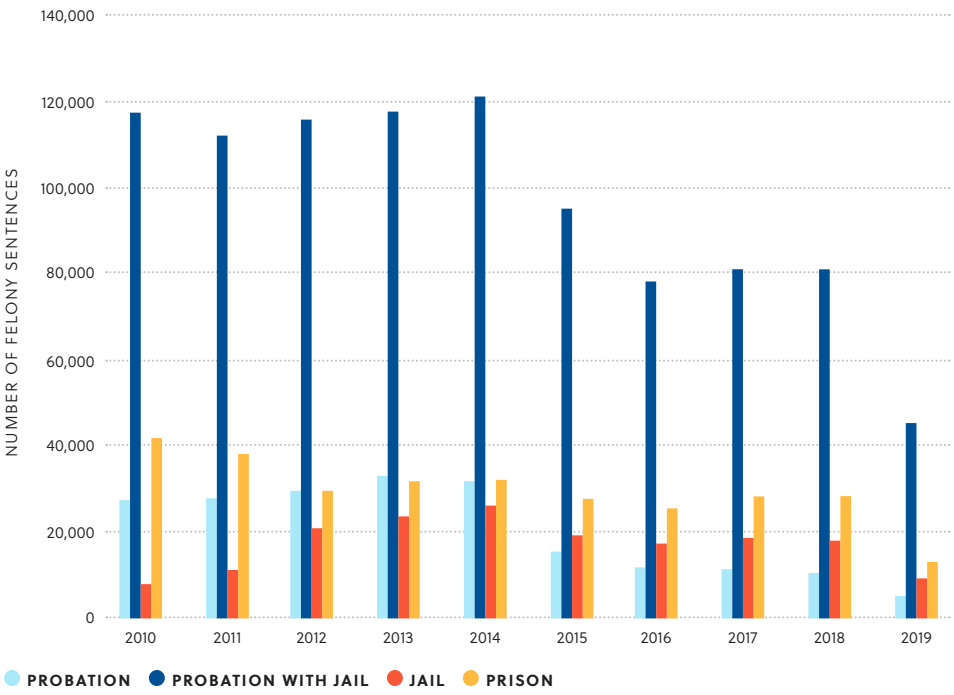
With this authority, the Committee has begun the process of gathering the various agency datasets. We have partnered with data analysts and security experts to ensure our research is sound and that confidential state data is protected by the highest security protocols. We also received generous philanthropic support to establish a long-term relationship with the California Policy Lab, a policy-focused research lab at University of California, Berkeley, and University of California, Los Angeles, to assist with collecting, analyzing, and understanding the data that the Committee collects.

A NOTE ON "VIOLENT," "NONVIOLENT," AND "SERIOUS" OFFENSES

Many of the Committee's recommendations distinguish between how people convicted of violent, serious, and nonviolent offenses should be treated. These distinctions are important because so much of California's criminal law turns on the definitions of these terms, and recommendations that did not grapple with them would be ignoring the reality of how cases are charged and prosecuted. While these terms can often be subjective, we recognize that the Legislature has created discrete lists of "serious" and "violent" felonies,[55] and this report relies on those statutory definitions. Crimes that do not appear on the list of violent offenses are considered "nonviolent."

49 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:16:17–0:16:20.
50 Written Submission of Lassen County Sheriff Dean Growdon, First Vice President of the California State Sheriffs' Association to Committee on Revision of the Penal Code, 1 (Oct. 21, 2020); Written Submission of Chief Probation Officers of California to Committee on Revision of the Penal Code, 4 (Oct. 21, 2020); Written Submission of Chief Eric Nuñez (Los Alamitos), President of California Police Chiefs Association to Committee on Revision of the Penal Code, 3–4 (Oct. 21, 2020).
51 Judge Richard Vlavianos, Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 0:38:10–0:38:55; District Attorney Nancy O'Malley, Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 1:55:15–1:56:45.
52 *See* Mikaela Rabinowitz, Robert Weisberg, and Jessica McQueen Pearce, *The California Criminal Justice Data Gap*, Stanford Criminal Justice Center (2019).
53 *See, e.g.*, Matt Ford, *The Missing Statistics of Criminal Justice*, The Atlantic (May 31, 2015); Bill Wichert, *NJ Criminal Justice Data Law Could Spur Reforms Elsewhere*, Law360 (Nov. 15, 2020).
54 Government Code § 8286.
55 Penal Code § 11927(c); Penal Code § 667.5(c).

FELONY SENTENCES BY TYPE OF PUNISHMENT IN CALIFORNIA



Source: California Department of Justice, *Crime in California*, Table 38B (2014); California Department of Justice, *Crime in California*, Table 38A (2019).

For important reasons, violent crimes receive a significant amount of public and political attention. However, it is also true that the vast majority of arrests in California (about 90%) are for misdemeanors and nonviolent felonies.[56] Over 80% of people facing felony charges in California receive a sentence of jail, probation, or a combination of the two.[57] Less than 20% of all felony charges result in prison sentences.[58]

We acknowledge that there is a growing consensus that a rigid distinction between violent and nonviolent offenses may be counterproductive.[59] For example, across the country, people convicted of violent offenses often have lower recidivism rates than people convicted of nonviolent ones.[60] In California, the three-year reconviction rate for people committed to prison for a non-serious/nonviolent offense was 51%.[61] For people committed to prison with a violent offense, it was 29%.[62] Some of this apparent paradox is likely explained by long sentences imposed for violent crimes, which result in older parolees who are less likely to commit new crimes upon release. At the same time, nonviolent crimes are often associated with poverty, addiction, and homelessness — which are rarely cured by incarceration.

While the Committee is not calling for abolishing the distinction between violent and nonviolent offenses, many of its recommendations are informed by this research and call for considering the totality of a person's background and offense, not merely letting an offense's statutory classification be a definitive statement on what rehabilitative responses are appropriate.

56 California Department of Justice, *Crime in California 2019*, Tables 23–25 (Jul. 2020).
57 *Id.* at Table 38A. The California Department of Justice notes without further explanation that in 2019 "there was a decrease in the number of final dispositions and sentences for felony adult arrests reported to the California Department of Justice." (*Id.* at Note b.)
58 *Id.*
59 *See* James Austin, Vincent Schiraldi, Bruce Western, and Anamika Dwivedi, *Reconsidering the "Violent Offender,"* The Square One Project (May 2019).
60 *Id.* at Table 4.
61 CDCR Office of Research, *Appendix to the Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15*, Figure 8, Table 12 (Jan. 2020).
62 *Id.;* Research shows that people who have committed violent offenses are often the victims of other violent offenses. (James Austin, Vincent Schiraldi, Bruce Western, and Anamika Dwivedi, *Reconsidering the "Violent Offender,"* The Square One Project (May 2019).)

THREE-YEAR RECIDIVISM OUTCOMES FOR PEOPLE RELEASED FROM PRISON IN CALIFORNIA (2014-15)

TYPE OF RECONVICTION	NUMBER OF RELEASED PEOPLE CONVICTED OF NEW OFFENSES	% OF TOTAL PEOPLE RELEASED
Felonies Against Persons	2,788	7%
Other Felony Offenses	5,891	15%
Misdemeanors	9,556	24%
TOTAL RECIDIVISM	**18,235**	**46%**

Source: CDCR Office of Research, *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15*, Table 1 (Jan. 2020).

Recidivism is also an important and often misunderstood term of criminal law. While prisons and jails should do as much as possible to encourage rehabilitation and reduce recidivism, we note that only 7% of people released from prison committed subsequent felony crimes against persons.[63] The remaining 93% committed misdemeanors, nonviolent felonies, or no crime at all.

LANGUAGE USED THROUGHOUT THIS REPORT

This report avoids using the term "inmate," "prisoner," or "offender."[64] Instead, the report uses "incarcerated person" and similar "person-first" language. Other official bodies have made similar choices about language,[65] and the Committee encourages stakeholders – including the Legislature when drafting legislation – to consider doing the same.

63 CDCR Office of Research, *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15*, Table 1 (Jan. 2020).

64 *See* Nguyen Toan Tran, et al., *Words Matter: A Call for Humanizing and Respectful Language to Describe People Who Experience Incarceration*, BMC International Health and Human Rights, 18, 41 (2018).

65 Nancy G. LaVigne, *People First: Changing the Way We Talk About Those Touched by the Criminal Justice System*, Urban Institute (Apr. 4, 2016); John E. Wetzl, *Pennsylvania Dept. of Corrections to Discard Terms Offender,' 'Felon' in Describing Ex-prisoners*, Washington Post (May 26, 2016); Karol Mason, *Guest Post: Justice Dept. Agency to Alter Its Terminology for Released Convicts, to Ease Reentry*, Washington Post (May 4, 2016); Morgan Godvin and Charlotte West, *The Words Journalists Use Often Reduce Humans to the Crimes They Commit. But That's Changing*, Poynter (Jan. 4, 2021).

1. Eliminate Incarceration and Reduce Fines and Fees for Certain Traffic Offenses

Eliminate Incarceration and Reduce Fines and Fees for Certain Traffic Offenses

RECOMMENDATION

Two common traffic offenses — driving without a license and driving with a license suspended for failure to pay a fine or appear in court — can be punished as misdemeanors and carry significant fines, even though they have little relation to unsafe driving.

The Committee therefore recommends the following:

1. Eliminate misdemeanor charging for (a) driving without a license and (b) driving with a license suspended for failure to pay a fine or appear in court. These offenses should be mandatory infractions.

2. Reduce fines and fees for these offenses.

3. Reduce DMV "points" for these offenses to zero.

RELEVANT STATUTES

Penal Code § 19.8
Vehicle Code §§ 12500, 12810, 14601.1

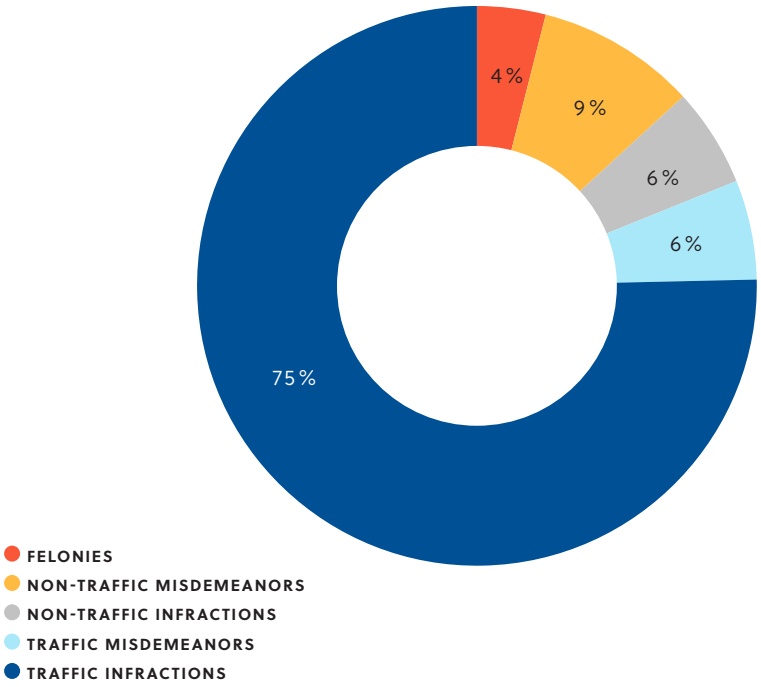
BACKGROUND AND ANALYSIS

Under current law, people can be convicted of misdemeanors and incarcerated for driving without a license or driving with a license suspended for failure to pay a fine or appear in court.[66] These offenses are primarily financial in nature and are not connected to unsafe driving. Data also indicates that Black and Latinx motorists are disproportionately arrested for these offenses despite there being no documented difference in driving behavior.[67] The Committee recommends that they be considered infractions only and that no one should be incarcerated for them.

These cases make up a large portion of all criminal filings in California and consume considerable resources among police, courts, prosecution and defense offices, and county jails. In fact, the vast majority of all criminal filings in California are traffic cases — more than 81% or 3.6 million filings a year.[68]

66 "[E]very offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both." (Penal Code § 19; Vehicle Code §§ 14601.1(b)(1)–(2), 40000.11(b).)
67 *Stopped, Fined, Arrested*, Back on the Road California, 1, 21 (Apr. 2016); John Macdonald & Steven Raphael, *An Analysis of Racial/Ethnic Disparities in Stops by Los Angeles County Sheriff's Deputies in the Antelope Valley: Report Period: January–June 2019*, xi (Sep. 2020).
68 Judicial Council of California, *Court Statistics Report, Statewide Caseload Trends, 2009–10 through 2018–19*, 124–25, Table 7a.

BREAKDOWN OF CRIMINAL FILINGS IN CALIFORNIA (2018-19)



Source: Judicial Council of California, Court Statistics Report, Statewide Caseload Trends, 2009–10 through 2018–19, 134–35 (Table 7a).

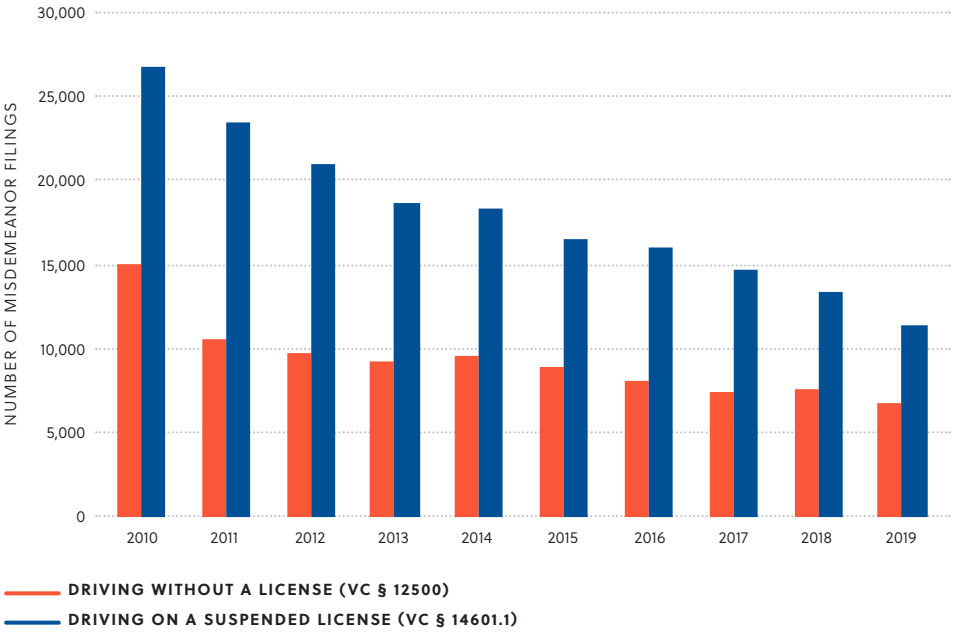
Annually, almost 260,000 traffic offenses are charged as misdemeanors,[69] and the people arrested and jailed for these offenses are disproportionately people of color.[70] Additional data confirms that license suspensions for failure to appear are correlated with high poverty rates and race, with the highest rates of suspensions in poorer neighborhoods with a high percentage of Black and Latinx residents.[71]

According to data provided to the Committee from the California Department of Motor Vehicles, approximately 600,000 people currently have their licenses suspended solely for failure to appear in court.[72]

The number of prosecutions for driving without a license and driving on a suspended license is also large. In Los Angeles County, between 2010 and 2019, there were more than 180,000 charges for driving without a license and more than 92,000 charges filed for driving on a license suspended for failure to appear or pay a fine.[73]

69 This data is from the Judicial Council's Statewide Caseload Trend reports. *See, e.g.*, Judicial Council of California, *Court Statistics Report, Statewide Caseload Trends, 2009–10 through 2018–19*, 134–35, Table 7a.
70 *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back on the Road California, 4–20 (Apr. 2016); California Department of Justice, *Racial and Identity Profiling Advisory Board 2021 Annual Report*.
71 *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back on the Road California, 1, 9 (Apr. 2016).
72 Data provided by California Department of Motor Vehicles (Jan. 2021).
73 This information was provided by the Los Angeles County Public Defender's Office.

MISDEMEANOR TRAFFIC FILINGS IN LOS ANGELES COUNTY



Source: Source: Los Angeles County Public Defender.

In 2017, California's Commission on the Future of California's Court System, convened by Chief Justice Tani Cantil-Sakauye, recommended that minor traffic court cases be handled entirely in civil court and not as criminal proceedings.[74] Likewise, the American Association of Motor Vehicle Administrators has long opposed suspending licenses for reasons unrelated to safety.[75] More generally, Attorney General Becerra told the Committee at its October 2020 meeting that "the fewer times we have to go to the justice system to deal with people on a criminal ground, the better off we'll always be."[76]

In recognition of some of these issues, three large prosecutor's offices in California – the Santa Clara County District Attorney, the Los Angeles City Attorney, and the Los Angeles County District Attorney – have exercised their discretion to either decline filing charges in these cases or to always file them as infractions.[77] San Francisco does not suspend licenses for people who fail to appear for traffic court dates.[78]

Although there is little relationship between unsafe driving and the two traffic misdemeanors at issue here – driving on a license suspended for failure to pay a fine or appear in court[79] and driving without a license[80] – prosecutors currently have the discretion to charge these offenses as misdemeanors.[81] Therefore, not only can people can be arrested and jailed,[82] but fines and fees can also be exorbitant.[83] In addition, a conviction for driving on a suspended license adds two "points" on the person's license – the same consequence as driving under the influence of drugs or alcohol.[84]

74 Commission on the Future of California's Court System, Report to the Chief Justice, 58 (2017).
75 American Association of Motor Vehicle Administrators, *Reducing Suspended Drivers and Alternative Reinstatement: Best Practices*, 3 (Nov. 2018).
76 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:6:28–0:7:18.
77 Los Angeles County District Attorney Special Directive 20-07, 2–3 (effective Dec. 8, 2020); Santa Clara County District Attorney, Bend the Arc Reforms, 9 (Jul. 22, 2020) (noting disproportionate impact that this offense has on people of color); Memorandum from M.C. Molidor, Jose Egurbide, and Robert Cha, Re: Update to the Los Angeles City Attorney Filing Guidelines for Direct Citations — Changes Re: Vehicle Code Section 14601.1(a) (Feb. 22, 2020).
78 "In 2018, the San Francisco Court also formalized a policy stopping the suspension of driver's licenses for missing a traffic court date, or Failure to Appear (FTA)." (*Driving Toward Justice*, San Francisco Financial Justice Project, 1 (Apr. 2020).)
79 Vehicle Code § 14601.1.
80 Vehicle Code § 12500.
81 Penal Code § 19.8(a) (listing Vehicle Code § 12500 (driving without a license) and Vehicle Code § 14601.1 (driving on suspended license) as "subject to subdivision (d) of Section 17"); Penal Code § 17(d) (allowing the offenses in § 19.8(a) to be filed as infractions). A court may also reduce these misdemeanors to infractions with the defendant's consent. (Penal Code § 17(d)(2).)
82 *See, e.g.*, Vehicle Code § 14601.8 (allowing judge to permit "weekend jail" for people convicted under § 14601.1).
83 Via thirteen different code provisions, an infraction with a base fine of $100 ends up costing $815 once an initial deadline to pay is missed. (*Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back on the Road California, 23 (Apr. 2016).)
84 Vehicle Code § 12810 (specifying "point violation count"); *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, Back on the Road California, 22 (Apr. 2016).; Vehicle Code § 12810(b) & (e). *See also* DMV, California Department of Motor Vehicles, *DMV Point System in California*, available at DMV website.

California has taken recent steps to address the inequities inherent in some license suspensions, but it is unknown how many people still have misdemeanor charges pending despite these reforms.[85]

In addition, California has some of the county's highest court costs and penalty fees for vehicle infractions.[86] The total cost in fines and fees for driving on a suspended license and driving without a license can amount to more than $4,000. According to the Alliance for a Just Society, failures to appear and license suspensions are among "the most common ways courts are able to legally [] jail poor people."[87]

These violations are often directly related to poverty and do not invariably reflect a disregard for the law.[88] Advocates note that many low-income people face "significant barriers to attending [court], including an inability to take time off work, lack of available transportation, lack of child care, or lack of a reliable or permanent address where they can receive notice of the hearing."[89] Other people may avoid coming to court, knowing they cannot pay a court fine or fee and fearing arrest.[90] The violations can also result in other significant consequences, including serving as the basis for arrest[91] or vehicle impounding.[92]

While every driver should take the steps to be properly licensed and appear in court, driving without a license does not necessarily indicate unsafe driving and frequently relates to income level. If someone without a license is driving in an unsafe manner, they can be separately cited and charged for those offenses.[93]

EMPIRICAL RESEARCH

Recent research shows that license suspension for failure to appear in court is not the most effective way to coerce people to appear in court and pay their fines.[94] In fact, after California prohibited license suspensions for failure to pay court fees in 2017, on-time collections increased the following year. As the San Francisco Financial Justice Project concluded, "[t]he increase in collections without the use of driver's license suspensions indicates that the ability to suspend driver's licenses was not needed to ensure payment."[95]

Other research shows that license suspensions have dramatic economic consequences. Data from New Jersey concludes that 42% of people surveyed lost a job while their license was suspended, 45% reported not finding another job, and 88% reported reduced income.[96] Another study showed that women with young children receiving public assistance were twice as likely to find employment if they had a driver's license — a bigger impact than having graduated from high school.[97]

INSIGHTS FROM OTHER JURISDICTIONS

Seven states, including Virginia, Mississippi, and South Carolina, do not restrict driving privileges for failure to appear in court.[98] Six additional states, including Pennsylvania, Oregon, and New Jersey, do not criminalize a first offense for driving on a suspended license when the suspensions are not related to driving under the influence.[99]

Connecticut, Oregon, Pennsylvania, Washington, and Wisconsin treat driving without a license as a traffic infraction.[100] Texas considers driving without a license a misdemeanor offense, but the penalty is limited to a $200 fine.[101]

85 In 2017, Governor Brown's budget stopped the practice of suspending licenses for people who did not pay court fees. (AB 103 (2017) (Committee on Budget) (Section 53 & 54).) After this change, the Department of Motor Vehicles voluntarily revoked all license suspensions that had been caused by failures to pay court fines. (California Department of Motor Vehicles, *DMV Removes Driving Suspensions for Failure to Pay Fines* (Mar. 15, 2018), available at DMV website.)

86 *Paying More for Being Poor*, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, 1 (May 2017).

87 Allyson Fredericksen and Linnea Lassiter, *Debtors' Prisons Redux: How Legal Loopholes Let Courts Across the Country Criminalize Poverty*, Alliance for a Just Society, 4 (Dec. 2015).

88 *Id*. at 2.

89 *Id*. *See also* Brief of Legal Services of Northern California as Amici Curiae Supporting Appellant, *Hernandez v. Department of Motor Vehicles*, 49 Cal.App.5th 928 (2020).

