



November 29, 2023

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.shtm> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon

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,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

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 resentedenced “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 statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article 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	<i>Timely filed</i> - 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	<i>Deny</i> - 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
	<p>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</p>	

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.

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 resented “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.

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.

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

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.

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

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.

(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

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

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

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

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 Cal.3d 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 Council 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

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

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

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

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

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 sentence, 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.

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.



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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) amended section 1172.1 to remove a comma.

COMMISSION ON STATE MANDATES

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Last Updated: 11/27/23

Claim Number: 22-TC-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

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