



**COUNTY OF LOS ANGELES
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RECEIVED
December 20, 2023
*Commission on
State Mandates*

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December 19, 2023

Via Drop Box

Ms. Heather Halsey
Executive Director
Commission on State Mandates
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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, including⁴: (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.

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 L. Magee
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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

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.)

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