90 Allyson Fredericksen and Linnea Lassiter, *Debtors' Prisons Redux: How Legal Loopholes Let Courts Across the Country Criminalize Poverty*, Alliance for a Just Society, 2 (Dec. 2015).

91 Penal Code § 836 (allowing a police officer to arrest a person for a public offense committed in their presence); Penal Code § 15 (defining "public offense" as a violation of law punishable by death, imprisonment, fine, removal, or disqualification from office); Vehicle Code § 40303(a)–(b).

92 Vehicle Code § 22651(p).

93 *See, e.g.*, Vehicle Code §§ 23103 (reckless driving), 22350 (basic speed law), 22107 (unsafe lane change).

94 Redesigned summons form and text messages reduced failures to appear on average by 13% and 21%, respectively. (Alissa Fishbane, Aurelie Ouss, and Anuj K. Shah, *Behavioral Nudges Reduce Failure to Appear for Court*, Science (Nov. 6, 2020).)

95 "And across California, on-time collections went up in the year following the end of driver's license suspensions for Failure to Pay." *(Driving Toward Justice*, San Francisco Financial Justice Project, 3 (Apr. 2020).) "[C]ollections have declined slightly in the year since, [but] the Judicial Council attributes the decline primarily to the continuing decline in the number of filings." (*Id*. at 5.)

96 New Jersey Motor Vehicles Affordability and Fairness Task Force Final Report, xii (Feb. 2006).

97 John Pawasarat and Lois M. Quinn, *Research Brief on ETI Driver's License Studies*, ETI Publications 186, 1 (2017).

98 The states are Idaho, Iowa, Mississippi, South Carolina, South Dakota, Virginia, and Wisconsin. The Free to Drive Coalition conducted research into the laws governing license suspensions in these states and found that, while various codes list the circumstances that can lead to license suspension, failure to appear is not one of them.

99 Indiana Code § 9-24-19-1; New Jersey Stat. Ann. § 39:3-40; Oregon Rev. Stat. § 811.175; 75 Pennsylvania Code Stat. Ann. § 1543; Rhode Island Stat. § 31-11-18(b); and 23 Vermont Stat. Ann. § 676.

100 Connecticut Gov't Stat. Ann. § 14-36(i); Oregon Rev. Stat. § 807.010; 75 Pennsylvania Code Stat. Ann. § 1501; Rev. Code Washington Ann. § 46.20.015; Wisconsin Stat. Ann. § 343.05.

101 Texas Code Ann., Transp. §§ 521.021, 521.461.

2. Require that Short Prison Sentences Be Served in County Jails

Require that Short Prison Sentences Be Served in County Jails

RECOMMENDATION

Thousands of people are sentenced to state prison every year for less than a year instead of serving their sentences in county jail, despite evidence indicating better public safety outcomes from local incarceration.

The Committee therefore recommends the following:

1. Require counties to maintain custody of people who would serve less than one year in state prison.

2. Follow state practice of reimbursing counties if jail populations increase as a result.

3. Ensure that no person serves more than five years in county jail.

4. Add tools to help manage jail populations, including increasing use of the county parole release process, and specify "warm handoff" upon release from jails to state parole and county probation authorities.

RELEVANT STATUTES

Penal Code § 1170

BACKGROUND AND ANALYSIS

A large number of people sent to state prison are incarcerated there for less than one year. Although their imposed sentence is almost always longer than one year, their actual time in state prison is short because of time they have already served awaiting trial in county jails and through available custody credits.[102]

According to data provided to the Committee by the California Department of Corrections and Rehabilitation (CDCR), approximately 37% of people sentenced to state prison for determinate terms serve less than one year in CDCR custody. (The statistic addresses someone's actual length of incarceration — that is, how much time is left to serve on a sentence.) This amounts to roughly 14,000 people annually. Approximately 5,000 people per year serve less than six months in CDCR custody.[103]

102 Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:59:54–1:00:00.
103 Information provided by CDCR Office of Research.

NUMBER OF PEOPLE WHO SERVED LESS THAN ONE YEAR IN PRISON

	2017	2018	2019
LESS THAN 6 MONTHS	5,103	4,822	5,461
6 MONTHS TO 1 YEAR	8,627	9,312	9,046
TOTAL	**13,730**	**14,134**	**14,507**

Source: Source: CDCR Office of Research.

At the same time, new data presented to the Committee in July 2020 by professors Mia Bird and Ryken Grattet concludes that people with short sentences have significantly lower recidivism rates (22% fewer felony convictions) if they serve their sentences in county jails or on probation, rather than state prison.[104] The study accounts for a wide array of criminogenic variables, including crimes committed and criminal histories.[105]

In addition, at the Committee's hearings in July and October 2020, representatives from the California State Sheriffs' Association agreed that county jails can generally provide better services and public safety benefits in the form of reduced recidivism compared to CDCR.

California State Sheriffs' Association First Vice President, Lassen County Sheriff Dean Growdon, told the Committee he was unsurprised that people incarcerated locally are less likely to commit new crimes compared to those sent to state prison for the same offenses. Sheriff Growdon explained that people incarcerated in county jails stay local and maintain their ties to their families and communities while serving their sentences. He also emphasized that sheriffs put extra effort into rehabilitative and reentry services, especially following the enactment of Public Safety Realignment in 2010.[106]

Butte County Sheriff Kory Honea, Second Vice President of the California State Sheriffs' Association, also agreed that county jails have better recidivism rates compared to CDCR. He told the Committee that "we at the local level can provide better outcomes,"[107] describing a program in his county that had lower recidivism rates than CDCR at the time.[108] Sheriff Honea noted that local officials have natural and direct incentives to develop programs with better public safety results: "[If] we don't do anything to address the underlying causes of criminal behavior, and then we turn them back loose into our community, they're going to victimize members of our community, including my friends and my family, or perhaps me."[109] Sheriff Growdon noted that people in county jails may be able to "maintain those local ties and support that they might develop while they're in custody."[110] Other research has shown that counties that prioritized spending funds on reentry services over enforcement had better recidivism rates.[111]

104 Written submission of Mia Bird and Ryken Grattet to Committee on Revision of the Penal Code (Jul. 2020).
105 *Id.*
106 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:48:33–0:52:56.
107 Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:50:33–0:51:00.
108 See Jonathan W. Caudill, Ryan Patten, Sally Parker and Matt Thomas, *Breaking Ground: Preliminary Report of Butte County Sheriff's Alternative Custody Supervision Program*, ii (Sep. 19, 2012), discussing Butte County's alternative custody program.
109 Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 1:06:52–1:07:39.
110 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:51:01–0:51:19.
111 Mia Bird and Ryken Grattet, *Do Local Realignment Policies Affect Recidivism in California?*, Public Policy Institute of California, 20 (Aug. 2014).

Although CDCR may have larger rehabilitative and reentry systems, those state prison benefits generally do not apply to people who are incarcerated there for less than one year. This is because people entering state prison spend their first months (up to 120 days) in "Reception Centers" which have minimal programming. In addition, waitlists for rehabilitative programming are often over one year in length.[112] The combination of short stays, long waitlists, and initial confinement in Reception Centers means that people receive few meaningful rehabilitative opportunities while in CDCR custody if confined in prison for less than one year.

As former Governor Brown remarked to the Committee in September 2020: "[These people] go to prison for a year [or] 18 months. What does that accomplish?"[113] Governor Brown said that he favored having people serve shorter sentences locally rather than in prison and recommended that jails be given the resources to provide successful treatment and programming.[114]

The financial impact of short prison sentences is also significant. According to Director of Finance Keely Bosler, the intake costs for bringing people into CDCR (including transportation costs, security intake assessments, and health screens) are significant – up to $47 million annually.[115] A portion of these savings could be passed on to counties to offset additional costs of incarcerating more people locally.

Since the enactment of Public Safety Realignment in 2011, many counties have shown sufficient capacity and expertise in managing people serving sentences of incarceration in county jail, even if that burden was initially unwanted. As Sheriff Growdon told the Committee, the difference between jails before and after Realignment and other reforms is "night and day" because sheriffs have embraced rehabilitative programming and alternative custody arrangements, often with better public safety outcomes and reduced costs.[116]

Recent experience with the COVID-19 public health emergency provides another example of the ability of county jails to maintain custody over people sentenced to state prison sentences. In March 2020, CDCR stopped the transfer of people from jail to prison in an effort to curtail spread of the virus.[117] Though not without some significant difficulties, this experience demonstrates the ability of local authorities to incarcerate additional people sentenced to state prison, especially for periods less than a year.

112 CDCR Ombudsman, *What to Expect — Reception and Classification Process*, available at CDCR website. Once intake at CDCR resumes, the waiting times at reception centers is expected to be shorter. (California Department of Finance, *California State Budget Summary 2021–22*, 177 (Jan. 2021).)
113 Committee on Revision of the Penal Code, Meeting on Sep. 16, 2020, 0:9:20–0:9:30.
114 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 0:32:22–0:34:30; 0:41:38–0:42:40.
115 California Department of Corrections and Rehabilitation, *2020–21 State Budget*, CR 19; Director Bosler explained that such wasted expenditures were key drivers for the passage of AB 109. (Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:19:00–0:21:30.)
116 Committee on Revision of the Penal Code, Meeting on Oc. 21, 2020, 0:39:23–0:40:55.
117 CDCR, *COVID-19 Updates*; CDCR, *People Sentenced to CDCR Held in County Jail — FAQs*, available at CDCR website.

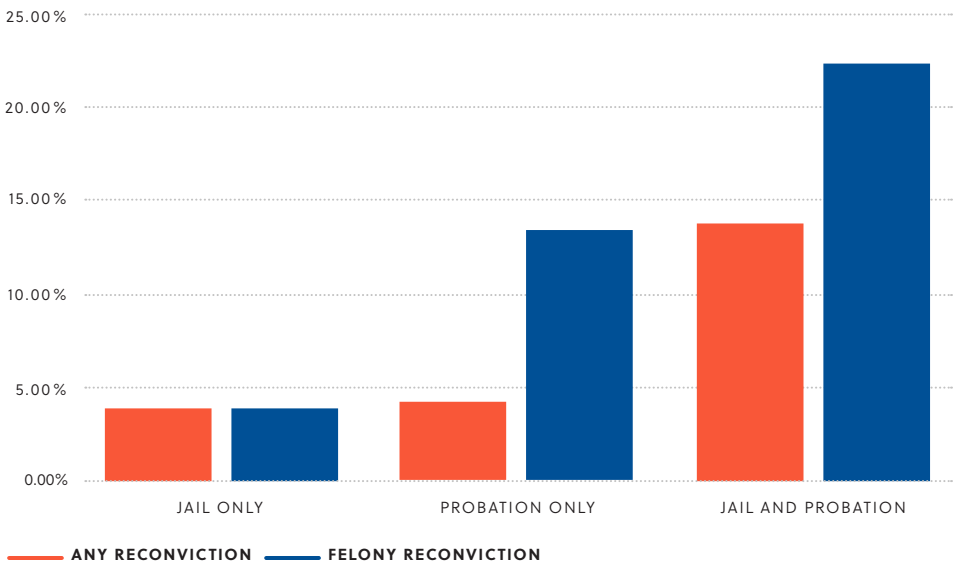
EMPIRICAL RESEARCH

As noted, according to a multi-county study of incarceration trends in California by professors Bird and Grattet, people who served a sentence in jail and on probation had significantly lower felony reconviction rates (23% fewer felony convictions) compared to people sentenced to prison for the same crimes.[118] The research controlled for a number of variables, including criminal history, length of sentence, and conviction offense.

More information about the different outcomes is here:

IMPACT OF SENTENCE TYPE ON TWO-YEAR RECIDIVISM RATE

Bars Represent Percentage Decrease in Two-Year Reconviction Rate Relative to Prison Sentence.



Source: Source: Mia Bird and Ryken Grattet, Public Policy Institute of California (Jun. 2019).

The study also examined five common offenses – burglary, motor vehicle theft, controlled substance possession, controlled substance possession with intent to sell, and weapons – and found that people sentenced locally to jail, probation, or jail and probation have lower reconviction rates than their prison-sentenced counterparts, except for jail sentences for burglary.[119] In addition, people serving prison terms for these five offenses spent more than twice the amount of time in custody compared to people who were sentenced to county jail.[120]

INSIGHTS FROM OTHER JURISDICTIONS

According to the United States Department of Justice, the general rule and practice in criminal law is that sentences less than a year are served in county jail, whereas longer

118 Mia Bird and Ryken Grattet, *Felony Sentencing and Recidivism Outcomes in California*, Public Policy Institute of California (Jun. 2019); Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:00:00–1:00:21.
119 Mia Bird and Ryken Grattet, *Felony Sentencing and Recidivism Outcomes in California*, Public Policy Institute of California (Jun. 2019).
120 Committee on Revision of the Penal Code, Meeting on Jul. 23, 2020, 0:11:25–0:12:00, 0:12:39–0:13:47, 0:23:24–0:24:07.

sentences are served in state prisons.[121] This is not the rule in California. Instead, following 2011's Public Safety Realignment,[122] each felony offense in the Penal Code specifies whether a sentence of incarceration should be served in jail or in prison.[123] Under Realignment, some people can be sentenced to serve several years in jail, rather than in state prison.

Some states have addressed the recurring problem of short sentences by finding alternatives to state prison. For example, in Massachusetts there are "Houses of Correction" run by local sheriffs that are designated for some sentences up to two and a half years long.[124] In 2019, Pennsylvania enacted a short-sentence parole law that grants presumptive parole release to people whose minimum term of imprisonment is two years or less.[125]

ADDITIONAL CONSIDERATIONS

- Current state policy provides for reimbursing counties for the cost of maintaining custody of people sentenced to state prison under Realignment.[126] If the Committee's recommendation for counties to maintain custody over people with short prison sentences results in an increased jail population, the state should follow its usual practice of reimbursing counties for that additional expense.

- If the Committee's recommendation is implemented, some counties may have extra capacity in their jails that neighboring counties may be able to use. Current law does not permit these transfers for people sentenced to state prison terms,[127] and the Legislature should consider allowing them to do so.

- As noted above, following Realignment, some people received lengthy jail sentences — more than five years. In 2016, the California State Sheriffs' Association reported that approximately 1,500 people statewide were serving sentences of more than five years in county jails as a result of Realignment.[128] People sentenced to five years or more should not be incarcerated in county jail facilities because jails are not built to incarcerate people for this long. Instead, these people should serve their time in state prison.

- Under current law, every county is expected to manage its local jail population through a "board of parole commissioners" that is empowered to release people from jail to county parole supervision.[129] However, county parole is rarely used,[130] and the law has not been updated to reflect current practices in community supervision. Counties should be encouraged to utilize this provision, which can become an important tool to incentivize rehabilitation, manage jail populations, and help reduce unnecessary local correctional costs.

- If enacted, this proposal would likely result in more people being released from jail custody to community supervision. There should be better coordination between local jail officials and authorities responsible for supervision upon a person's release from custody. This "warm handoff" between jails and probation and parole agencies should be as robust as possible. To ensure this,

121 "Prisoners sentenced to jail facilities usually have a sentence of one year or less." (United States Department of Justice, *Prisoners in 2018*, Bureau of Justice Statistics, 2.)
122 AB 109 (Committee on Budget), 2011 Cal. Stat. ch. 15.
123 J. Richard Couzens and Tricia A. Bigelow, *Felony Sentencing After Realignment*, 6–8 (May 2017).
124 Massachusetts General Laws, ch. 279, § 23.
125 61 Pennsylvania Code Stat. Ann. § 6137.1.
126 The daily rate in 2010 was $77.17. (Brian Albert, *State Prisoners in County Jails*, National Association of Counties, 6 (Feb. 2010).)
127 Penal Code § 4016.5(a).
128 *See Letter of Cory Salzillo & Cathy Coyne, Re: Updated Survey of Long-Term Offenders in Jail*, (Oct. 17, 2016). More current data is not available.
129 Penal Code §§ 3075 (specifying that the board should have a sheriff's representative, a probation representative, and a member of the public selected by the presiding judge of the Superior Court); 3081(b) (authority to release).
130 Asm. Com. on Public Safety, Analysis of Asm. Bill No. 884 (2013–2014 Reg. Sess.), 2 (Mar. 3, 2013).

current law that specifies what information CDCR must give to probation departments for people going on post-release community supervision should be made applicable to all people released from jail.[131]

- Conditions in many county jails are constitutionally inadequate.[132] And even where conditions are not so dire, most jails simply do not operate with long-term stays in mind and may not provide access to the outdoors, contact visits, rehabilitative programming, or work opportunities. Counties should continue to take steps to improve the conditions of their jails in order to maximize the benefits of this proposal.

131 Penal Code § 3003(e)(1).

132 At the time of report publication, 19 county jail systems had court-ordered population caps and housed 65% of people in California jails. (Sarah Lawrence, *Court-Ordered Population Caps in California County Jails*, Stanford Criminal Justice Center, 6 (Dec. 2014); Prison Law Office, *Settlement Reached in Contra Costa County Jail Class Action Lawsuit* (Oct. 1, 2020); Prison Law Office, *Settlement Reached in Lawsuit Challenging Conditions in Santa Barbara County Jail* (Jul. 2020); Prison Law Office, *Settlement Reached in Class Action Challenging Conditions in Sacramento County Jail* (Jun. 2019); Prison Law Office, *Settlement Reached in Santa Clara County Jail Litigation* (Oct. 2018).) "Most county jails have a grossly inadequate system to serve people with mental health disabilities." (Written Submission of Aaron Fischer to Committee on Revision of the Penal Code, 4–5 (Jul. 23, 2020), available at CLRC website; Abbie Vansickle and Manuel Villa, *Who Begs to Go to Prison? California Jail Inmates*, The Marshall Project (Apr. 23, 2019).)

3. End Mandatory Minimum Sentences for Nonviolent Offenses

End Mandatory Minimum Sentences for Nonviolent Offenses

RECOMMENDATION

Many nonviolent offenses in California, including many drug crimes, require incarceration because the state does not have a coherent approach to probation eligibility.

The Committee therefore recommends the following:

Allow probation or other alternatives to incarceration for all nonviolent offenses.

RELEVANT STATUTES

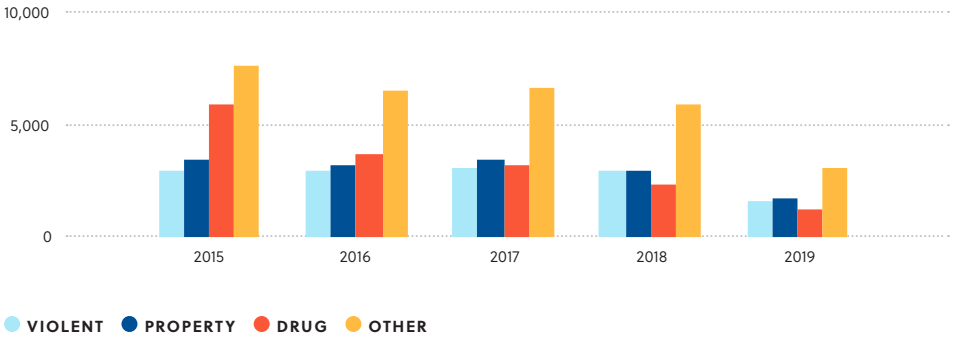
Penal Code § 1203, et seq.

BACKGROUND AND ANALYSIS

California law provides mandatory minimum sentences for many nonviolent crimes, including many drug crimes.[133] These laws remove all discretion from judges to fashion the most appropriate sanctions, even if a judge believes supervision and treatment on probation may be the most appropriate result in a case. By contrast, there is no mandatory minimum sentence for some violent crimes, including murder.[134] In total, 20% of straight probation sentences (i.e., without incarceration) are for violent offenses.[135]

Probation is the most common criminal sanction in the United States, yet California's laws governing who is eligible for probation (and who is not) lack coherence and consistency, create unintended mandatory minimum sentences, and fail to account for individual impact on public safety.

PROBATION SENTENCES BY TYPE OF OFFENSE IN CALIFORNIA



Source: California Department of Justice, *Crime in California*, Table 40 (2019).

Los Angeles District Attorney George Gascón testified before the Committee in November 2020 that mandatory minimum sentences make especially little sense for nonviolent crimes.[136] He has also described mandatory minimum sentences as "cruel, ineffective, and actually exacerbate our recidivism and racial disparities across the

133 *See, e.g.*, Penal Code §§ 462(a), 1203(e)(4), 1203.07(a)(1).
134 *See, e.g.*, *People v. Denner*, 2019 WL 5927604, *6 (3d District 2019).
135 California Department of Justice, Crime in California 2019, Table 40 (Jul. 2020).
136 Penal Code § 1203.07.

criminal justice system."[137] A representative of the California District Attorneys Association, Larry Morse, recently said that "I don't think most DAs have any heartburn about eliminating mandatory minimums."[138]

The Committee agrees that all relevant information should be considered in fashioning a sentence, and probation should be a permissible sentence for nonviolent crimes. A judge hearing the individual circumstances of a person's case should determine the appropriate punishment. As San Mateo Chief of Probation John Keene, Secretary and Treasurer of the Chief Probation Officers of California, argued to the Committee in April 2020, probation eligibility should be determined by evaluating someone's individual circumstances and not be guided solely by the offense charged against them.[139]

The Committee also considered diversion programs and collaborative courts available in many counties.[140] Many of these programs depend on the availability of sentences to probation. For example, Alameda County District Attorney O'Malley told the Committee that successful diversionary programs can tailor sanctions to individuals and that in "a cost-benefit analysis, there's no question that diversion wins out over incarceration."[141] San Joaquin County Superior Court Judge Richard Vlavianos agreed, testifying that recidivism was lower for certain offenses resolved with diversion programs.[142] And former United States District Court Judge Thelton Henderson urged the Committee in December 2020 that "diversion programs ought to play a much larger role than they now do."[143] The Committee was impressed by the steps that stakeholders have taken to expand alternatives to incarceration, and eliminating mandatory jail conditions would further support their efforts by removing statutory barriers. At the same time, most diversion programs and collaborative courts rely heavily on local stakeholders and resources, and aside from the elimination of mandatory incarceration for nonviolent offenses, the Committee does not currently make any specific recommendation to improve access alternatives to incarceration at the state level.

EMPIRICAL RESEARCH

Research shows that states can improve public safety outcomes by sentencing more people who commit lower-level and nonviolent crimes to probation and other intermediate community measures such as community service or treatment.[144] In 2016, the Brennan Center estimated that alternatives to prison, including probation, are likely more effective sentences for about 25% of the entire American prison population.[145] The Brennan Center study also concluded that incarceration does little to rehabilitate this group of lower-level offenders and can enhance the likelihood of recidivism.[146]

Similar findings were reported from cost-benefit studies of incarcerated populations in eight states.[147] A study of New York, New Mexico, and Arizona found that the benefits of incapacitating 50% of males incarcerated in those states were not worth the high costs.[148] A subsequent study found that the risk of recidivism for a substantial number of incarcerated people in five additional states was too low to justify their incarceration on a cost-benefit basis.[149]

In 2018, the Virginia Criminal Sentencing Commission found that, of the people who committed drug and property crimes for which the Virginia sentencing guidelines

137 Alexei Koseff, *Jail Time for Nonviolent Drug Crimes in California Would Be Cut Under Scott Wiener*, San Francisco Chronicle (Dec. 15, 2020).
138 *Id.*
139 Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 0:42:27–0:44:39.
140 Judicial Council of California, *Collaborative Justice Courts Fact Sheet* (Nov. 2020). Includes 400+ collaborative courts statewide.
141 Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 1:14:20–1:15:15, 1:12:27–1:12:37.
142 *Id.* at 0:10:10–0:12:00.
143 Committee on Revision of the Penal Code, Meeting on Dec. 10, 2020, 0:19:50–0:20:10.
144 *Id.*; Kevin Reitz, *The Compelling Case for Low-Violence-Risk Preclusion in American Prison Policy*, Behavioral Sciences & The Law, 210–211 (2020).
145 James Austin, Lauren-Brooke Eisen, James Cullen, and Jonathan Frank, *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, Introduction, 7–9 (2016).
146 *Id.*
147 *Id.*; Anne Morrison Piehl, Bert Useem, and John J. Dilulio Jr., *Right-Sizing Justice: A Cost–Benefit Analysis of Imprisonment in Three States*, Manhattan Institute, 8–9, Endnote 17 (1999).
148 Study findings translated the social costs and benefits of incarcerating people into dollars, and then compared them. (*Id.* at 3–9.)
149 *Id.* at 9; Bert Useem and Anne Morison Piehl, *Prison State: The Challenge of Mass Incarceration*, 67 (2008); Kevin Reitz, *The Compelling Case for Low-Violence-Risk Preclusion in American Prison Policy*, Behavioral Sciences & The Law, 210-211 (2020).

recommended prison time, 50% could be instead directed to community-based programs with little threat to public safety.[150]

Finally, researchers have found "little evidence" that people on probation perceive a jail sentence to be substantially more punitive than community-based sanctions such as electronic monitoring, curfews, or community service.[151]

INSIGHT FROM OTHER JURISDICTIONS

In the last two decades, at least 28 states have undertaken reforms aimed at reducing or excising mandatory minimums from their state statutes and instead providing for probation or other community supervision.[152]

These reforms have positively impacted crime rates and reduced prison populations. For example, in 2002, the Michigan Legislature repealed most mandatory minimum drug sentences.[153] Since then, Michigan's prison population dropped by over 21%,[154] while the state's property crime rate declined roughly 52%, the violent crime rate dropped by 15%, and homicides dropped by 11%.[155]

In 2009, New York enacted similar reforms to its drug laws,[156] followed by great drops in violent and property crime rates and prison population.[157] Since 2011, New York has closed 17 prison facilities and realized $193 million in annual savings due to the decrease in its prison population.[158]Maryland and Montana also recently eliminated their mandatory minimum sentences for nonviolent drug offenses.[159]

In 2021, the Virginia Crime Commission recommended the wholesale elimination of mandatory minimum sentences for all offenses.[160] The New Jersey Criminal Sentencing and Disposition Commission also recommended that the Legislature eliminate mandatory minimum sentences for nonviolent drug and property crimes.[161]

In some states, the majority of people convicted of felonies are sentenced to straight probation (compared to only 7% in California). In Minnesota, between 2004 and 2018, 75% of those convicted of a felony were placed on probation.[162] Similarly, in Kansas, over 70% of those convicted of a felony were placed on probation.[163]

In other states, probation is presumed for nonviolent offenses.[164] In Maryland, sentencing preferences for probation and drug treatment programs were recently enacted for certain drug offenses.[165] Arkansas law requires judges to weigh 13 factors in favor of sentence suspension or straight probation[166] and includes an explicit directive that courts have the discretion to sentence those convicted of felonies to drug courts or other rehabilitation programs.[167]

The Model Penal Code — as well as the American Bar Association and the Federal Judicial Conference — all recommend that no mandatory minimum prison sentences be attached to any offenses.[168] Instead, all favor judicial discretion to impose a sentence proportionate to the severity of the offense,[169] which could include probation and other forms of supervised release.

150 *Id.* (citing Matthew Kleiman, Brian J. Ostrom, and Fred L. Cheesman, II, *Using Risk Assessment to Inform Sentencing Decisions for Nonviolent Offenders in Virginia*, 53 Crime & Delinq. 106 (2007)); Virginia Criminal Sentencing Commission, *Annual Report*, 31–34 (2018).
151 Eric J. Wodahl, Brett E. Garland, and Kimberly Schweitzer, *Are Jail Sanctions More Punitive Than Community-Based Punishments? An Examination into the Perceived Severity of Alternative Sanctions in Community Supervision*, Criminal Justice Policy Review 31(5), 696-720, 713 (2020).
152 *Recent State-Level Reforms to Mandatory Minimum Laws*, Families Against Mandatory Minimums (May 10, 2017), available at FAMM.org website.
153 Patrick Affholter and Bethany Wicksall, *Eliminating Michigan's Mandatory Minimum Sentences for Drug Offenses*, Senate Fiscal Agency, 1 (Nov./Dec. 2002).
154 Michigan Department of Corrections, *2018 Statistical Report*, C-12 (Nov. 14, 2019) (end of year population in 2018 was 38,761); Michigan Department of Corrections, *2016 Statistical Report*, C-12 (Sep. 5, 2017) (end of year population in 2003 was 49,357); *Michigan Prison Population Continues to Decline*, News 10 (Dec. 19, 2019) (Michigan prison population in Dec. 2019 was down to 38,005).
155 From 2003–2019, burglaries fell by 58%, robberies fell by 52.5%, motor vehicle theft fell by 69%, and larceny fell by 47%. (Crime Data Explorer: Michigan, Federal Bureau of Investigation, available at the FBI Crime Data Explorer website.)
156 Jeremy Peters, *Albany Reaches Deal to Repeal '70s Drug Laws*, New York Times (Mar. 25, 2009).
157 New York State Corrections and Community Supervision, *DOCCS Fact Sheet*, 3 (Sep. 1, 2020); Federal Bureau of Investigation Crime Data Explorer: New York, available at FBI Crime Data Explorer website.
158 New York State Corrections and Community Supervision, *DOCCS Fact Sheet*, 3 (Sep. 1, 2020).
159 "Elimination of mandatory minimum sentences for controlled dangerous substance felonies." *Governor Larry Hogan Announces Implementation of Justice Reinvestment Act*, Governor's Office of Crime Prevention, Youth, and Victim's Services, (Oct. 3, 2017); *Recent State-Level Reforms to Mandatory Minimum Laws*, Families Against Mandatory Minimums (2017), available at FAMM.org website.
160 Ned Oliver, *Virginia Crime Commission Recommends Eliminating All Mandatory Minimum Sentences*, Virginia Mercury (Jan. 5, 2021).
161 New Jersey Criminal Sentencing & Disposition Commission, *Annual Report*, 21–23 (Nov. 2019).
162 Minnesota Sentencing Guidelines Commission, *2019 Probation Revocations*, 2 (Sep. 2, 2020).
163 *Justice Reinvestment in Kansas: Update to the Kansas Sentencing Commission*, The Council of State Governments Justice Center, 8 (Oct. 22, 2020).
164 *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, The Pew Charitable Trusts (Jul. 2018) (since 2011, nine states have created some form of presumptive probation); Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies, National Conference of State Legislatures*, 7 (Jun. 2015) (describing presumptive probation systems in four states).
165 Maryland Code Ann. § 5-601(e)(3)(i); *Maryland Justice Reinvestment Act*, Maryland Alliance for Justice Reform, available at Maryland Alliance for Justice Reform website.
166 Arkansas Code Ann. § 5-4-301.
167 Arkansas Code Ann. § 5-4-313.
168 *Model Penal Code: Sentencing Pre Publication Draft* (2020), Section 6.11(8); *Id.* at 267-68; *ABA Opposes Mandatory Minimum Sentences*, ABA (Aug. 15, 2017); *Sentencing, Corrections, and Re-Entry Reforms*, ABA (Dec. 11, 2020); *Judicial Conference Addresses Judgeship Needs Issues*, United States Courts (Mar. 16, 2016) ("The Judicial Conference has long-standing positions opposing mandatory minimums and supporting their repeal."); *Letter from Judge Bell to Chairman Leahy*, Committee on Criminal Law of the Judicial Conference of the United States (Sep. 17, 2013), available at United States Courts website.
169 *See, e.g., Model Penal Code: Sentencing Pre Publication Draft*, Commentary, 267-68.

4. Establish that Low-Value Thefts without Serious Injury or Use of a Weapon Are Misdemeanors

Establish that Low-Value Thefts without Serious Injury or Use of a Weapon Are Misdemeanors

RECOMMENDATION

Minor thefts that do not result in serious bodily injury and do not involve use of a deadly weapon are currently punished as violent felonies but should be considered misdemeanors.

The Committee therefore recommends the following:

1. Thefts of property under $950 without serious bodily injury or use of a deadly weapon must be charged as petty theft, punishable by up to one year in jail.

2. Exclude any theft with the use of a deadly weapon. This crime would constitute robbery (a violent felony with a prison sentence of two to five years).

3. Exclude any theft that results in serious bodily injury. This crime would also constitute robbery.

4. Permit retroactive reductions.

RELEVANT STATUTES

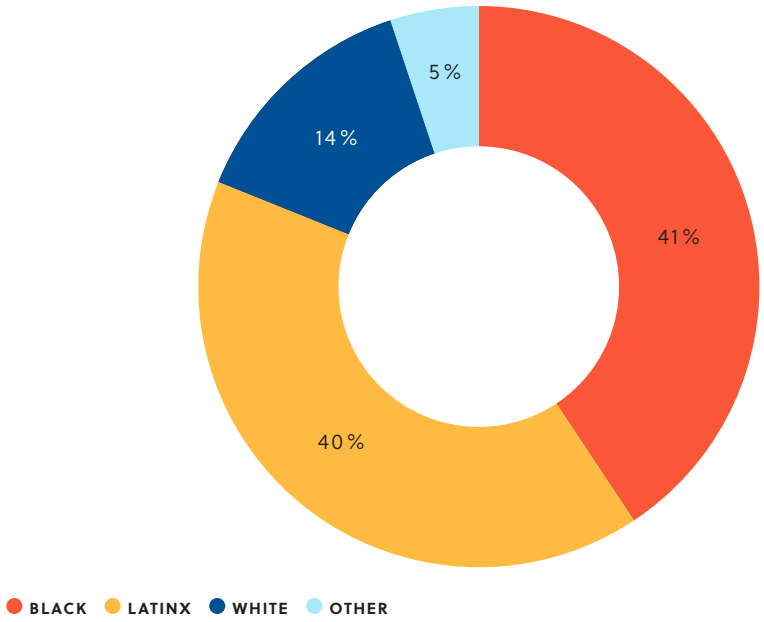
Penal Code §§ 211, 486

BACKGROUND AND ANALYSIS

California's robbery statute has not been updated since 1872.[170] Over the years, the punishment has been extended to a violent felony with a mandatory prison sentence of up to five years, without enhancements. At the same time, courts have also expanded the conduct that constitutes robbery to cover thefts of any value, even when there is no weapon involved nor physical injury to the victim. Additionally, the number of people currently in prison for robbery in California are disproportionately people of color.

170 Penal Code § 211.

PERCENTAGE OF PEOPLE IN PRISON FOR ROBBERY IN CALIFORNIA BY RACE



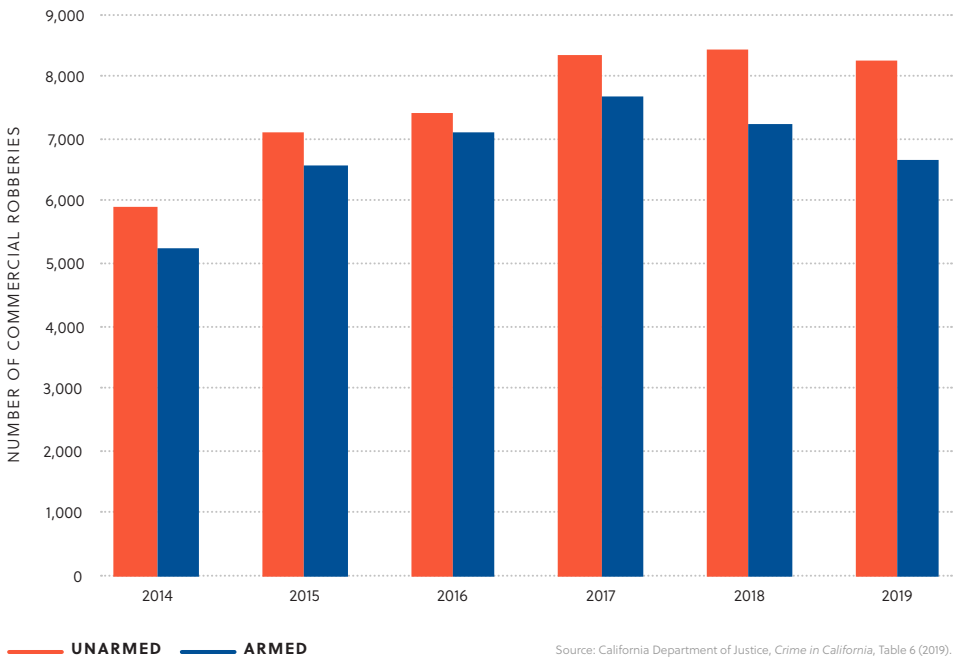
Source: CDCR Office of Research.

The Penal Code defines robbery as any taking of any property, regardless of value, if "accomplished by means of force or fear."[171] Following the landmark *People v. Estes*[172] case in 1983, courts have allowed prosecutors to charge robbery in cases that were previously considered simple shoplifting. In effect, shoplifting can be elevated from a mandatory misdemeanor to a violent crime with a mandatory sentence to state prison. Purse snatches and stealing a cell phone can also be considered robbery, even if a victim is not physically touched. In addition, robbery's automatic classification as a "violent felony," regardless of the circumstances, can subject a person to enhanced penalties, including a life sentence under the Three Strikes law.[173]

"*Estes* robberies" are extremely common. In 2019, over 8,000 unarmed commercial robberies were reported throughout the state.

171 *Id.*
172 *People v. Estes*, 147 Cal.App.3d 23 (1983).
173 Penal Code § 667.

COMMERCIAL ROBBERIES IN CALIFORNIA



Source: California Department of Justice, *Crime in California*, Table 6 (2019).

When Alameda District Attorney O'Malley, then-president of the District Attorneys' Association, appeared before the Committee in April 2020, she said that *Estes* robberies are often low-level crimes that her office recommended for less severe sanctions, including diversion and treatment, rather than incarceration.[174]

Santa Clara County District Attorney Jeff Rosen and San Mateo County District Attorney Stephen Wagstaffe also suggested limiting prosecutors' ability to charge these types of cases as violent robberies.[175] District Attorney Wagstaff added that if *Estes* robberies were eliminated, "I wouldn't sit there and say, 'Oh my heavens, you've taken one of our great tools in protecting public safety.'"[176] While people charged in *Estes* cases often end up pleading guilty to a lesser offense, including grand theft from a person, charging an offense that carries steep penalties greatly impacts a defendant's ability to negotiate a reasonable plea agreement.[177]

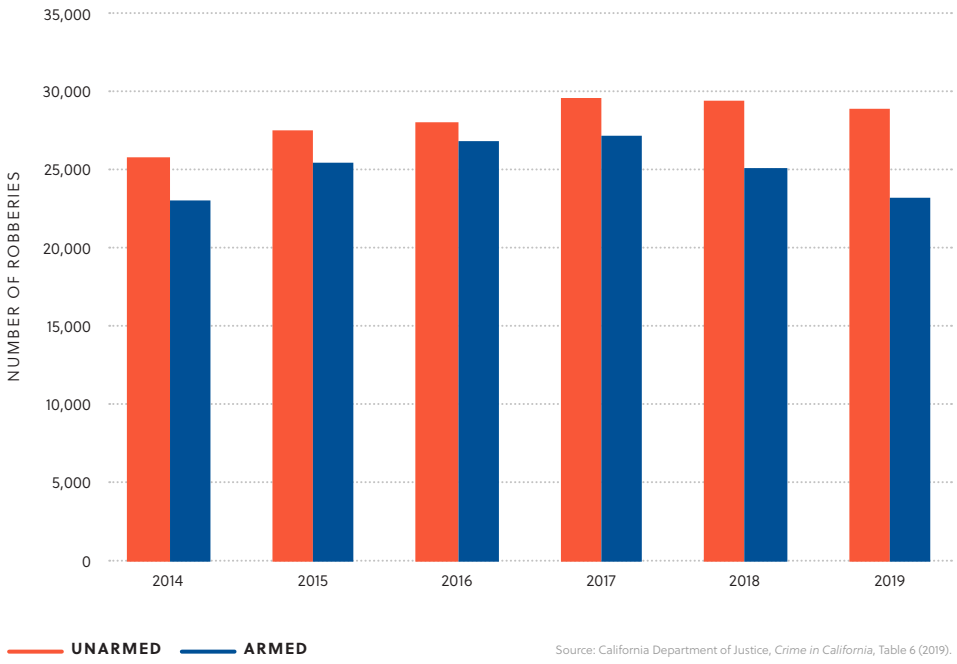
California is currently out of step with other states, which distinguish between different types of thefts and forbid thefts involving minor use of force or fear from being charged as robberies or other felonies.[178]

California's Penal Code currently divides theft into two degrees: grand and petty theft. Generally, grand theft occurs when the value of the stolen property exceeds $950,[179] and theft that does not meet one of the definitions of grand theft is petty theft.[180] The Penal Code also has a separate misdemeanor "shoplifting" offense for thefts from commercial establishments.[181] Theft involving *any* force or fear is considered a robbery.[182]

174 Committee on Revision of the Penal Code, Meeting on Apr. 23, 2020, 2:11:30–2:12:12.
175 Committee on Revision of the Penal Code, Meeting on Oct. 21, 2020, 0:16:48-0:17:18, 0:59:10–1:01:46.
176 *Id.* at 59:10-101:46.
177 H. Mitchel Caldwell, *The Prosecutor Prince: Misconduct, Accountability, and a Modest Proposal*, 63, CATH. U. L. Rev. 51, 62 (2013).
178 The Penal Code currently divides theft into two degrees: grand and petty theft. (Penal Code § 486.) Generally, grand theft occurs when the value of the stolen property exceeds $950. (Penal Code §§ 487, 490.2(a).)
179 Penal Code § 487; Penal Code § 490.2(a).
180 Penal Code § 488.
181 Penal Code § 459.5(a).
182 Penal Code § 211.

The Committee recommends adding a new offense to this hierarchy: petty theft in the first degree, punished as a misdemeanor. The offense would cover any thefts from a person or commercial establishment that involved the use of force or fear but where no serious injury was caused and no deadly weapon was used.

TOTAL ROBBERIES IN CALIFORNIA



Source: California Department of Justice, *Crime in California*, Table 6 (2019).

The Committee recognizes that some purely verbal altercations can be extremely traumatizing for the victim. These offenses should be treated seriously. However, the Penal Code has other offenses that may be appropriate to apply in these scenarios, such as criminal threats,[183] which can be charged as a felony strike offense.[184]

EMPIRICAL RESEARCH

In 2016, The Pew Charitable Trusts researched the effects of changing state theft penalties and found that states that raised the dollar threshold of what constitutes a felony theft offense saw crime and larceny rates fall.[185] California's Proposition 47, which was enacted in 2016 by voter initiative and established shoplifting under $950 as a mandatory misdemeanor, had no effect on violent crime and, at worst, a small effect on property crime.[186]

183 Penal Code § 422(a).
184 Penal Code § 422(a); Penal Code § 1192.7(c)(38).
185 Adam Gelb et al., *The Effects of Changing State Theft Penalties*, The Pew Charitable Trusts (2016).
186 Bartos and Kubrin, *Can We Downsize Our Prisons and Jails Without Compromising Public Safety? Findings from California's Prop 47*, American Society of Criminology, Volume 17, Issue 3 (2018); Mia Bird, Magnus Lofstrom, Brandon Martin, Steven Raphael, and Viet Nguyen, *The Impact of Proposition 47 on Crime and Recidivism*, Public Policy Institute of California, 21 (Jun. 2018).

INSIGHTS FROM OTHER JURISDICTIONS

Most states acknowledge the wide range of behavior a person may use to steal and distinguish between offenses with different levels of seriousness. Of 15 examined states, 14 had a system of statutes that created increasingly serious degrees of robbery, based on how the offense was committed.[187]

For example, in Texas[188] and Illinois[189], the crime of pushing a store employee while shoplifting is a misdemeanor. In New York and Oregon, the same crime is a low-level felony carrying a sentence as low as probation.[190]

In Texas, a robbery conviction requires proof that the accused "intentionally, knowingly, or recklessly causes bodily injury to another" or "places another in fear of imminent bodily injury or death."[191] Similarly, Vermont's robbery statute requires some bodily injury to be inflicted for the offense to apply.[192]

187 The states are Alabama, Alaska, Arizona, Colorado, Florida, Illinois, Massachusetts, New York, Oregon, Texas, Utah, Vermont, Washington, and West Virginia. (*See* Alabama Code §§ 13A-8-41–13A-8-43; Alaska Stat. §§ 11.41.500–11.41.510; Arizona Rev. Stat. §§ 13-1902–13-1904; Colorado Rev. Stat. §§ 18-4-301–18-4-303; Florida Stat. Ann. §§ 812.13, 812.131; 720 Illinois Comp. Stat. Ann. §§ 5/18-1–5/18-6; Massachusetts Stat. Ann. Ch. 265 §§ 17-21; N.Y. Penal Law §§ 160.00–160.15; Oregon Rev. Stat. §§ 164.395, 164.405, 164.415; Texas Penal Code Ann. §§ 29.02, 29.03, 31.03; Utah Code Ann. §§ 76-6-301–76-6-302; Vermont Stat. Ann. § 608; Washington Stat. Ann. § 9A.56.190; West Virginia Code § 61-2-12.) Only Nevada had a single degree of robbery. (Nevada Rev. Ann. § 200.380.)

188 Texas Penal Code Ann. §§ 31.03(e), 12.23.

189 720 Illinois Comp. Stat. Ann. §§ 5/16-25, 5/12-3; 730 Illinois Comp. Stat. Ann. § 5/5-4.5-55.

190 Oregon Rev. Stat. §§ 164.395, 161.605.

191 Texas Penal Code Ann. § 29.02.

192 13 Vermont Stat. Ann. § 608; *State v. Francis*, 151 Vt. 296, 305 (1989).

5. Provide Guidance for Judges Considering Sentence Enhancements

Provide Guidance for Judges Considering Sentence Enhancements

RECOMMENDATION

Judges currently have authority to dismiss sentence enhancements "in furtherance of justice," but that standard has never been defined or clarified by the Legislature or courts and can be applied inconsistently.

The Committee therefore recommends the following:

1. Establish guidelines and presumptions (but not requirements) that judges should consider dismissing sentencing enhancements in furtherance of justice when:
    - The current offense is nonviolent.
    - The current offense is connected to mental health issues.
    - The enhancement is based on a prior conviction that is over five years old.
    - The current offense is connected to prior victimization or childhood trauma.
    - The defendant was a juvenile when he/she committed the current offense or prior offenses.
    - Multiple enhancements are alleged in a single case or the total sentence is over 20 years.
    - A gun was used but it was inoperable or unloaded.
    - Application of the enhancement would result in disparate racial impact.
2. Provide that the presumptions can be overcome if there is "clear and convincing evidence that dismissal of the enhancement would endanger public safety."
3. Clarify that the list is not exclusive. Judges maintain power to strike enhancements in other compelling circumstances.

RELEVANT STATUTES

Penal Code § 1385

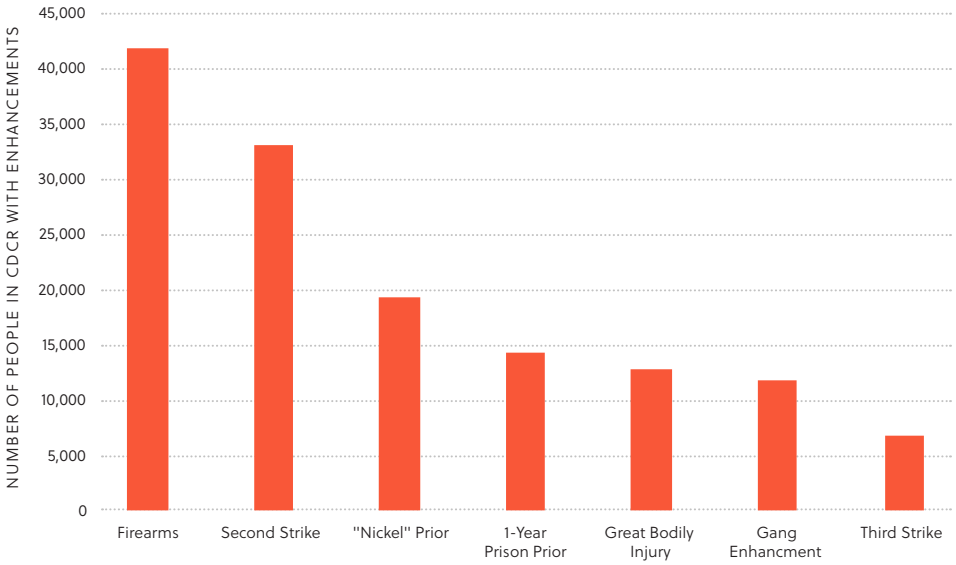
BACKGROUND AND ANALYSIS

California's Penal Code includes over 150 different sentence enhancements.[193] The vast majority of people in the state's prisons (over 80%) are serving a term lengthened by a sentence enhancement.[194] More than 25% of current prisoners are serving sentences extended by three or more enhancements.[195] On average, enhancements more than double a defendant's original sentence length.[196]

193 Data provided by CDCR Office of Research.
194 Ryken Grattet, *Sentence Enhancements: Next Target of Corrections Reform?*, PPIC Blog (Sep. 27, 2017). Between 1984 and 1991, California passed over 1,000 crime bills, many of them enhancing criminal sentences. (Michael Vitiello and Clark Kelso, *A Proposal for Wholesale Reform of California's Sentencing Practice and Policy*, 38 Loy. L.A. L. Rev. 903, 921 (2005).)
195 Ryken Grattet, *Sentence Enhancements: Next Target of Corrections Reform?*, PPIC Blog (Sep. 27, 2017).
196 Elan Dagenais, Raphael Ginsburg, Sharad Goel, Joseph Nudell, and Robert Weisberg, *Sentencing Enhancements and Incarceration: San Francisco, 2005–17*, Stanford Computational Policy Lab, 2 (Oct. 17, 2019).

The most common enhancements include extended sentences for use of a firearm, the Three Strikes law, the Street Terrorism Enforcement and Protection Act (gang enhancements), and the five-year serious felony enhancement ("nickel prior").[197]

MOST COMMON SENTENCING ENHANCEMENTS IN CALIFORNIA (2020)



Source: Source: CDCR Office of Research.*

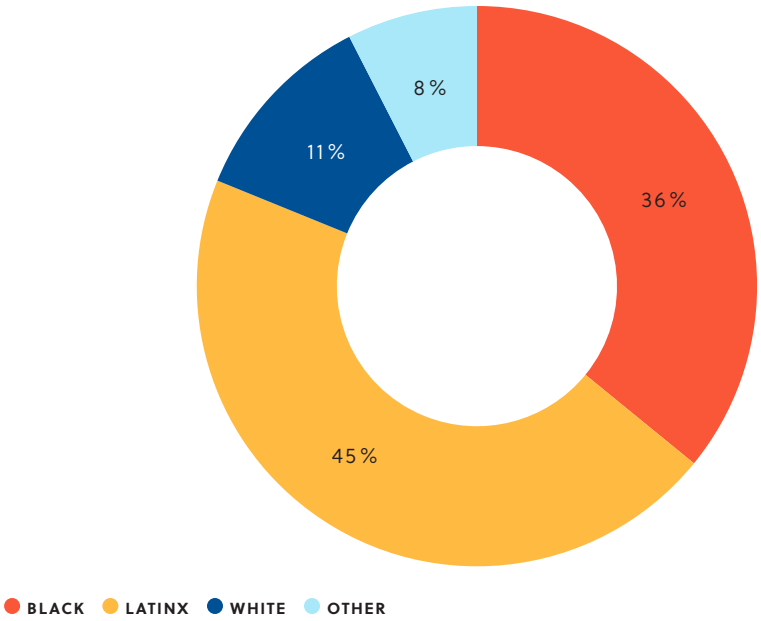
These common enhancements are applied disproportionately against people of color and people suffering from mental illness.[198] Over 92% of people sentenced to prison for a gang enhancement statewide are Black or Latinx.[199] In Los Angeles, 95% of people sentenced to prison for a gang enhancement statewide are Black or Latinx.[200] Yet, according to the Anti-Defamation League, California has a "uniquely large population of white supremacist gangs.[201] People sentenced under the Three Strikes law are also more likely to be Black and suffer from a mental illness compared to those who do not face Three Strikes sentences.[202]

When former Governor Brown addressed the Committee in September 2020, he argued that California should "get rid of all of the enhancements" or change the law so that judges are steered towards not imposing enhancements.[203]

* See Penal Code §§ 12022(a), 12022.5(a), 12022.53(b)–(d) (firearm use); 667(e)(1) (second strike); 667(a)(1) (nickel prior); 667.5(b) (1-year prison prior) (West 2018); 12022.7(a) and (e) (great bodily injury); 186.22(b)(1) (gang enhancement).

197 Data provided by CDCR Office of Research.
198 *Id. See also The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise*, Stanford Justice Advocacy Project, 1 (2017).
199 Data provided by CDCR Office of Research.
200 *Id.*
201 Anti-Defamation League, *White Supremacist Prison Gangs in the United States, A Preliminary Inventory* (2016).
202 *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise*, Stanford Justice Advocacy Project, 1 (2017).
203 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 0:17:08–0:17:55.

PERCENTAGE OF CALIFORNIA PRISON POPULATION WITH GUN ENHANCEMENT BY RACE (2020)



Source: CDCR Office of Research.

Santa Clara District Attorney Rosen testified before the Committee in September 2020 that enhancements have evolved to distort and dominate the criminal charging and sentencing process: "[W]hen I began as a prosecutor, enhancements could moderately shift the underlying sentence. Now they have become the tail that wags the dog. It's quite common now that the entire trial and all pretrial negotiations are solely about the enhancement, not the crime itself."[204]

Los Angeles District Attorney Gascón also told the Committee that enhancements were largely inappropriate, resulting in excessive sentences with "absolutely no connection to public safety."[205] One of District Attorney Gascón's first acts in office was to instruct deputy prosecutors to avoid charging enhancements in almost all cases.[206] Enhancement statutes are also arcane and opaque. Former Governor Brown said California's enhancement laws had a "tax code–like complexity."[207]

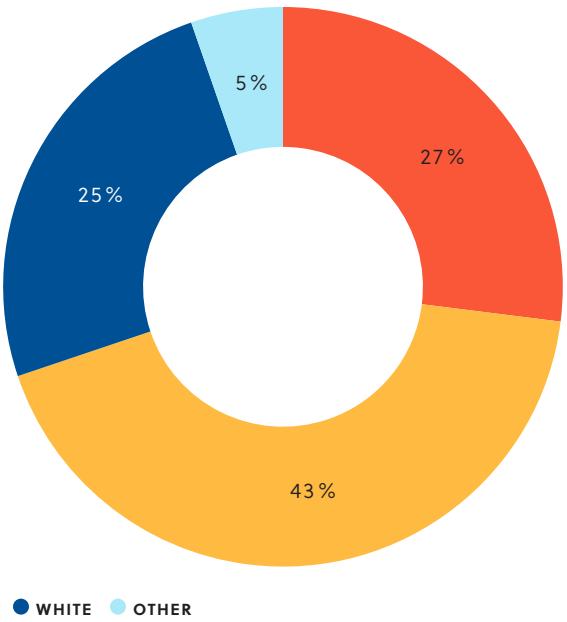
Despite prominent leaders calling for overhauls of California's sentence enhancement laws, many of the most important and commonly used enhancements — such as Three Strikes, the five-year "nickel prior," and certain gang enhancements — were enacted by voter initiative and cannot be modified by a majority vote in the Legislature.[208] As previously noted, the Committee limited itself in this report only to those recommendations that could be passed by a majority vote, so the Committee does not currently advocate for complete revision of California's enhancement laws, as misguided as they may be.

204 *Id.* at 1:05:57 to 1:06:24.
205 Committee on Revision of the Penal Code, Meeting on Nov. 13, 2020, 0:10:05–0:10:41.
206 James Queally, *On First Day as L.A. County D.A., George Gascón Eliminates Bail, Remakes Sentencing Rules*, Los Angeles Times (Dec. 7, 2020).
207 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 0:4:17–0:7:00.
208 Penal Code § 667(j).

Sentence enhancements can be dismissed by sentencing judges. The current legal standard instructs judges to dismiss a sentence enhancement when "in furtherance of justice."[209] Courts have not clarified or defined this standard, and the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an "amorphous concept."[210] As a result, this discretion may be inconsistently exercised and underused because judges do not have guidance on how courts should exercise the power.

The lack of clarity and guidance is especially concerning given demographic disparities in sentences.[211] As noted, Three Strikes sentences and gang enhancements in California are disproportionately applied against people of color.[212] People suffering from mental illness are also overrepresented among people currently serving life sentences under the Three Strikes law for nonviolent crimes.[213]

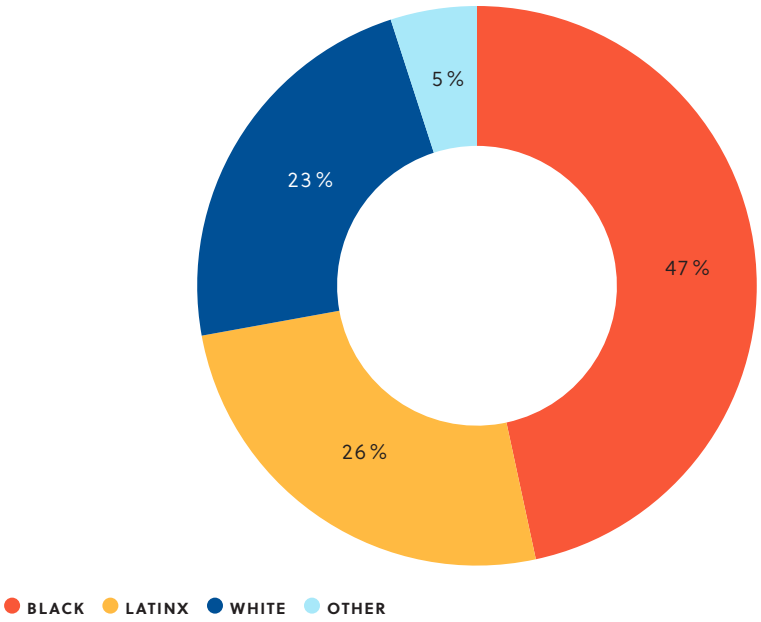
PERCENTAGE OF NONVIOLENT SECOND STRIKERS CURRENTLY IN PRISON BY RACE (2020)



Source: Data provided by CDCR Office of Research.

209 Penal Code § 1385(a).
210 *People v. Superior Court (Romero)*, 13 Cal.4th 497, 530 (1996).
211 *See, e.g.*, Josh Salman, Emily Le Coz, and Elizabeth Johnson, *Florida's Broken Sentencing System*, Sarasota Herald Tribune (Dec. 12, 2016) (exploring racial disparities in Florida's criminal sentences); The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System*, 6–8 (Mar. 2018).
212 Data provided by CDCR Office of Research. *See also Letter of California Legislative Black Caucus, Re: Proposition 57 Regulations, Notice File No. Z2017-0703-04* (Jul. 18, 2017).
213 *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise*, Stanford Justice Advocacy Project, 1 (2017).

PERCENTAGE OF THIRD STRIKERS CURRENTLY IN PRISON BY RACE (2020)



Source: CDCR Office of Research.

We appreciate that racial disparities in sentencing are hardly confined to California,[214] but they are especially concerning given the extreme prison terms required by many sentence enhancements. At minimum, lack of clarity in sentencing authority encourages subjectivity and inconsistency.

The Committee recommendation follows legal guidance provided to judges when exercising sentencing discretion in other contexts. For example, California law directs judges on how to exercise their sentencing discretion in the context of probation.[215] Furthermore, our recommendation builds on existing California Rules of Court that guide judges on what circumstances they should consider in aggravation and mitigation in imposing a felony sentence,[216] such as prior abuse, recency and frequency of prior crimes, and mental or physical condition of the defendant.[217] The Committee recommendations are also informed by the California Surgeon General's recent annual report, which recommends that the criminal legal system implement policies and practices that address trauma in justice-involved youth and adults.[218]

Finally, the Committee believes that judges should retain authority to impose sentence enhancements in appropriate cases. The Committee's recommendation leaves to judges the authority to impose sentence enhancements to protect public safety. But providing guidance on how and when judges should evaluate the appropriateness of sentence enhancements would provide more consistency, predictability, and reductions in unnecessary incarceration while ensuring that punishments are focused on protecting public safety.

214 *See* Bergeron, et al., *How a Spreadsheet Could Change the Criminal Justice System*, The Atlantic (Dec. 14, 2020). *See also* Elizabeth Tsai Bishop, Brook Hopkins, Chijindu Obiofuma, and Felix Owusu, *Racial Disparities in the Massachusetts Criminal System*, The Criminal Justice Policy Program, Harvard Law School, 64 (Sep. 2020).
215 *See, e.g.*, Penal Code §§ 1170(h)(5)(A); 1203(e); California Rule of Court 4.415 provides further guidance to judges when applying this presumption.
216 California Rules of Court, Rules 4.421 and 4.423.
217 California Rules of Court, Rules 4.423(a)(9), 4.423(b)(1), and 4.423(b)(2).
218 Harris, et al., *Roadmap for Resilience: The California Surgeon General's Report on Adverse Childhood Experiences, Toxic Stress, and Health*, Office of the California Surgeon General (2020).

EMPIRICAL RESEARCH

There is a broad consensus among academic studies of decades of nationwide crime and incarceration data concluding that long sentences have little or no public safety value. As Professor Steven Raphael wrote, "[t]here is very little evidence of an impact of extremely harsh punishments (that is, longer sentences, capital punishment) on the levels of the crimes they are intended to deter."[219] Professor Raphael also noted people sentenced by harsher judges had higher recidivism rates than people sentenced by more lenient judges.[220]

Other studies show that a person's criminal involvement tends to be limited to a period of less than 10 years.[221]

INSIGHTS FROM OTHER JURISDICTIONS

The most common type of sentencing enhancement across other jurisdictions are enhancements based on prior convictions, including Three Strikes and habitual offender statutes.

Many of these states have restrictions on the use of these enhancements. For example, out of 20 jurisdictions examined by the Committee,[222] 12 have cut-off dates or "wash-out" provisions, after which criminal history no longer counts for purposes of increasing the length of some sentences. Florida, Illinois,[223] Michigan, Delaware, and the District of Columbia have 10-year cut-offs for counting most prior felony offenses.[224] Arkansas, Minnesota, and the federal government[225] have a cut-off for counting most felony priors at 15 years, and for misdemeanor priors at 10 years.[226] In Arizona, defendants are subject to a longer sentence for a new felony conviction if they committed certain felonies within the past five years or more serious felonies within the past 10 years.[227] Similarly, Washington has a five-year wash-out period for enhanced sentences based on most prior offenses and a 10-year wash-out period for more serious felony priors.[228]

219 Steven Raphael and Michael A. Stoll, *Why Are So Many Americans in Prison?*, 222 (2013). *See also* National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press, 134-140 (2014).

220 Written Submission of Professor Steven Raphael to Committee on Revision of the Penal Code, 5 (Jun. 26, 2020) (explaining research in Anna Aizer and Joseph J. Doyle, *Juvenile Incarceration, Human Capital, and Future Crimes: Evidence from Randomly Assigned Judges*," Quarterly Journal of Economics, 130(2): 759–803 (2015) and Michael Mueller-Smith, *The Criminal and Labor Market Impacts of Incarceration*, University of Michigan Working Paper (2015).).

221 Alex R. Piquero, J. David Hawkins, Lila Kazemian, and David Petechuk, *Bulletin 2: Criminal Career Patterns (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)*, (2013).

222 The states examined in addition to the federal system were Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, and Washington.

223 In Illinois, judges have discretion to subject people to "extended term sentencing" — a longer sentence based on certain factors — one of which is if they had a prior conviction within the last 10 years. (730 Illinois Comp. Stat. § 5/5-5-3.2(b)(1).)

224 4 Delaware Sentencing Accountability Comm'n Benchbook 25 (2020); D.C. Voluntary Sentencing Guidelines Manual § 2.2.3 (2020); Florida Crim. Punishment Code: Scoresheet Preparation Manual 10 (2019); Michigan Sentencing Guidelines Manual Step.1.D (2020).

225 To calculate criminal history for federal offenses, every prior sentence of one year and a month within the last 15 years counts, as does every sentence of imprisonment of 60 or more days within the last 10 years. (United States Sentencing Guidelines Manual § 4A1.2 (2020).)

226 Arkansas Sentencing Standards Grid Offense Serious Rankings &. Related Material 102-03 (2017); Minnesota Sentencing Guidelines §§ 2.B.1.c and 2.B.3.e (2020).

227 Arizona Rev. Stat. § 13-105(22)(b),(c); § 13-703(B)(C).

228 Washington State Adult Sentencing Guidelines Manual 53-54 (2020). Prior Class A and felony sex convictions are always counted for criminal history purposes. (*Id.*)

6. Limit Gang Enhancements to the Most Dangerous Offenses

Limit Gang Enhancement to the Most Dangerous Offenses

RECOMMENDATION

Gang enhancements are applied inconsistently and disproportionately against people of color, and fail to focus on the most dangerous, violent, and coordinated criminal activities.

The Committee therefore recommends the following:

1. Focus the definition of "criminal street gang" to target organized, violent enterprises.
2. Remove nonviolent property crimes from the list of predicate gang-related felonies.
3. Require the defendant to know the person responsible for any predicate gang-related offense.
4. Prohibit use of the current offense as proof of a "pattern" of criminal gang activity.
5. Require direct evidence of current and active gang involvement and violence, and limit expert witness testimony.
6. Bifurcate direct evidence of gang involvement from the guilt determination at trial.

RELEVANT STATUTES

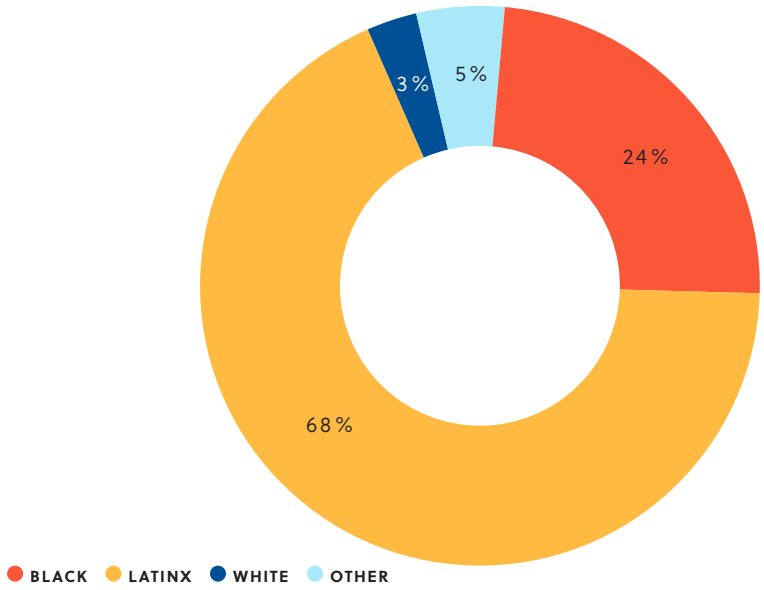
Penal Code § 186.22

BACKGROUND AND ANALYSIS

As previously noted, Black and Latinx people comprise 92% of the people sentenced under California's gang enhancement statute.[229] The racial disparity is even starker in the state's largest jurisdiction: Over 98% of people sentenced to prison for a gang enhancement in Los Angeles are people of color.[230] Yet research shows that white people make up the largest group of youth gang members.[231] It is difficult to imagine a statute, especially one that imposes criminal punishments, with a more disparate racial impact.

229 Data provided by CDCR Office of Research.
230 *Id.*
231 Judith Greene and Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*, Justice Policy Institute (2007).

PERCENTAGE OF PEOPLE CURRENTLY IN PRISON WITH GANG ENHANCEMENTS BY RACE (2020)



Source: CDCR Office of Research.

California's gang enhancement can result in life sentences and may apply to crimes as minor as misdemeanors.[232] The law was originally enacted in 1988 as the Street Terrorism Enforcement and Prevention (STEP) Act to "seek the eradication of criminal activity by street gangs."[233] The law was controversial from the start. Then-member of the Legislature and future Attorney General Bill Lockyer went so far as predicting the law would be "laughed out of court."[234] But proponents of the law promised the enhancement would only apply when "the provable purpose of the gang is to commit serious and violent crime, and it can be shown that a gang member knew that was the gang's purpose when he joined."[235]

At the time, the Legislature asserted that California was "in a state of crisis ... caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods."[236] As originally enacted, the Act aimed to eliminate gangs by creating a three-year enhancement for gang-related offenses.[237] Since then, the scope of the enhancement and severity of related punishments have greatly expanded.

Lawmakers, courts, and voters who enacted Proposition 21 in 2000 have increased the penalties that accompany the enhancement and broadened its application. Not only were punishments made longer, but it became easier to charge gang enhancements. This is because the list of predicate offenses, which must be established to prove the existence of a gang, has also ballooned and includes many nonviolent offenses.[238] Under current law, a person charged with a gang enhancement does not even have to know the person responsible for predicate offenses.[239]

232 Penal Code §§ 186.22(b)(4)(C) & (d). Gang enhancements now add five years for a serious felony and 10 years for a violent felony. (Penal Code § 186.22(b).)
233 Penal Code § 186.21.
234 Martin Baker, *Stuck in the Thicket: Struggling with Interpretation and Application of California's AntiGang STEP Act*, 11 Berkeley J. Crim. L. 101, 102 (2006) (quoting *Criminal Street Gang Bill Passes Committee*, Eagle Rock Sentinel (Jun. 27, 1987).)
235 *Id.* at 101.
236 *Id.*
237 Penal Code § 186.22(b) (1988).
238 Penal Code § 186.22(e)(1)-(33).
239 *People v. Prunty*, 62 Cal.4th 59, 67–68 (2015).

The racially disproportionate application of gang enhancements is particularly concerning. Director of Systemic Issues Litigation at the Office of the State Public Defender Lisa Romo explained to the Committee in September 2020: "Although social science tells us [gang] members come in all races and all ethnicities, law enforcement officers are taught that gang members are people of color. This means that communities of color are overpoliced, and white gang members can pass."[240] Civil Rights attorney Sean Garcia-Leys testified to the Committee that police often have difficulties knowing the difference between active gang members, former gang members, and people who are non-members but are "meshed in a gang social network by virtue of family and neighborhood."[241]

Another problem with gang enhancements is that the evidence considered in court can be unreliable and prejudicial to a jury. San Joaquin County Deputy District Attorney Kevin Rooney, who specializes in gang prosecutions, agreed that bifurcating evidence of gang involvement from evidence related to the underlying charges would reduce the risk of unfairly prejudicing juries and convicting innocent people.[242] Empirical research corroborates this assessment.[243] Studies show that even merely associating an accused person with a gang makes it more likely that a jury will convict them.[244]

The Committee acknowledges that revising the gang enhancement presents special challenges. Because the law was amended by Proposition 21 in 2000, some aspects of the law can only be changed by another voter initiative or a two-thirds vote in the Legislature. As discussed in the introduction, the Committee decided to not make any recommendations that would require a supermajority vote of the Legislature. The recommendations in this section therefore require only a majority vote because they do not involve aspects of the gang enhancement statute enacted by Proposition 21.

EMPIRICAL RESEARCH

Recent studies reveal the unreliability of gang evidence. For example, the California Attorney General's 2019 Annual Report on CalGang, the statewide intelligence database used by law enforcement to track purported gang members, found that the demographics of those entered into the database were 65% Latinx, 24% Black, and 6% white.[245] Yet evidence indicates that white people make up the largest group of youth gang members.[246] Indeed, recent reports, including an audit by the Los Angeles Police Department, found that the CalGang database includes unreliable and false information.[247]

Survey data from California indicates that youth of different ethnicities self-identify as gang members at similar rates to each other.[248] In 2015, the Anti-Defamation League found that California has a "uniquely large population of white supremacist gangs (from skinhead gangs to street gangs),"[249] and a recent sting by federal authorities of members of the Aryan Brotherhood confirms that white gangs remain extremely active in the state.[250]

As noted, this problem is not limited to California. In Chicago, the police department's gang database found that 95% of the 65,000 individuals listed in it are Black or Latinx.[251] In Mississippi, a recent report found that every person arrested under the state's gang law between 2010 and 2017 was Black, even though the state's Association of Gang Investigators reports that 53% of the state's gang members are white.[252]

240 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 0:52:22–0:52:44.

241 *Id.* at 1:04:02–1:04:45. Scholars have also questioned law enforcement's ability to accurately identify gang members. (Malcolm W. Klein, *What Are Street Gangs When They Get to Court?*, 31 Val. U.L. Rev. 515, 516 (1997).)

242 Deputy District Attorney Rooney was generally supportive of the gang enhancement, though he noted that it could be improved in certain areas including bifurcating trials. (Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 1:16:32–1:17:09.)

243 Mitchell L. Eisen, Dayna M. Gomes, Lindsey Wandry, and David Drachman, *Examining the Prejudicial Effects of Gang Evidence,* 13 J. Forensic Psychol. Pract. 1 (2013); Mitchell L. Eisen, Brenna Dotson, and Gregory Dohi, *Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?*, 62 UCLA Law Review Discourse 2 (2014).

244 Mitchell L. Eisen, Mitchell L. Eisen, Dayna M. Gomes, Lindsey Wandry, and David Drachman, *Examining the Prejudicial Effects of Gang Evidence,* 13 J. Forensic Psychol. Pract. 1 (2013); Mitchell L. Eisen, Brenna Dotson, and Gregory Dohi, *Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?*, 62 UCLA Law Review Discourse 2 (2014).

245 Attorney General's Annual Report on CalGang for 2019.

246 Judith Greene and Kevin Pranis, *Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies,* Justice Policy Institute, 37-38 (2007).

247 Los Angeles Police Department Intradepartmental Correspondence 1.14, Re: Review of CalGang Database Entries by the Metropolitan Division and the Gang Enforcement Details (Jul. 10, 2020) (audit limited to LAPD gang entries); Richard Winton, *California Gang Database Plagued with Errors, Unsubstantiated Entries, State Auditor Finds*, Los Angeles Times (Aug. 11, 2016).

248 Data collected and published by the California Healthy Kids Survey (CHKS) and Biennial State CHKS and compiled by the Lucile Packard Foundation for Children's Health, available at the CHKS website. *See also* Todd C. Hiestand, *Gang Membership, Duration, and Desistance: Empirical Literature Review,* DOJ Research Center (2018).

249 Anti-Defamation League, *White Supremacist Prison Gangs in the United States, A Preliminary Inventory* (2016).

250 Nate Gartrell, *'Build an army': Aryan Brotherhood Leaders Attempted to Rule Over All White California Prison Gangs, Feds Say*, The Orange County Register (Sep. 1, 2019).

251 Odette Yousef, *Activists: Gang Database Disproportionately Targets Young Men of Color*, NPR (Jan. 27, 2018).

252 Donna Ladd, *Only Black People Prosecuted Under Mississippi Gang Law Since 2010*, Jackson Free Press (Mar. 29, 2018).

INSIGHTS FROM OTHER JURISDICTIONS

All 50 states and the District of Columbia have enacted some form of anti-gang measures.[253]

But in comparison to California, other states require more evidence of connection or organization between gang members for gang enhancements to apply. For example, in Illinois, to qualify as a criminal street gang, it must be shown that a group has "an established hierarchy."[254] In Arkansas, a person commits the offense of engaging in a criminal gang when they commit two or more predicate offenses "in concert" with two or more other persons.[255] In Maryland, a "criminal organization" is required to have an "organizational or command structure,"[256] and to convict a person of participating in a criminal organization, the prosecution must prove the defendant had knowledge of the pattern of criminality of members of the gang.[257]

Other state courts have treated expert witness testimony about an accused's gang membership with caution and required such testimony to be closely connected to direct evidence. For example, the Minnesota Supreme Court has warned "that criminal gang involvement is an element of the crime does not open the door to unlimited expert testimony," and gang activity must therefore be proven by "firsthand knowledge."[258] New Mexico's Supreme Court reached a similar result.[259]

At least three states (Indiana, Tennessee, and Rhode Island) require gang enhancements to be proven in a separate phase of trial.[260]

253 *Highlights of Gang-Related Legislation*, National Gang Center.
254 740 Illinois Code Stat. § 147/10.
255 Arkansas Code Ann. § 5-74-104(a)-(b).
256 Maryland Crim. Law § 9-801.
257 Maryland Crim. Law § 9-804(a)(1); *Madrid v. State*, 247 Maryland. App. 693 (2020).
258 *State v. DeShay*, 669 N.W.2d 878, 885 (2003).
259 *State v. Torrez*, 146 N.M. 331, 339 (2009).
260 Rhode Island Stat. § 12-19-39(a)-(d); Indiana Stat. § 25-50-2-15(c); Tennessee Stat. § 40-35-121(h)(1).

7. Retroactively Apply Repealed Sentence Enhancements

Retroactively Apply Repealed Sentence Enhancements

RECOMMENDATION

In recent years, the Legislature eliminated certain sentence enhancements in Senate Bills 136 (2017) and 180 (2019), but these reforms apply only to new cases.

The Committee therefore recommends the following:

1. Retroactively apply the elimination of sentence enhancements enacted in SB 136 and SB 180.

2. Automatically remove these enhancements without requiring court action for the new sentence, and do not limit how many enhancements can be removed per person.

3. Prevent renegotiation of plea bargains.

RELEVANT STATUTES

Penal Code § 667.5(b)
Health & Safety Code § 11370.2

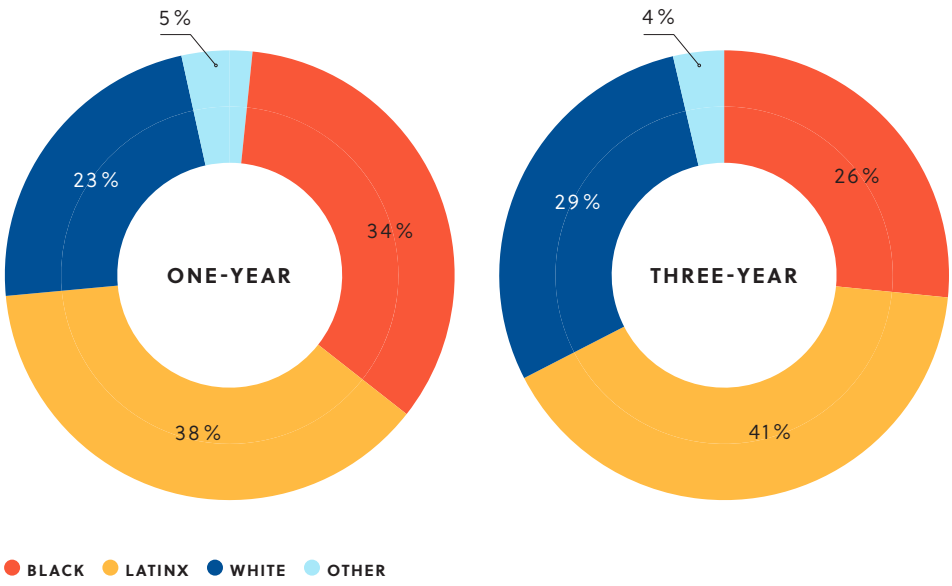
BACKGROUND AND ANALYSIS

In 2017 and 2019, the Legislature repealed sentencing enhancements that added one year of incarceration to a defendant for each prior prison or jail term he or she previously served and added three years to a sentence for some prior drug convictions.[261] These reforms apply prospectively only to new cases filed after SB 136 and SB 180 became law. Most people already serving time for these enhancements did not benefit from the change in the law.[262]

As with other sentence enhancements discussed above, the enhancements eliminated by SB 136 and SB 180 were disproportionately applied against people of color. As the author of SB 136, Sen. Scott Weiner, stated, "This injustice undermines the public trust in our laws, law enforcement, and our political institutions."[263] The Los Angeles Times editorial page also supported the repeal of this one-year enhancement as "good lawmaking in that it would roll back foolish lawmaking."[264]

261 Health & Safety Code § 11370.2; Penal Code § 667.5(b).
262 Penal Code § 3; *People v. McKenzie*, 9 Cal.5th 40 (2020); *In re Estrada*, 63 Cal.2d 740, 744 (1965); *People v. Chamizo*, 32 Cal.App.5th 696, 700–01 (2019) (SB 180).
263 Sen. Com. On Public Safety, Analysis of Sen. Bill No. 136 (2019–2020 Reg. Sess.) 2 (Mar. 26,2019).
264 Los Angeles Times Editorial Board, *Editorial: It's Time to Take Politics out of Sentence Enhancements*, Los Angeles Times (July 20, 2019). *See also* Michelle Alexander, *Op-Ed: Michelle Alexander: Sentence 'Enhancement' for Drug Offenders Is a Tool of Community Destruction*, Los Angeles Times (May 9, 2016).

PERCENTAGE OF PEOPLE CURRENTLY IN PRISON WITH ONE- AND THREE-YEAR SENTENCE ENHANCEMENTS BY RACE (2020)



Source: CDCR Office of Research.

It is difficult to justify a sentence that is longer than someone's else's merely because it was imposed at a slightly different date. California has offered retroactive application for some of its most significant sentencing reforms: People serving life sentences under the Three Strikes law could seek resentencing under Proposition 36, people with certain felony convictions could be resentenced under Proposition 47, and marijuana convictions could be modified or vacated under Proposition 64.[265] Recent reforms to the felony murder rule were also given retroactive application.[266] The same principle should apply here.

EMPIRICAL RESEARCH

Research has shown that modest reductions in sentences, as recommended here, have no public safety impact. In 2018, the United States Sentencing Commission studied retroactive application of reductions to federal drug sentences, which resulted in an average reduction of 30 months for more than 7,500 people with no measurable impact on recidivism rates.[267] Another United States Sentencing Commission study on other retroactive sentence reductions had similar findings.[268]

Additional research on the federal system shows that "average length of stay can be reduced by 7.5 months with a small impact on recidivism."[269] A similar analysis of the prison populations in Maryland, Michigan, and Florida concluded that a sentence reduction of three to 24 months would have produced minimal public safety impacts for a significant portion of the prison population.[270]

265 Penal Code § 1170.126; Penal Code § 1170.18; Health & Safety Code § 11361.8.
266 Penal Code § 1170.95.
267 United States Sentencing Commission, *Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions*, 1, 3 (Mar. 2018); United States Sentencing Commission, *Retroactivity & Recidivism: The Drugs Minus Two Amendments*, 1 (Jul. 2020).
268 United States Sentencing Commission, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*, 14–15 (May 2014).
269 William Rhodes, Gerald G. Gaes, Ryan Kling, and Christopher Cutler, *Relationship Between Prison Length of Stay and Recidivism: A Study Using Regression Discontinuity and Instrumental Variables with Multiple Break Points*, Criminal Public Policy 17:731–69, 758–759 (2018).
270 *Time Served: The High Cost, Low Return of Longer Prison Terms*, The Pew Center on the States, 35–38 (2012).

INSIGHTS FROM OTHER JURISDICTIONS

As noted, after a change to the Federal Sentencing Guidelines in 2011, more than 7,500 people incarcerated in federal prison for some drug offenses received an average sentence reduction of 30 months without impacting recidivism rates.[271]

Between 2004 and 2009, New York State retroactively reduced sentences for drug offenses and allowed more than 1,500 people to be resentenced.[272] Analysis of the first cohort resentenced showed a low recidivism rate: About 4% of people returned to prison for a new offense within three years of release, compared to a return rate of 11% for people convicted of drug offenses who were released without being resentenced.[273]

In New Jersey, the state Sentencing and Disposition Commission recommended that their changes to sentencing law for nonviolent drug and property offenses be applied retroactively.[274]

The Kansas Sentencing Commission is also considering a recommendation that would allow for early release of people convicted of certain drug offenses.[275]

Delaware reformed its Three Strikes law in 2016 and allowed people convicted under the old version of the law to apply for sentence modification.[276]

In 2012, the Maryland Supreme Court ruled that an error in jury instructions should have retroactive effect, which resulted in more than 200 people who had received long or life sentences being released from prison.[277] Only seven of these people have had parole violations or reconviction since release.[278]

ADDITIONAL CONSIDERATIONS

- Because both of these sentencing enhancements have been repealed in almost all cases, it would waste court, prison, and prosecutorial resources to involve courts in removing each enhancement. Instead, the Legislature should create a mechanism that would allow sentences with these enhancements to be reduced without returning to court, including a clear deadline for when the removal of the sentencing enhancements must be completed.

- Because the enhancements at issue here were widely used and 97% of felony cases are resolved with a guilty plea,[279] retroactive elimination of these enhancements could invite significant relitigation of resolved cases. To remove any doubt, the Legislature should specify that removing these sentencing enhancements is not a basis for disturbing plea bargains.[280]

271 United States Sentencing Commission, *Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions*, 1 (Mar. 2018).
272 "'After the reforms, 1,697 inmates applied to be resentenced, and 1,630 were released,' said Linda Foglia, the state Department of Corrections spokeswoman." (Bob Fredericks, *Just 67 Inmates Still Doing Time Under Rockefeller Drug Laws*, New York Post (Jul. 17, 2015).)
273 William Gibney, *Drug Law Resentencing: Saving Tax Dollars With Minimal Community Risk*, Legal Aid Society, 8 (Jan. 13, 2010).
274 New Jersey Sentencing and Disposition Commission, *Annual Report*, 24–26 (Nov. 2019). Relevant legislation was approved by the New Jersey legislature but is awaiting action by the governor. (Tracey Tulley, *It Was a Landmark Crime Bill. Then a State Senator Added a Special Favor*, New York Times (Dec. 17, 2020).)
275 Minutes of the Kansas Sentencing Commission Zoom Meeting, 2 (Nov. 19, 2020).
276 Jorge Renaud, *Eight Keys to Mercy: How to Shorten Excessive Prison Sentences*, Prison Policy Initiative, 5 (Nov. 2018); 11 Del. Code § 4214(f).
277 Michael Millemann Rebecca Bowman Rivas, and Elizabeth Smith, *Digging Them Out Alive*, 25 Clinical L. Rev. 365, 367–69 (2019).
278 Justice Policy Institute, *The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars*, 17 (Nov. 2018). Committee staff obtained the latest recidivism information in November 2020 from a Maryland public defender who is tracking it.
279 Judicial Council of California, *Court Statistics Report, Statewide Caseload Trends, 2009–10 through 2018–19*, 85.
280 *Stamps*, 9 Cal. at 703 (Legislature "may bind the People to a unilateral change in a sentence without affording them the option to rescind the plea agreement" (citation omitted)).

8. Equalize Custody Credits for People Who Committed the Same Offenses, Regardless of Where or When They Are Incarcerated

Equalize Custody Credits for People Who Committed the Same Offenses, Regardless of Where or When They Are Incarcerated

RECOMMENDATION

People who committed the same crimes and have the same criminal histories receive different amounts of good conduct credits depending on whether they are housed in county jail, state prison, or state hospitals.

The Committee therefore recommends the following:

1. Equalize good conduct credits between jail, prison, and state hospitals.

2. Retroactively apply good conduct credits implemented by CDCR pursuant to Proposition 57 and toward youth offender and elderly parole dates.

RELEVANT STATUTES AND REGULATIONS

Penal Code § 4019
15 CCR § 3043.2

BACKGROUND AND ANALYSIS

Most people incarcerated in county jails and prisons are eligible to earn "good conduct credits" which take time off their sentence if they follow institutional rules. But current law awards differing credits to different people, based solely on where they are incarcerated. For example, someone serving time on a violent offense who follows institutional rules currently earns 20% off their sentence if they are housed in state prison, but only 15% off if incarcerated in a county jail.[281] Someone who is found incompetent to stand trial and is confined to a state hospital does not get *any* good conduct credit,[282] which means that they may be incarcerated longer than someone whose offense was not related to mental illness.

"GOOD CONDUCT" CREDITS IN CALIFORNIA JAILS AND PRISONS

CONVICTION TYPE	JAIL	PRISON
Nonviolent offense with no prior strike conviction	50%	50%
Nonviolent offense with a prior strike conviction	50%	33.3%
Violent offense	15%	20%

Source: Penal Code §§ 4019, 4019.1, 4019.4; 15 CCR §§ 3043.2, 3043.3, 3043.4, 3043.5.

281 *Compare* 15 CCR § 3043.2(a)(2) (20% in prison) *with* Penal Code § 2933.1(c) (15% in jail).
282 Penal Code § 4019(a)(8) (limiting good conduct credits for people found incompetent to stand trial to those confined only to "county jail treatment facilit[ies]"); *People v. Waterman*, 42 Cal.3d 565, 571 (1986).

Almost every incarcerated person can potentially benefit from good conduct credits. This means that equalizing credits between custody settings – even if the changes are small – could have a profound effect on the amount of overall incarceration and on the state budget.[283] For example, if nonviolent "second strikers" (people with a prior strike offense currently in prison for a nonviolent offense) earned the same credit in prison that they earned while in jail, each person would serve almost two less months per year in prison. As of June 2019, there were more than 18,000 nonviolent second strikers in CDCR custody.[284] If this group of people were allowed to earn the same credits for good conduct as other people convicted of nonviolent offenses, the cumulative impact would be approximately 3,000 fewer years of incarceration annually.[285]

Good conduct credits also incentivize positive rehabilitative programming and positive institutional behavior. In July 2020, James King appeared before the Committee to describe how increased credit eligibility by CDCR greatly increased the number of people in prison registering for educational, vocational, and rehabilitation programs, including drug treatment and victim awareness.[286]

"EARNED" CREDITS IN CALIFORNIA JAILS AND PRISONS

JAIL	PRISON
All earned credits capped at six weeks per year	Milestone Completion Credits: Up to 12 week reduction per year for various academic, vocational, or rehabilitative goals
	Rehabilitative Achievement Credits: Up to 40 day reduction per year for various self-help and public service activities
	Education Merit Credits: 180 day reduction for earning high school diploma and other educational achievements

Source: Penal Code § 4019.4; 15 CCR §§ 3043.3, 3043.4, 3043.5.

Part of the reason why prison and jail credits do not match is because credits in jail settings are determined by the Penal Code and prison credits are set by CDCR regulations. CDCR was given authority over credit rules with the passage of Proposition 57 in 2016. As a result of these dual sources of authority, there is no single body considering the credit-earning rules for each setting, and similarly situated people can receive less good conduct credit simply because of a difference in their custodial setting. As the California Supreme Court has acknowledged, in some cases, there are perverse incentives to delay transfer to prison and stay longer in county jail where there may be fewer services but better credit opportunities.[287]

There are also limits on how CDCR applies good conduct credits, depending on a person's date of incarceration or how old they are. First, CDCR increased the credit-earning capacity for many people in its custody after the effective date of Proposition 57, but those rules only applied prospectively as of May 1, 2017.[288] Second, CDCR

283 Allison Lawrence, *Cutting Corrections Costs: Earned Time Policies for State Prisoners*, National Conference of State Legislators, 1 (Jul. 2009); *Department of Corrections: Administration of Earned Time*, Oregon Secretary of State Audit Report, 1, 15 (Dec. 2010).
284 CDCR Office of Research, *Offender Data Points — Offender Demographics for the 24-Month Period Ending June 2019*, Table 1.22 (Oct. 2020).
285 Data provided by CDCR Office of Research.
286 Written Submission of James King to Committee on Revision of the Penal Code, 2 (Jul. 23, 2020).
287 *People v. Thomas*, 21 Cal.4th 1122, 1126 (1999).
288 CDCR, *CDCR Issues Amended Proposition 57 Regulations*, News Release (Nov. 19, 2017).

conduct credits implemented following Proposition 57 do not currently apply when calculating parole hearings dates for people eligible for youth or elderly parole.[289]

While applying these credits to anyone who would be eligible – regardless of age or date of incarceration – may present technical administrative challenges at CDCR, the Committee reiterates its belief that peoples' sentences and length of incarceration should not depend on the date they were convicted. We also reiterate that fundamental fairness demands that reforms with prospective application should generally be applied retroactively as well.

EMPIRICAL RESEARCH

Studies of credit-earning systems in other states have shown that recidivism outcomes are not different for people who receive credits and end up serving less time incarcerated.[290] Other research has shown that people who have the opportunity to earn time off a sentence have fewer disciplinary violations.[291]

INSIGHTS FROM OTHER JURISDICTIONS

The Model Penal Code recommends that good conduct credits be available to all incarcerated people at the same rate, regardless of the nature of their offense and where they are incarcerated.[292]

Different credits for the same people in jail and prison also present significant constitutional issues. More than twenty years ago, Washington state was found to have violated the federal Equal Protection Clause by offering different amounts of good conduct to people while they were in jail or prison.[293] California state courts have found equal protection violations in similar situations,[294] as has the Montana Supreme Court.[295]

In 2017, Louisiana retroactively applied changes to good conduct credits, which led to a 45% increase in the number of people released because of their good conduct credits.[296]

The federal system also recently made some good conduct credits retroactive, which led to the accelerated release of 3,100 people in July 2019, even though the change in credits was modest and amounted only to an extra week off a year.[297]

289 Penal Code § 3051(b).
290 *See* N.Y. Dept. of Corr. Services., *Merit Time Program Summary: October 1997–December 2006*, I–iii (2007); E.K. Drake, R. Barnoski, and S. Aos, *Increased Earned Release From Prison: Impacts of a 2003 Law on Recidivism and Crime Costs, Revised*, Washington State Institute for Public Policy, 1, 7–8 (Apr. 2009).
291 William D. Bales and Courtney H. Miller, *The Impact of Determinate Sentencing on Prisoner Misconduct*, Journal of Criminal Justice 40, 401–402 (2012).
292 Model Penal Code: Sentencing § 11.01, Comment (b).
293 *MacFarlane v. Walter*, 179 F.3d 1131 (9th Cir. 1999), judgment vacated and dismissed as moot, *Lehman v. MacFarlane*, 529 U.S. 1106 (2000).
294 *See e.g., People v. Raygoza*, 2 Cal.App.5th 593, 602 n.4 (2016); *People v. Mobley*, 139 Cal.App.3d 320, 323 (1983); *People v. Lapaille*, 15 Cal.App.4th 1159, 1168–70 (1993); *People v. Sage*, 26 Cal.3d 498, 507 (1980).
295 *MacPheat v. Mahoney*, 299 Mont. 46, 53 (2000).
296 Louisiana Dept. of Public Safety & Corrections, Louisiana Commission on Law Enforcement, *Louisiana's Justice Reinvestment Reforms First Annual Performance Report*, 16, 42 (Jun. 2018). The spike in releases was caused by the "retroactive nature of some of the policies." (Louisiana Dept. of Public Safety & Corrections, Louisiana Commission on Law Enforcement, *Louisiana's Justice Reinvestment Reforms 2019 Annual Performance Report*, 14 (Jun. 2012).)
297 The United States Department of Justice, *Department of Justice Announces the Release of 3,100 Inmates Under First Step Act, Publishes Risk and Needs Assessment System* (Jul. 19, 2019); Ames Grawert, *What Is the First Step Act — And What's Happening With It?*, Brennan Center for Justice (Jun. 23, 2020).

9. Clarify Parole Suitability Standards to Focus on Risk of Future Violent or Serious Offenses

Clarify Parole Suitability Standards to Focus on Risk of Future Violent or Serious Offenses

RECOMMENDATION

The statutes and regulations governing the parole release determinations by the Board of Parole Hearings (BPH) are not consistent with each other.

The Committee therefore recommends the following:

1. Clarify that the definitions of "danger to society" and "danger to public safety" mean "imminent risk that the parole candidate will commit a serious or violent felony if released."

2. Establish a rebuttable presumption that a parole candidate is suitable for release (i.e., does not present an imminent risk to commit a serious or violent felony) if one or more of the following factors are true:

    - The commitment offense was nonviolent.
    - The commitment offense has a connection to mental illness.
    - The parole candidate is designated low-risk on a CDCR or BPH risk assessment.
    - The parole candidate has no violent prison rule violations in the past three years.
    - The parole candidate has average or above average performance in programming in the past three years.
    - The parole candidate's criminal system involvement resulted from retaliation against an abuser or was a result of prior victimization, abuse, or trauma.

3. Specify that the presumption can be overcome if parole hearing officers nonetheless determine that the parole candidate presents an imminent risk to commit a serious or violent felony if released.

4. Specify that failure to qualify for one or more of the presumptions listed above shall not be construed as a checklist of prerequisites for a grant of parole.

5. Specify that a parole candidate's failure to complete any recommended program or work assignment that is unavailable to them cannot be a basis for denial of parole.

6. Provide that, if parole release is denied, parole hearing officers may recommend housing with appropriate programming within CDCR.

7. Provide that parole hearing officers consider whether a parole candidate's risk can be mitigated outside of prison, such as by mandating a halfway house, substance abuse treatment, mental health treatment, or other appropriate conditions. This release option is not intended to become BPH's default decision.

8. Increase the standard for judicial review of parole decisions to "abuse of discretion," and specify that a court can order a new hearing or grant release as the case may warrant.

9. Increase the data that BPH releases to the public.

RELEVANT STATUTES AND REGULATIONS

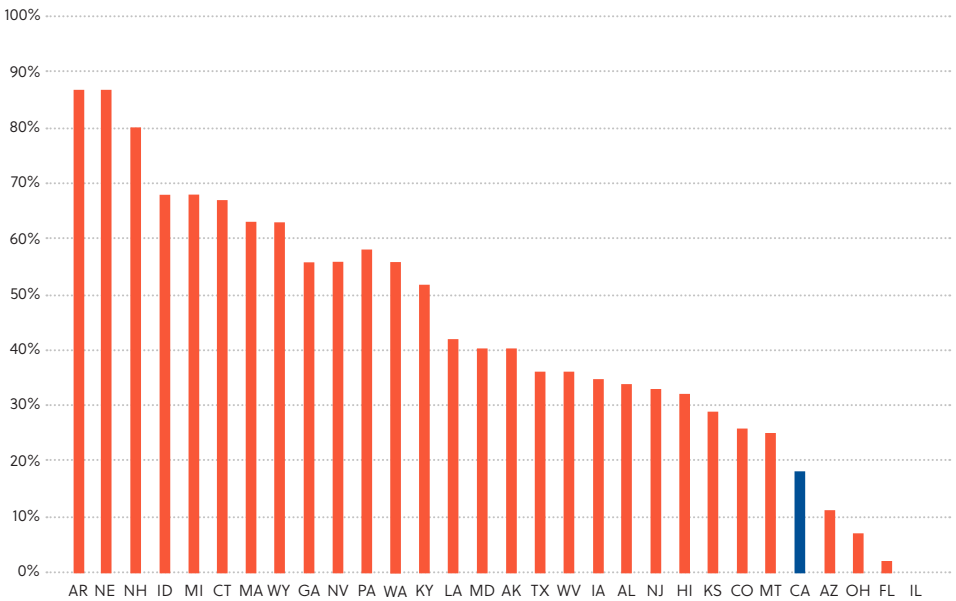
Penal Code § 3041(a) & (b)
15 CCR § 2281

BACKGROUND AND ANALYSIS

More than half of California's prison population is eligible at some point for release by parole authorities.[298]

Compared to other states, California has among the lowest parole grant rates. In 2020, California's parole grant was 16%.[299] The figure is especially low given that 82% of people up for review by California parole authorities score as "low risk" to reoffend,[300] according to an actuarial risk assessment tool developed and administered by CDCR and researchers at the University of California, Irvine.[301]

PAROLE GRANT RATES BY STATE



SOURCE: MARIEL E. APLER, *BY THE NUMBERS: PAROLE RELEASE AND REVOCATION ACROSS 50 STATES*, ROBINA INSTITUTE OF CRI¬MINAL LAW AND CRIMINAL JUSTICE (2016).

298 Board of Parole Hearings Executive Officer Jennifer Shaffer informed the Committee that 55% of the current CDCR population will go through a parole review process at some point. (Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020,1:34:52– 1:35:50.) This includes people sentenced to indeterminate life terms and people eligible for parole consideration under Proposition 57. (*See* 15 CCR §§ 3490(f) &. (d), 2449.4(c).)

299 CDCR, BPH, Parole Suitability Hearing and Decision Information, available at CDCR website; Board of Parole Hearings, *Report of Significant Events*, 3 (2019).

300 Data provided by CDCR Office of Research.

301 *See* Susan Turner, James Hess, Jesse Jannetta, *Development of the California Static Risk Assessment Instrument (CSRA)*, Center for Evidence-Based Corrections at the University of California, Irvine, 1 (Nov. 2009).

Furthermore, the relatively few people who have been granted parole by BPH have remarkably low recidivism rates.[302] According to the most recent CDCR Outcome Evaluation Report, only 2.3% of people found suitable by parole authorities and released from custody were convicted of a new crime, the majority of which were misdemeanors.[303]

PAROLE HEARING OUTCOMES IN CALIFORNIA

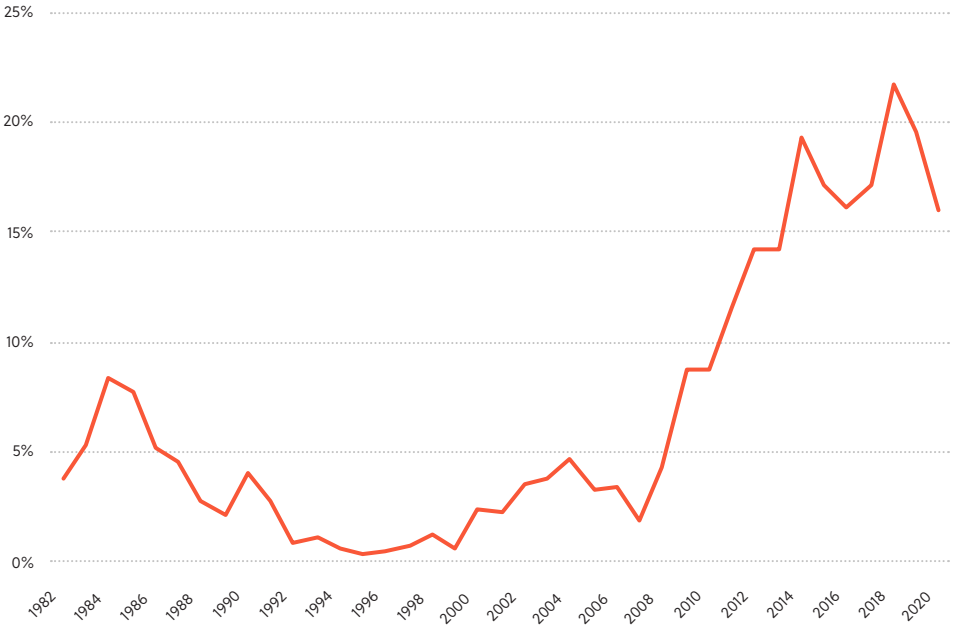
	2017	2018	2019	2020
NUMBER OF PAROLE GRANTS	915	1,136	1,184	1,106
TOTAL SCHEDULED HEARINGS	5,335	5,226	6,061	6,932
GRANT RATE	17%	22%	20%	16%
DENIAL RATE	42%	34%	37%	29%
HEARINGS NOT HELD	41%	44%	43%	55%

Source: CDCR Office of Research.

Despite current efforts by BPH, former Governor Brown testified before the Committee that he supported additional measures that would result in "earlier parole for more people."[304] And University of Southern California Law Professor Heidi Rummel, an expert in California's parole process, emphasized that the low recidivism rate of parolees proved that California could release more people safely on parole without endangering public safety.[305]

302 California lifers have had a "miniscule" recidivism rate for serious offenses. (Jordan D. Segall, Robert Weisberg, and Debbie Mukamal, *Life in Limbo*, Stanford Criminal Justice Center, 17 (2011).)
303 CDCR, Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15, viii (Jan. 2020). As of September 2011, among the 860 people convicted of murder in California paroled since 1995, only five individuals have returned to prison for new felonies since being released. (Jordan D. Segall, Robert Weisberg, and Debbie Mukamal, *Life in Limbo*, Stanford Criminal Justice Center, 17 (2011).)
304 Committee on Revision of the Penal Code, Meeting on Sep. 17, 2020, 0:17:55–0:18:10.
305 *Id.* at 0:13:21–0:14:21.

CALIFORNIA PAROLE HEARING GRANT RATE BY YEAR



Source: CDCR Office of Research.

Part of the problem is that the various statutes and regulations governing California's parole release standard are vague and internally inconsistent. They should be harmonized to provide better transparency and equal application.

For example, Penal Code Section 3041(a)(2) directs parole authorities to "normally grant parole."[306] Another section of the governing statute instructs parole authorities to deny parole if the candidate poses a threat to "public safety."[307] That term has never been defined by the Legislature.[308] Separately, BPH adopted regulations that parole should be denied if the candidate "pose[s] an unreasonable risk of danger to society."[309] Again, this term has not been defined.[310]

Although these terms have never been squarely reconciled or addressed by courts or the Legislature, at least three courts of appeal have indicated the standards "danger to public safety" and "danger to society" combine to mean parole should be granted unless the parole candidate is at risk to commit a violent crime if released.[311] Likewise, the Penal Code utilizes similar language focused on an imminent risk of violence in other circumstances where authorities must determine whether people may be released from custodial settings into the community.[312]

BPH Executive Officer Jennifer Shaffer agreed that risk of violence was the principal concern considered by parole commissioners—and "wasn't very far from where we are today" in terms of a de facto standard at suitability hearings—even though the statutes and regulations make no such specification.[313] She also acknowledged that the current statutory and regulatory parole release standards are "muddled."[314]

306 Penal Code § 3041(a)(2).
307 Penal Code § 3041(b)(1).
308 Some courts interpret this standard to mean "an unreasonable risk" to commit "future violence if granted release on parole." (*In re Hunter*, 205 Cal.App.4th 1529, 1536 (2012).)
309 15 CCR § 2281(a); 15 CCR § 2402(a); 15 CCR § 2422(a); 15 CCR § 2432(a). Regulations also list a number of factors that must be considered. (*See* 15 CCR § 2281(c) (unsuitability) and (d) (suitability).)
310 *See In re Rosenkrantz*, 29 Cal.4th 616, 626 (2002). BPH decisions to deny parole are upheld by a reviewing court if supported by "some evidence." (*Lawrence*, 44 Cal.4th, 1218–1221.)
311 *Hunter*, 205 Cal.App.4th at 1536 (reversing a denial of parole because there was no evidence "tending to show that [the parole candidate would] pose an unreasonable risk of future violence"); *In re Jackson*, 193 Cal.App.4th 1376, 1388 (2011) (reversing a parole denial because parole candidate's lack of attendance in self-help programs did not necessarily indicate a likelihood he would "commit violent crimes ... and [thus] does not constitute some evidence that [the candidate] is currently dangerous."); *In re Morganti*, 204 Cal.App.4th 904, 921 (2012) (holding that the possibility that someone on parole might commit new nonviolent drug crimes did not support a finding of risk to society).
312 *See* Penal Code § 1610 (providing that some people awaiting a decision about whether they should be sent to a secured state hospital may be incarcerated if they "pose an imminent risk of harm to [themselves] or to another"); Penal Code § 853.6(a)(2) (providing that someone arrested on a protective order violation in a domestic violence case may only be released by an arresting officer if doing so would not "imminently endanger[]" other people).
313 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 58:18–0:58:25. Executive Officer Shaffer stated that the current standard the BPH uses to deny parole based on case law was "a current unreasonable risk to public safety." (*Id.* at 0:30:19–0:30:30.)
314 *Id.* at 0:28:30–0:30:00.

While the Committee appreciates that parole authorities continue to evaluate and refine its parole review process, including recently implementing a "structured decision making" evaluation process,[315] we urge legislative action because the ultimate release standard remains vague and inconsistent and the process involves a great deal of subjectivity, unpredictability, and concerns about inconsistency.

Research suggests that factors that currently play central roles in parole determinations may have little predictive value. For example, studies indicate that the severity of a person's offense does not predict future recidivism risk.[316] Research also indicates that consideration by parole authorities of subjective factors, such as whether the parole candidate lacks "insight"[317] or "remorse,"[318] does not effectively predict recidivism. These issues are compounded for people with mental health issues who may be unable to articulate the appropriate presentation of insight or remorse.[319]

In addition, parole can often be denied because of failure to complete programs that were unavailable to the parole candidate.[320] For example, Shanae Polk, Director of Operations at 2nd Call, described to the Committee the great difficulties she faced in trying to fulfill BPH's release requirements because of class unavailability and a lack of assistance in preparing for her parole hearing.[321] Now that she has been released, and frustrated by the lack of appropriate programming, Ms. Polk volunteers to teach the only domestic violence class offered at a women's prison.[322]

EMPIRICAL RESEARCH

The most robust data on recidivism prediction shows that older people are less likely to commit new crimes compared to younger people.[323] This is particularly relevant in the context of parole because most parole candidates are older, having served a considerable sentence prior to becoming eligible for release consideration. As noted above, research indicates that a person's period of criminal involvement generally lasts less than 10 years.[324]

Studies of other states show that, as in California, people with the most serious convictions tend to have the lowest recidivism rates.[325] For example, in Michigan, 2.7% of 2,558 homicide parolees returned to prison for committing any new crime.[326] In New York, 0.9% of people released from prison in 2012 after a murder conviction returned to prison for a new offense within three years, well below the average 9.2% rate for all offenses.[327]

In addition, research has found that there is no difference in violence between people with mental illness and their non-mentally ill neighbors,[328] and more specifically that formerly incarcerated people with mental illness are rearrested or reincarcerated at a rate similar to (and sometimes lower than) non-mentally ill people.[329] According to researchers, the risk of violence society ascribes to mental illness "vastly exceeds the actual risk presented."[330]

Studies also show that actuarial risk assessment tools are particularly reliable in identifying low-risk individuals.[331] For example, a violence prediction tool developed by the Pennsylvania Sentencing Commission in 2018 is 98% accurate in predicting which people are at low risk for committing a new violent crime.[332]

315 Written Submission of Jennifer Shaffer to Committee on Revision of the Penal Code, 24–25 (Nov. 12, 2020).
316 Danielle Sered, *Accounting for Violence: How to Increase Safety and Break our Failed reliance on Mass Incarceration*, Vera Institute of Justice, 19 (2017); Patrick Langan and David Levin, *Recidivism of Prisoners Released in 1994*, U.S. Department of Justice, Bureau of Justice Statistics, 1 (2002); Tracy Velazquez, *The Pursuit of Safety: Sex Offender Policy in the United States*, Vera Institute of Justice, 6 (2008).
317 *See In re Shaputis*, 53 Cal.4th 192, 217–221 (2011). Proof of insight may include "acknowledg[ing] the material aspects of [the person's] conduct and offense, show[ing] an understanding of its causes, and demonstrat[ing] remorse." (*In re Ryner*, 196 Cal.App.4th 533, 549 (2011).)
318 15 CCR § 2281(d)(3); Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:7:00–0:8:05, 0:9:58–0:10:38, 0:53:50–0:55:35, 1:05:44–1:06:55.
319 *Id.* at 1:05:44–1:06:55, 0:53:50–0:55:35; Jeremy Isard, *Under the Cloak of Brain Science: Risk Assessments, Parole, and the Powerful Guise of Objectivity*, California Law Review, vol. 105, n. 4 (2017).
320 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:8:37–0:8:46, 1:18:00–1:18:23.
321 *Id.* at 1:25:25–1:28:30, 1:33:46–1:35:28.
322 *Id.* at 1:31:36-1:33:45.
323 Robert Weisberg, Debbie Mukamal, and Jordan Segall, *Life in Limbo*, Stanford Law School Criminal Justice Center, 17 (2011).
324 Alex R. Piquero, J. David Hawkins, Lila Kazemian, David Petechuk, *Bulletin 2: Criminal Career Patterns (Study Group on the Transitions between Juvenile Delinquency and Adult Crime)* (2013).
325 Jordan D. Segall, Robert Weisberg, and Debbie Mukamal, *Life in Limbo*, Stanford Criminal Justice Center, 17 (2011).
326 Citizens Alliance on Prisons and Public Spending, *Denying Parole at First Eligibility: How Much Public Safety Does It Actually Buy?*, 4 (Aug. 2009).
327 New York State Department of Corrections and Community Supervision, *2012 Inmate Releases, Three Year Post-Release Follow Up*, Table 5, Appendix C (Dec. 2016) (noting that between 1985 and 2012, the return rate for a new offense for people who had been released from prison after being convicted of murder was 1.9%).
328 See E. Fuller Torrey, Jonathan Stanley, John Monahan, Henry J. Steadman, *The MacArthur Violence Risk Assessment Study Revisited; Two Views Ten Years After Its Initial Publication*, Psychiatr Serv 59, 147–52 (2008); H.J. Steadman, E.P. Mulvey, J. Monahan, et al.: *Violence by People Discharged From Acute Psychiatric Inpatient Facilities and by Others in the Same Neighborhoods*, Archives of General Psychiatry 55, 393–401 (1998).
329 See J.A. Wilson and P.B. Wood, *Dissecting the Relationship Between Mental Illness and Return to Incarceration*, J. Crim. Just. 42, 527–37 (2014); Kristen M. Zgoba, Rusty Reeves, Anthony Tamburello, and Lisa Debilio, *Criminal Recidivism in Inmates With Mental Illness and Substance Use Disorders*, Journal of the American Academy of Psychiatry and the Law Online 3913–3920 (Feb. 2020) (finding that formerly incarcerated people with mental illness and no substance abuse disorders were arrested less frequently than those with no mental illness); J. Bonta, M. Law, and K. Hanson, *The Prediction of Criminal and Violent Recidivism Among Mentally Disordered Offenders: A Meta-analysis*, Psychological Bulletin, 123(2), 123–142 (1998).
330 E. Fuller Torrey, Jonathan Stanley, John Monahan, Henry J. Steadman, *The MacArthur Violence Risk Assessment Study Revisited; Two Views Ten Years After Its Initial Publication*, Psychiatry Serv 59, 147–52 (2008).
331 Model Penal Code: Sentencing § 6.11, Commentary at 296 (citing Brian J. Ostrom et al., *Offender Risk Assessment in Virginia: A Three-Stage Evaluation* (2002) (noting that actuarial risk assessment tools were less accurate in predicting high risk of violence); Hennessey D. Hayes and Michael R. Geerken, *The Idea of Selective Release*, 14 Just. Quarterly, 353, 368–369 (1997); Kathleen Auerhahn, Selective Incapacitation and the Problem of Prediction, 37 Criminology 703 (1999) (same).
332 Pennsylvania Commission on Sentencing, Revisions to the Proposed Risk Assessment Instrument, 3, Table 1 (2018).

Three risk assessment tools used by BPH and CDCR were also found to be extremely accurate in predicting which people were low risk for future violence.[333] One study of over 24,000 people conducted over 50 months found that 91% of people evaluated as low risk of future violence did not go on to commit a violent crime.[334]

INSIGHTS FROM OTHER JURISDICTIONS

Several states, including Nevada, Hawaii, Maryland, Arkansas, Michigan, and Louisiana, rely on risk assessment scores as an important factor in parole determination.[335] For example, In Hawaii, the parole statute requires release for people deemed "low-risk" by a validated risk assessment tool.[336] In Nevada, if a parole candidate is assessed as low-risk and their offense was of low or medium severity, the parole board is directed to grant parole "at the initial eligibility date" for a low- or medium-severity crime, and at the "first or second meeting" for a high-severity crime.[337] Maryland uses a combination of risk assessment score and offense type to determine a presumptive guidelines release range.[338]

In Norway (which many experts see as a model for modern criminal law),[339] the standard for preventive detention mandates that there must exist "an imminent risk that the offender will again commit" a "serious violent felony."[340] Parole systems in New Jersey and Washington make a similar inquiry about future harm to others in some contexts.[341] For example, in New Jersey, the juvenile release standard requires in part that someone be paroled if they "will not cause injury to persons."[342]

Some jurisdictions presume that people convicted of nonviolent offenses shall be granted parole. For example, Louisiana, Oklahoma, and Pennsylvania presumptively grant parole to many people.[343] In 2017, Louisiana authorized release without a hearing to people convicted of nonviolent offenses who served 25% of their sentences when certain conditions are met.[344]

Many states focus on in-prison programming as a gateway to early release. For example, Mississippi and Maryland grant release without a hearing at the earliest parole release date for some people who have met the requirements of their case plans.[345] For others, including Arkansas, Washington, and Louisiana, in-prison disciplinary behavior is a key parole factor.[346]

ADDITIONAL CONSIDERATIONS

- Parole authorities should be encouraged to release more data concerning their process and parole hearing outcomes. BPH currently releases information about the number of scheduled parole hearings and their outcomes.[347] They also release an annual Report of Significant Events that includes additional information and provide to members of the public free transcripts of any parole hearings.[348] These efforts are an excellent start to providing transparency into BPH's operations, but BPH should release on a routine basis additional information about who is and who is not granted parole, including the parole hearing outcomes for sentence type, type of parole hearing, and important demographic information such as race, gender, and county of commitment.

333 Three tools that California's BPH uses to assess risk were all evaluated in this study, including the HCR-20 (violence risk), PCL-R (any criminal offending risk), and the Static-99 (sexual offending risk), among others. (Seena Fazel, Jay P. Singh, and Helen Doll, *Use of Risk Assessment Instruments to Predict Violence and Antisocial Behaviour in 73 Samples Involving 24,827 People: Systematic Review and Meta-Analysis*, 345 BR. MED. J. e4692 (2012).)

334 *Id.*

335 Arkansas Code Ann. § 16-93-615 (a)(1)(B) (providing that parole decisions "shall be made by reviewing information such as the result of the risk-needs assessment"); Louisiana Stat. Ann. § 15:574.2(C)(2)(f) (providing that parole can be granted by just a majority of the committee when the person "has obtained a low-risk level designation determined by a validated risk assessment instrument"); MCLS § 791.233e(3)(a) (providing that "statistical risk" is one of eight factors that determine a probability of parole score); *Michigan Department of Corr. Policy Directive: Parole Guidelines*, Attachment A, available at State of Michigan website; *Monroe City Prosecuting Attorney v. Wilkins* (*In re Parole of Frederick Wilkins*), 2020 Mich. LEXIS 1801, *1-2 (Oct. 21, 2020) (holding that the parole candidate must be released if he or she receives a "high" probability of parole score absent "substantial and compelling reasons").

336 "Except for good cause shown to the paroling authority, a person who is assessed as low risk for re-offending [via a validated risk assessment tool] shall be granted parole upon completing the minimum sentence [of an indeterminate sentence]." (Hawaii Stat. Ann. § 706-670(1).) This requirement can be overcome if the person has committed serious misconduct in prison, among other reasons. (*Id.*)

337 Nevada Ann. Code § 213.516, § 213.514 (2020). Nevada uses a matrix based on a person's risk assessment and offense severity to calculate release. (Nevada Ann. Code § 213.516 (2020).)

338 Alexis Lee Watts, Brendan Delaney, and Edward E. Rhine, *Profiles in Parole Release and Revocation: Maryland*, Robina Institute of Criminal Law and Criminal Justice, 5 (2018).

339 *See, e.g.*, Henrik Pryser Libell and Matthew Haag, *New York's Jails Are Failing. Is the Answer 3,600 Miles Away?*, New York Times (Nov. 12, 2019).

340 Norwegian Penal Code § 39 c (1) ("There must be deemed to be an imminent risk that the offender will again commit" a "serious violent felony, sexual felony, unlawful imprisonment, arson or other serious felony impairing the life, health or liberty of other persons . . . . ").

341 Washington Rev. Code § 9.95.420(3)(a) (In Washington, people convicted of sex offenses must be released when their minimum sentence has expired unless "it is more likely than not that the offender will commit sex offenses if released.").

342 New Jersey Rev. Stat. § 30:4-123.53(b) ("A juvenile inmate shall be released on parole when it shall appear that the juvenile, if released, will not cause injury to persons or substantial injury to property.").

343 HB 2286 (Oklahoma Reg. Session 2018) (creating an administrative parole process for people convicted of nonviolent offenses); 37 Pa. Code § 96.1 ("Eligible offenders generally are low-risk offenders who have not committed personal injury crimes . . . ."); Louisiana Rev. Stat. § 15:574.4; Senate Bill 139 (Louisiana Reg. Session 2017).

344 *Louisiana's 2017 Criminal Justice Reforms*, The Pew Trust (Mar. 1, 2018).

345 In Mississippi, an incarcerated person also must meet requirements including a discharge plan, no serious or major violation reports within six months, and no hearing request by a victim. (Mississippi Code Ann. § 47-7-18(1) (2020).) In Maryland, an incarcerated person also cannot have committed a "category 1 rule violation," nor can a victim have requested a hearing. (Maryland Correctional Services Code Ann. § 7-301.1(g) (2020).)

346 Arkansas Code § 16-93-101(3)(D)(ii); Washington Rev. Code § 9.94A.730(1); Louisiana Stat. Ann. § 15:574.2(C)(2)(b).

347 *See* BPH, *Parole Suitability Hearing and Decision Information*, available at CDCR website.

348 BPH, *Request for Parole Suitability Hearing Transcript*, available at CDCR website.

- The parole standard recommended by the Committee — that a parole candidate shall be awarded parole unless there is "imminent risk that the parole candidate will commit a serious or violent felony if released" — is borrowed from Norwegian criminal law,[349] which has been recognized internationally as a model system.

- Parole release is currently a binary decision: The person is either going to stay incarcerated or be released to the community with supervision. The Committee's recommendation is to create additional types of release scenarios for parole candidates that BPH concludes are close to being entitled to full release but may still need additional structure, supervision, or programming prior to full release.[350]

- Courts reviewing parole release decisions must currently apply an extremely deferential standard of review and may not intervene in parole decisions if there is "some evidence" supporting a parole denial.[351] This standard does not come from a statute.[352] The Committee recommends that parole decisions should instead be reviewed for "abuse of discretion." This standard of review, which is well-defined in other judicial contexts, would give appropriate deference to BPH's role in making parole decisions while providing an important safety valve.

349 Norwegian Penal Code § 39(c)(1). This standard is used for "preventive detention" and is intended to retain the most dangerous people if they continue to be a risk to society but is seldom used. (*Anders Breivik: Just How Cushy Are Norwegian Prisons?*, BBC (Mar. 16, 2016).) For example, only 112 people total were imprisoned in Norway pursuant to "preventive detention" as of 2018. (Norway Statistics, Imprisonment (Jun. 29, 2020).)

350 For example, in Canada, "day parole" allows someone to "to participate in community-based activities in preparation for full parole or statutory release." (Government of Canada, Parole Board, Types of Conditional Releases.)

351 The origin of the "some evidence" standard was the United States Supreme Court's decision in Superintendent, Mass. Correctional Institution at *Walpole v. Hill*, 472 US 445 (1985). The Court there explained that all that was required was a "modicum" of evidence and that due process was only violated "if the decision is not supported by *any* evidence." (*Id*. at 455 (emphasis added).)

352 *Rosenkrantz*, 29 Cal.4th at 652.

10. Establish Judicial Process for "Second Look" Resentencing

Establish Judicial Process for "Second Look" Resentencing

RECOMMENDATION

The administrations of Governor Newsom and former Governor Brown and the Legislature have expanded the use of "second look" sentencing by authorizing courts to revisit sentences of selected incarcerated people when recommended by law enforcement authorities. This practice should be clarified and expanded.

The Committee therefore recommends the following:

1. Establish judicial procedures for evaluating resentencing requests.
    - In all cases, require notice, initial conference within 60 days, and written reasons for court decisions.
    - For all cases initiated by law enforcement, require appointment of counsel.
2. Establish that resentencing is presumed if law enforcement officials recommend resentencing because a sentence is unjust or because of a person's exceptional rehabilitative achievement while incarcerated.
3. Expand "second look" sentencing opportunities by allowing any person who has served more than 15 years to request a reconsideration of sentence by establishing that "continued incarceration is no longer in the interest of justice."

RELEVANT STATUTES

Penal Code § 1170(d)

BACKGROUND AND ANALYSIS

California has a special provision in the Penal Code that allows certain law enforcement officials, including the Secretary of CDCR or any elected district attorney, to request that a person be resentenced at any time for any reason. A court that receives such a request is vested with authority to recall the person's sentence and issue a new, reduced punishment, if "circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice."[353]

The law has existed for decades but was given new life in 2018 when then-Governor Brown allocated resources to CDCR to identify incarcerated people who demonstrated records of rehabilitation and deserved a reevaluation of their sentence in court. The law was then expanded to allow prosecutors to make similar resentencing requests.[354] Prosecutors and CDCR do not make requests for resentencing lightly. CDCR has an extensive set of regulations guiding the process.[355] Hillary Blout, Executive Director of For the People, described to the Committee the resource-intensive procedures that some prosecutors are beginning to use to review old cases.[356] Although the requests for resentencing are made by law enforcement authorities, the ultimate decision to recall a person's sentence and reduce their punishment remains with the courts.

353 Penal Code § 1170(d)(1).
354 AB 2942 (Ting, 2018).
355 *See* 15 CCR § 3076.1.
356 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:10:05–0:10:38, 0:51:05–0:52:07; Written Submission of Hillary Blout to Committee on Revision of the Penal Code, 2 (Nov. 10, 2020).

Despite these expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the parties, appointing counsel, or giving parties an opportunity to be heard.[357] The law does not require a court to give any specific reason for denying a resentencing request.[358]

RESENTENCING REFERRALS BY CDCR (2019-20)

	EXCEPTIONAL CONDUCT	CHANGE IN LAW	TOTAL
REFERRALS	155	1,448	1,603
COURT RESPONSES	110	1,023	1,133
% COURT RESPONSES	71%	71%	71%
RESENTENCINGS	64	411	475
% RESENTENCED	41%	28%	30%

Source: CDCR Office of Research.

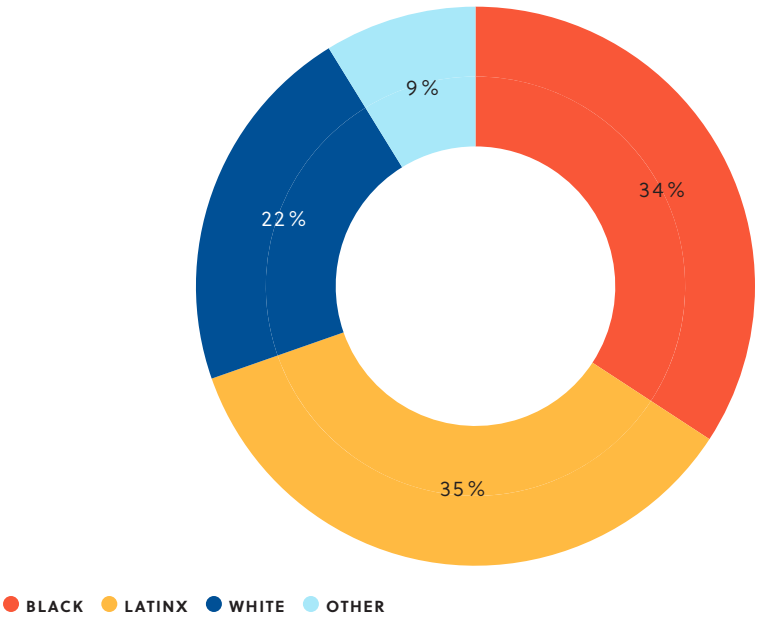
Placer County Superior Court Judge Richard Couzens, a leading expert on California's criminal law, appeared before the Committee in November to encourage better process and expanded use of California's "second look" sentencing law.[359] He told the Committee that the current process is "amazingly sparse," "largely unstructured," and that it would be appropriate to require courts to issue "affirmative responses, even if just in writing."[360] Without such guidance, many requests for resentencing have gone unanswered by the courts or have been denied without any meaningful input from the person who is to be resentenced.[361]

Judge Couzens also endorsed wider use of the resentencing process to allow prisoners who have served a significant portion of their sentence to petition courts for revaluation of their punishment and early release: "[I]t seems to me fundamentally fair that if a person has been in custody for 15 years, that it's not unreasonable to say, 'Hey, has this person changed?' That's just not unreasonable."[362] Sam Lewis, Executive Director of the Anti-Recidivism Coalition, also supported the proposal to encourage and incentivize rehabilitation for people sentenced to long prison terms.[363]

As of June 2020, almost 30,000 people had served more than fifteen years in CDCR custody.

357 *People v. McCallum*, 55 Cal.App.5th 202 (2020); *People v. Frazier*, 55 Cal.App.5th 858 (2020).
358 "[N]othing in section 1170, subdivision (d)(1), requires the court to state its reasoning when declining to exercise its discretion in response to the Secretary's recommendation. It is a fundamental tenet of appellate review that we presume on a silent record the court properly exercised its discretion." (*Id.* at *814.*)
359 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:17:37–0:19:45, 0:44:07–0:44:19.
360 *Id.*
361 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:10:05–0:10:38; 0:51:05–0:52:07; Written Submission of Hillary Blout to Committee on Revision of the Penal Code, 2 (Nov. 10, 2020).
362 Committee on Revision of the Penal Code, Meeting on Nov. 12, 2020, 0:42:07–0:42:20.
363 *Id.* at 1:19:15–1:21:30.

PERCENTAGE OF PEOPLE CURRENTLY IN PRISON WHO HAVE SERVED MORE THAN 15 YEARS BY RACE (2020)



Source: CDCR Office of Research.

This idea, and the Committee's recommendation, mirrors a proposal from United States Senator Cory Booker and Congresswoman Karen Bass, who in 2019 introduced legislation that would allow any person in federal prison who had served 10 years of incarceration to apply for resentencing.[364]

EMPIRICAL RESEARCH

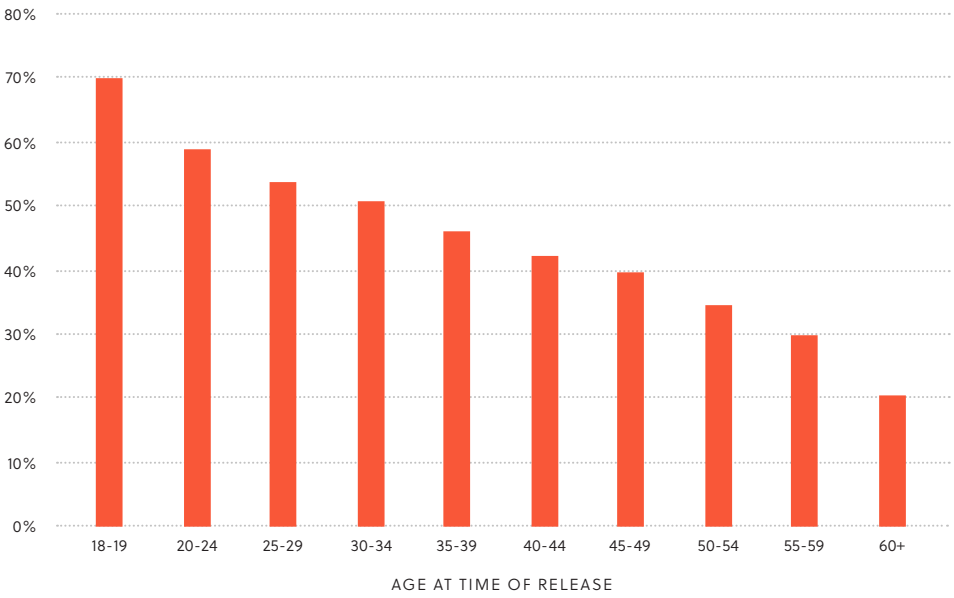
As noted elsewhere in this report, empirical research has long established that the older someone is, the less likely they are to commit offenses.[365] The recidivism rate for California's prison population bears this out: Older people simply do not commit as many crimes as younger people do.[366] This data supports the conclusion that, after some period of time, a sentence may deserve reevaluation.

364 H.R. 3795 — Second Look Act of 2019. To qualify for relief, someone would need to show that they were "not a danger to the safety of any person or the community," a "readiness for reentry," and that "the interests of justice warrant a sentence modification." (*Id.*; proposed Sec. 3627(a)(3)(A)(i), (ii) & (a)(3)(B).)

365 "The strong correlation between age and crime is one of the most tested and established in the field of criminology." (*In re Ivan Von Staich*, 56 Cal.App.5th 53, 77 (2020), review granted and cause transferred back to appellate court by California Supreme Court, 2020 WL 7647921 (2020).)

366 CDCR Office of Research, *Appendix to the Recidivism Report for Offenders Released From the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15*, Figure 18 (Jan. 2020).

THREE-YEAR RECIDIVISM RATE BY AGE AT TIME OF RELEASE FROM PRISON



Source: CDCR Office of Research, *Appendix to the Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014–15*, Figure 1 (Jan. 2020).

INSIGHT FROM OTHER JURISDICTIONS

In 2018, Congress enacted the federal First Step Act, which allowed people incarcerated in federal prison to request sentence reduction with a motion to the trial court.[367] More than 2,000 of these requests have been granted by federal courts around the country, including many to help combat the speed of COVID-19 in federal prisons.[368]

In the District of Columbia, any person who was under 18 years old at the time of their offense and has served at least 15 years in prison may request a new sentence.[369] The court must issue a reduced sentence if it concludes that "the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification."[370] The law was recently expanded to anyone who was under 25 years of age at the time of their offense and who has served at least 15 years.[371] Approximately 50 people have been recently resentenced in the District of Columbia for offenses committed before they were 18. None of those released have been reconvicted of a new violent crime.[372]

The Model Penal Code suggests that states enact "second look" sentencing that allows someone to ask a judge for resentencing after serving 15 years of imprisonment.[373] The New Jersey Sentencing & Disposition Commission also recently unanimously agreed that "second look" sentencing laws were important reforms.[374]

367 *See* 18 U.S.C. § 3582(c) (providing that a federally incarcerated applicant must show that "extraordinary and compelling reasons" warrant a sentence reduction).
368 Federal Bureau of Prisons, *First Step Act*, available at Federal Bureau of Prisons website.
369 D.C. Code § 24-403.03(a).
370 *Id.*
371 Hailey Fuchs, *D.C. Passes Bill to Give Young Offenders Chance at Reduced Sentences*, New York Times (Dec. 15, 2020).
372 *Id.*
373 Model Penal Code: Sentencing § 305.6, Comment (a) ("[This] provision reflects a profound sense of humility that ought to operate when punishments are imposed that will reach nearly a generation into the future, or longer still. A second-look mechanism is meant to ensure that these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.").
374 New Jersey Sentencing and Disposition Commission, *Annual Report*, 35 (Nov. 2019).

2020 Administrative Report

2020 Administrative Report

The inaugural year of the Committee on Revision of the Penal Code ended on January 1, 2021. The following report summarizes its activities during the past year from an administrative standpoint and briefly describes the Committee's future plans.

CREATION OF THE COMMITTEE

On January 1, 2020, the Committee on Revision of the Penal Code was formed.[375]

For administrative and budgetary purposes, the Committee was located within the California Law Revision Commission. There is no substantive overlap in the work of the two bodies. By law, no person can serve on both the Commission and the Committee simultaneously.[376] Neither body has any authority over the substantive work of the other.[377] The two bodies have different statutory duties.[378]

The Committee has seven members. Five are appointed by the Governor for four-year terms.[379] One is an assembly member selected by the speaker of the assembly; the last is a senator selected by the Senate Committee on Rules.[380] The Governor selects the Committee's chair.[381]

FUNCTION AND PROCEDURE OF THE COMMITTEE

The principal duties of the Committee are to:

1. Simplify and rationalize the substance of criminal law.
2. Simplify and rationalize criminal procedures.
3. Establish alternatives to incarceration that will aid in the rehabilitation of offenders.
4. Improve the system of parole and probation.[382]

The Committee is required to prepare an annual report for submission to the Governor and the Legislature.[383]

The Committee conducts its deliberations in public meetings, subject to the Bagley-Keene Open Meeting Act.[384] In 2020, it held eight meetings, five of which were two-day meetings. Its first meeting was held in the State Capitol. As a result of the COVID-19 pandemic, its remaining meetings were conducted entirely by teleconference.[385]

375 *See* 2019 Cal. Stat. ch. 25; Gov't Code § 8280(b).
376 *See* Gov't Code § 8281.5(d).
377 "The approval by the commission of any recommendations by the committee is not required." (Gov't Code § 8290(c).) The Commission and Committee submit their reports and recommendations directly to the Governor and legislature, not to each other. (Gov't Code § 8291.)
378 *Compare* Gov't Code §§ 8289, 8290 (duties of Commission) *with* Gov't Code § 8290.5 (duties of Committee).
379 Gov't Code § 8281.5(a), (c).
380 Gov't Code § 8281.5(a).
381 Gov't Code § 8283.
382 Gov't Code § 8290.5(a).
383 Gov't Code § 8293(b).
384 Gov't Code §§ 11120–11132.
385 This was made possible by Executive Orders N-25-20 and N-29-20.

PERSONNEL OF THE COMMITTEE

In 2020, the following persons were members of the Committee:

CHAIR
Michael Romano

LEGISLATIVE MEMBERS
Senator Nancy Skinner
Assemblymember Sidney Kamlager-Dove

GUBERNATORIAL APPOINTEES
Hon. John Burton
Hon. Peter Espinoza
Hon. Carlos Moreno
L. Song Richardson

The following persons are on the Committee's legal staff:

Thomas M. Nosewicz
Legal Director

Rick Owen
Staff Attorney

The following persons provide substantial support for the Committee's legal work:

Lara Hoffman
Nick Stewart-Oaten
Natasha Minsker
Daniel Seeman

The following persons are staff of the California Law Revision Commission who also provide managerial and administrative support for the Committee:

Brian Hebert
Executive Director

Barbara Gaal
Chief Deputy Director

Debora Larrabee
Associate Governmental Program Analyst

This report was copyedited by Nicole Antonio and designed by Taylor Le.

COMMITTEE BUDGET

In the 2019-20 state budget, $576,000 was added to the California Law Revision Commission's budget to offset the costs associated with the new Committee on Revision of the Penal Code. An equivalent amount was included in the 2020-21 state budget.

Most of that amount goes toward staff salaries and benefits. The remainder is used for operating expenses.

PLANNED ACTIVITIES FOR 2021

In 2021, the Committee expects to follow the same general deliberative process that it established in 2020. It will hold frequent public meetings with speakers representing all groups that have an interest in reform of the criminal justice system. At those meetings, the Committee will identify, debate, and develop reforms that would reduce unnecessary levels of incarceration and increase public safety.

The Committee will also continue its work to establish a secure compendium of empirical data from various law enforcement and correctional sources in California. That data will be used by the Committee as a tool in evaluating the effect of possible reforms.

ACKNOWLEDGMENTS

Many individuals and organizations participated in Committee meetings in 2020 or otherwise contributed towards this report. The Committee is deeply grateful for their assistance.

The keynote speakers and panelists are listed below. Inclusion of an individual or organization in this list in no way indicates that person's view on the Committee's recommendations.

Many other persons testified during the public comment portion of Committee meetings, submitted written comments, or otherwise assisted in the work of the Committee. It is not possible to list everyone here, but the Committee thanks all of them for their efforts and encourages them to continue to participate in the Committee's work going forward.

KEYNOTE SPEAKERS

(in order of appearance)

Hon. Gavin Newsom
Governor of California

Prof. Craig Haney
University of California, Santa Cruz

Keely Bosler
Director, California Department of Finance

Hon. Edmund G. Brown, Jr.
Former Governor of California

Xavier Becerra
Attorney General of California

George Gascón
District Attorney, Los Angeles County

Hon. Thelton E. Henderson
United States District Court, Northern District of California

PANELISTS

(in alphabetical order)

Anthony Adams
Deputy Public Defender, Mendocino County

Sujatha Baliga
Director, Restorative Justice Project, Impact Justice
Collaborative Fellow, Just Beginnings

Cathleen Beltz
Assistant Inspector General, Inspector General, Los Angeles County

Nina Salarno Besselman
President, Crime Victims United

Prof. Mia Bird
Goldman School of Public Policy, University of California, Berkeley

Hillary Blout
Executive Director, For the People

Hon. Lawrence Brown
Superior Court of California, County of Sacramento
Vice Chair, Collaborative Justice Courts Advisory Committee,
Judicial Council of California

Charles Callahan
Deputy Director (A), Facility Support – Division of Adult Institutions,
California Department of Corrections & Rehabilitation

Bridget Cervelli
Legal Services for Prisoners with Children

Hon. J. Richard Couzens (ret.)
Superior Court of California, County of Placer

Katie Dixon
Community Rights Organizer, Legal Aid at Work

Aaron Fischer
Disability Rights California

Neil Flood
Vice President, California Correctional Peace Officers Association

Sean Garcia-Leys
Civil Rights Attorney

Obed Gonzalez
California City Correctional Facility

Prof. Ryken Grattet
Chair, Department of Sociology, University of California, Davis

Dean Growdon
Sheriff of Lassen County
First Vice President, California State Sheriffs' Association

Kory L. Honea
Sheriff of Butte County
Second Vice President, California State Sheriffs' Association

Max Huntsman
Inspector General, Los Angeles County

Anne Irwin
Director, Smart Justice California

Jay Jordan
Executive Director, Californians for Safety and Justice

JOHN KEENE
Chief of Probation, San Mateo County
Secretary/Treasurer and Legislative Chair, Chief Probation Officers of California

ADNAN KHAN
Executive Director, Re:Store Justice

JAMES KING
Ella Baker Center

NICOLE KIRKALDY
Program Coordinator, Yolo County District Attorney's Neighborhood Court Program

PROF. CHARIS E. KUBRIN
Department of Criminology, Law & Society, University of California, Irvine

SAM LEWIS
Executive Director, Anti-Recidivism Coalition

JARED LOZANO
Associate Director, High Security (Males),
California Department of Corrections & Rehabilitation

HON. DANIEL J. LOWENTHAL
Superior Court of California, County of Los Angeles

HON. STEPHEN MANLEY
Superior Court of California, County of Santa Clara
Member, Collaborative Justice Courts Advisory Committee,
Judicial Council of California

HON. NANCY O'MALLEY
District Attorney, Alameda County
President, California District Attorneys Association

CAITLIN O'NEIL
Senior Fiscal & Policy Analyst, Legislative Analyst's Office

ERIC NUÑEZ
Chief of Police, Los Alamitos
President, California Police Chiefs Association

PAUL M. NUÑEZ
Deputy District Attorney, Los Angeles County District Attorney's Office

SHANAE POLK
Director of Operations, 2nd Call

PROF. STEVEN RAPHAEL
Goldman School of Public Policy, University of California, Berkeley

KEVIN ROONEY
Supervising Deputy District Attorney, Violent Criminal Enterprise Unit, San Joaquin County

LISA ROMO
Director of Systemic Issues Litigation, Office of the State Public Defender

JEFF ROSEN
District Attorney, Santa Clara County

LISA ROTH
Deputy Public Defender, Los Angeles County

HEIDI RUMMEL
Director, Post-Conviction Justice Project, USC Gould School of Law

JENNIFER SHAFFER
Executive Officer, Board of Parole Hearings

TAINA VARGAS-EDMOND
Executive Director, Initiate Justice

J. VASQUEZ
Participatory Defense & Policy Coordinator, Communities United for Restorative Youth Justice

HON. RICHARD A. VLAVIANOS
Superior Court of California, County of San Joaquin
Chair, Collaborative Justice Courts Advisory Committee, Judicial Council of California

STEPHEN M. WAGSTAFFE
District Attorney, San Mateo County
Former President, California District Attorneys Association

KEITH WATTLEY
Founder and Executive Director, UnCommon Law

PROF. ROBERT WEISBERG
Stanford Law School
Co-Director, Stanford Criminal Justice Center

PHILANTHROPIC AND OTHER SUPPORT

The Committee is also deeply grateful to Arnold Ventures and the Chan-Zuckerberg Initiative for providing generous support relating to the Committee's research and data analysis. The Committee also extends special thanks to the personnel at the California Department of Corrections and Rehabilitation who assisted the Committee's data-gathering efforts and facilitated the testimony of Obed Gonzalez, as well as the California Department of Motor Vehicles for other data assistance. We also greatly appreciate additional research support provided by Rio Scharf and Emma Briger. The Committee also received generous support from staff and faculty at Stanford Law School in developing our recommendations and drafting this report.

The Committee regrets any errors or omissions made in compiling these acknowledgments.

Appendix

Appendix A: Biographies of 2020 Committee Members

Michael Romano, of San Francisco, serves as chair of the Committee on Revision of the Penal Code. Romano teaches criminal justice policy and practice at Stanford Law School and has been director of the Stanford Justice Advocacy Project since 2007. Romano has collaborated with numerous local, state, and federal agencies, including the United States Department of Justice and Office of White House Counsel under President Obama. He has also served as counsel for the NAACP Legal Defense and Educational Fund and other civil rights organizations. Romano was a law clerk for the Honorable Richard Tallman at the United States Court of Appeals for the Ninth Circuit from 2003 to 2004 and a legal researcher for the Innocence Project from 2000 to 2001. He earned a juris doctor degree with honors from Stanford Law School and a master of laws degree from Yale Law School.

John L. Burton, of San Francisco, has been a partner and consultant for public affairs at Burton and the Brains since 2018. Burton was an attorney at John Burton Attorney at Law from 2004 to 2018. He was chairman of the California Democratic Party from 1973 to 1974 and 2009 to 2017. Burton founded John Burton Advocates for Youth in 2005. He was a senator in the California State Senate from 1996 to 2004. Burton served as a representative in the United States House of Representatives from 1974 to 1983. He served as a member of the California State Assembly from 1965 to 1974. He earned a juris doctor degree from the University of San Francisco School of Law.

Peter Espinoza, of Los Angeles, has served as director of the Office of Diversion and Reentry at the Los Angeles County Department of Health Services since 2016. He served as a commissioner and judge at the Los Angeles County Superior Court from 1990 to 2016. Espinoza was an attorney at Peter Espinoza Attorney at Law from 1984 to 1990. Espinoza was a deputy public defender at the Orange County Public Defender's Office from 1981 to 1983. He earned a juris doctor degree from the University of California, Los Angeles, School of Law.

Assemblymember Sydney Kamlager, of Los Angeles, has been a member of the Assembly since 2018. She represents the 54th Assembly District, encompassing Baldwin Hills, the Crenshaw community, all of Culver City, Ladera Heights, Leimert Park, Mar Vista, Mid-City Los Angeles, Palms, Pico-Union, Westwood, and Windsor Hills. As chair of the Select Committee on Incarcerated Women, Assemblymember Kamlager is focused on reviewing and reforming policies to support the health, dignity, and rehabilitation of women in prison. She also sits on the Assembly Public Safety Committee and Speaker Rendon's Select Committee on Police Reform. In 2020, Assemblymember Kamlager passed AB 1950, which reformed the California probation system by setting maximum terms of two years for felony offenses and one year for misdemeanor offenses. She earned a master's degree in arts management from the Heinz College at Carnegie Mellon University.

Carlos Moreno, of Los Angeles, has been a self-employed JAMS arbitrator since 2017. Moreno was United States Ambassador to Belize from 2014 to 2017. He was of counsel at Irell & Manella LLP from 2011 to 2013. Moreno was an associate justice of the California Supreme Court from 2001 to 2011 and served as a judge at the United States District Court, Central District of California, from 1998 to 2001. Moreno was a judge at the Los Angeles County Superior Court from 1993 to 1998 and at the Compton Municipal Court from 1986 to 1993. Moreno was senior associate at Kelley, Drye & Warren from 1979 to 1986. He was a deputy city attorney at the Los Angeles City Attorney's Office from 1975 to 1979. Moreno earned a juris doctor degree from Stanford Law School.

L. Song Richardson, of Irvine, is dean at the University of California, Irvine, School of Law, from 2018 to July 2021, and was a professor of law there from 2014 to 2017. She was a professor of law at the University of Iowa College of Law from 2012 to 2014. Richardson was an associate professor of law at American University from 2011 to 2012 and at DePaul University of Law from 2006 to 2011. Richardson was a partner at Schroeter, Goldmark and Bender from 2001 to 2006. She was assistant public defender at The Defender Association from 1999 to 2001. Richardson was an assistant federal public defender at the Federal Public Defender's Office, Western District of Washington, from 1997 to 1999. She was assistant counsel at the NAACP Legal Defense and Educational Fund from 1995 to 1997. She was a Skadden Public Interest fellow at the National Immigration Law Center in Los Angeles from 1994 to 1995 and at the Legal Aid Society's Immigration Law Unit in Brooklyn from 1993 to 1994. Richardson is a member of the American Law Institute and the executive committee of the Association of American Law Schools. She earned a juris doctor degree from Yale Law School.

Senator Nancy Skinner, of Berkeley, has been a member of the Senate since 2016. She was a member of the Assembly from 2006 to 2014. Senator Skinner represents California's 9th Senate District, which includes Oakland, Berkeley, and Richmond, and chairs the Senate Budget Committee. Senator Skinner is a longtime justice reform advocate and the author of two landmark California laws: SB 1421, which made police misconduct records available to the public for the first time in 40 years, and SB 1437, which reformed the state's felony murder rule so that people who do not commit murder can't be convicted of that crime. She also authored bills to reduce gun violence and allow people with prior felony convictions to serve on juries. Her legislative efforts have resulted in cuts to the number of juveniles incarcerated in state facilities by half; established a new, dedicated fund to reduce prison recidivism; reduced parole terms; and banned the box for higher education. She earned a master's degree in education from the University of California, Berkeley.

Appendix B: Additional Data

Cost of Misdemeanor Citations in Traffic Court

COST OF MISDEMEANOR CITATIONS IN TRAFFIC COURT

STATUTE	ASSESSMENT	AMOUNT OWED
Maximum misdemeanor fine	$1,000	$1,000
State penalty assessment (Penal Code § 1464)	$10 for every $10 base fine	$1,000
State criminal surcharge (Penal Code § 1465.7)	20% surcharge on base fine	$200
Court operations assessment (Penal Code § 1465.8)	$40 fee per fine	$40
Court construction (Gov't Code § 70372)	$5 for every $10 in base fine	$500
County fund (Gov't Code § 76000)	$7 for every $10 in base fine	$700
DNA Fund (Gov't Code § 76104.6 and 76104.7)	$5 for every $10 in base fine	$500
Emergency Medical Air Trans. Fee (Gov't Code § 76000.10)	$4 fee per fine	$4
EMS Fund (Gov't Code § 76000.5)	$2 for every $10 in base fine	$200
Conviction assessment (Gov't Code § 70373)	$30 per fine for misdemeanor	$30
Night court assessment (Vehicle Code § 42006)	$1 per fine	$1
ACTUAL COST OF CITATION		**$4,175**
DMV Warrant/hold assessment fee (Vehicle Code § 40508.6)	Up to $10 fee (may vary by county)	+$10
Fee for failing to appear (Vehicle Code § 40508.5)	$15 fee	+$15
Civil assessment for failure to appear/pay (Penal Code § 1214.1)	$300 fee	+$300
COST OF CITATION IF INITIAL DEADLINE IS MISSED		**$4,500**

Source: Source: Stopped, Fined, Arrested, Back on the Road California, 23 (Apr. 2016).

Number of People Who Served Less than One Year in CDCR by County

NUMBER OF PEOPLE WHO SERVED LESS THAN ONE YEAR IN CDCR BY COUNTY

COUNTY	2017	2018	2019
Alameda	287	220	203
Alpine	no data given	no data given	no data given
Amador	22	27	29
Butte	80	86	97
Calaveras	14	23	18
Colusa	19	23	23
Contra Costa	142	165	142
Del Norte	22	27	17
El Dorado	46	45	63
Fresno	681	743	764
Glenn	16	12	18
Humboldt	40	57	87
Imperial	58	70	90
Inyo	7	6	7
Kern	527	495	544
Kings	153	140	134
Lake	51	45	43
Lassen	10	21	23
Los Angeles	3,613	3,865	4,124
Madera	76	82	122
Marin	23	31	22
Mariposa	3	10	5
Mandocino	45	43	41
Merced	107	89	98
Modoc	1	5	7
Mono	3	3	4
Monterey	161	149	165
Napa	54	52	53
Nevada	10	11	12
Orange	776	826	935
Placer	141	120	109
Plumas	9	10	11

Number of People Who Serve Less than One Year in CDCR by County

(CONTINUED)

COUNTY	2017	2018	2019
Riverside	908	969	916
Sacramento	561	583	546
San Benito	20	14	15
San Bernardino	1,583	1,645	1,560
San Diego	951	955	957
San Francisco	51	39	68
San Joaquin	331	321	332
San Luis Obispo	83	100	95
San Mateo	183	188	188
Santa Barbara	105	118	103
Santa Clara	433	401	379
Santa Cruz	34	45	63
Shasta	81	91	120
Sierra	0	2	1
Siskiyou	10	11	13
Solano	173	168	118
Sonoma	97	98	112
Stanislaus	281	276	257
Sutter	65	60	46
Tehama	36	51	48
Trinity	2	7	9
Tulare	162	143	163
Tuolumne	19	12	5
Ventura	243	197	237
Yolo	63	70	54
Yuba	58	69	92
TOTAL	**13,730**	**14,134**	**14,507**

Source: CDCR Office of Research.

Number of People Currently in Prison with One- and Three-Year Sentence Enhancements (2020)

NUMBER OF PEOPLE CURRENTLY IN PRISON WITH ONE- AND THREE-YEAR SENTENCE ENHANCEMENTS (2020)

COUNTY OF SENTENCING	1-YEAR ENHANCEMENT	3-YEAR ENHANCEMENT
Alameda	369	4
Alpine	0	0
Amador	19	1
Butte	149	2
Calaveras	10	0
Colusa	9	0
Contra Costa	177	3
Del Norte	27	0
El Dorado	43	1
Fresno	564	3
Glenn	6	0
Humboldt	37	0
Imperial	27	0
Inyo	2	0
Kern	727	13
Kings	139	1
Lake	43	0
Lassen	22	0
Los Angeles	3885	68
Madera	57	2
Marin	36	0
Mariposa	14	0
Mendocino	63	2
Merced	125	0
Modoc	3	0
Mono	1	0
Monterey	141	5
Napa	28	1
Nevada	9	0
Orange	609	11

Number of People Currently in Prison with One- and Three-Year Sentence Enhancements (2020)

(CONTINUED)

COUNTY OF SENTENCING	1-YEAR ENHANCEMENT	3-YEAR ENHANCEMENT
Placer	111	5
Plumas	5	0
Riverside	1450	35
Sacramento	563	18
San Benito	17	2
San Bernardino	823	12
San Diego	1147	25
San Francisco	83	0
San Joaquin	216	8
San Luis Obispo	106	5
San Mateo	118	4
Santa Barbara	159	9
Santa Clara	507	10
Santa Cruz	67	1
Shasta	188	12
Sierra	1	0
Siskiyou	40	3
Solano	93	2
Sonoma	102	6
Stanislaus	243	2
Sutter	30	1
Tehama	58	4
Trinity	2	0
Tulare	342	4
Tuolumne	47	4
Ventura	210	7
Yolo	129	5
Yuba	26	0

Source: Source: Data provided by CDCR Office of Research.

Number of People Currently in Prison with Gang Enhancements by County (2020)

NUMBER OF PEOPLE CURRENTLY IN PRISON WITH GANG ENHANCEMENTS BY COUNTY (2020)

COUNTY	NUMBER
Alameda	369
Amador	19
Butte	149
Calaveras	10
Colusa	9
Contra Costa	177
Del Norte	27
El Dorado	43
Fresno	564
Glenn	6
Humboldt	37
Imperial	27
Inyo	2
Kern	727
Kings	139
Lake	43
Lassen	22
Los Angeles	3885
Madera	57
Marin	36
Mariposa	14
Mendocino	63
Merced	125
Modoc	3
Mono	1
Monterey	141
Napa	28
Nevada	9

Number of People Currently in Prison with Gang Enhancements by County (2020)

(CONTINUED)

COUNTY	NUMBER
Orange	609
Placer	111
Plumas	5
Riverside	1450
Sacramento	563
San Benito	17
San Bernardino	823
San Diego	1147
San Francisco	83
San Joaquin	216
San Luis Obispo	106
San Mateo	118
Santa Barbara	159
Santa Clara	507
Santa Cruz	67
Shasta	188
Sierra	1
Siskiyou	40
Solano	93
Sonoma	102
Stanislaus	243
Sutter	30
Tehama	58
Trinity	2
Tulare	342
Tuolumne	47
Ventura	210
Yolo	129
Yuba	26

Source: CDCR Office of Research.

Percentage of People Currently in Prison with Gang Enhancement by County and Race (2020)

PERCENTAGE OF PEOPLE CURRENTLY IN PRISON WITH GANG ENHANCEMENT BY COUNTY AND RACE (2020)

COUNTY	BLACK	LATINX	WHITE	OTHER
Alameda	42%	45%	1.56%	3.125
Amador	0%	16.66%	33.33%	50%
Butte	0%	50%	30%	20%
Calaveras	0%	0%	0%	100%
Colusa	0%	75%	0%	25%
Contra Costa	48.12%	44.37%	2.5%	5%
Del Norte	0%	100%	0%	0%
El Dorado	0%	0%	100%	0%
Fresno	21.97%	63.22%	2.69%	12.1%
Glenn	0%	100%	0%	0%
Humboldt	0%	100%	0%	0%
Imperial	0%	100%	0%	0%
Kern	34.19%	63.22%	1.61%	0.96%
Kings	13.2%	79.24%	5.66%	1.88%
Lake	20%	40%	40%	0%
Lassen	0%	100%	0%	0%
Los Angeles	32.11%	63.65%	1.22%	3.3%
Madera	11.42%	85.71%	2.85%	0%
Marin	0%	100%	0%	0%
Mendocino	0%	66.66%	0%	33.33%
Merced	8.27%	82.75%	4.13%	4.82%
Monterey	2.36%	92.91%	0%	4.72%
Napa	0%	92%	8%	0%
Orange	6.36%	80.18%	6.48%	6.95%
Placer	100%	0%	0%	0%
Riverside	26.72%	67.24%	4.16%	1.26%
Sacramento	47.57%	35.92%	3.55%	12.94%
San Benito	0%	100%	0%	0%
San Bernardino	35.85%	57.41%	5.08%	1.64%
San Diego	28.46%	60.57%	2.5%	8.461%

Percentage of People Currently in Prison with Gang Enhancement by County and Race (2020)

(CONTINUED)

COUNTY	BLACK	LATINX	WHITE	OTHER
San Francisco	68.75%	25%	6.25%	0%
San Joaquin	23.25%	58.13%	1.66%	16.94%
San Luis Obispo	17.64%	76.47%	5.88%	
San Mateo	10.9%	83.63%	3.63%	1.81%
Santa Barbara	6%	87.33%	5.33%	1.33%
Santa Clara	9.07%	78.5%	1.77%	10.64%
Santa Cruz	0%	97.56%	2.43%	0%
Shasta	0%	71.42%	14.28%	14.28%
Siskiyou	0%	25%	3%	0%
Solano	14.28%	71.42%	14.28%	0%
Sonoma	1.53%	84.61%	6.15%	7.69%
Stanislaus	2.46%	79.01%	4.93%	13.57%
Sutter	7.14%	82.14%	7.14%	3.57%
Tehama	0%	80%	0%	20%
Tulare	2.38%	90.88%	1.95%	4.77%
Tuolumne	0%	66.6%	33.3%	%0
Ventura	5.31%	87.76%	6.38%	0.53%
Yolo	3.12%	89.06%	4.68%	3.12%
Yuba	12%	64%	8%	16%

Source: CDCR Office of Research.