

Hearing Date: August 14, 2026

ITEM 2
TEST CLAIM
PROPOSED DECISION

Penal Code Section 741(b)
Statutes 2022, Chapter 806, Section 2 (AB 2778)
Race-Blind Charging
24-TC-07

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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Exhibit A

<i>For CSM Use Only</i>	
Filing Date:	Commission on State Mandates Filed Date June 10, 2025
TC #:	24-TC-07

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:

Race-Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

City of Sacramento

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

Leyne Milstein, Interim City Manager

Street Address, City, State, and Zip:

915 L Street, 5th Floor, Sacramento, CA 95814

Telephone Number

(916)808-8491

Email Address

lmilstein@cityofsacramento.org

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:

Arthur M. Palkowitz, Esq. Attorney for Claimants

Organization: Law Offices of Arthur M. Palkowitz

Street Address, City, State, Zip:

12807 Calle de la Siena, San Diego, CA 92130

Telephone Number

(858)259-1055

Email Address

law@artpalk.onmicrosoft.com

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:

Penal Code Section 741(b)

Statutes 2022, Chapter 806

Assembly Bill No. 2778, Section 2

Effective Date: January 1, 2023

Page 93 (1-4)

☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 10 / 2025

☐ A: Which is not later than 12 months (365 days) following [insert effective date] ___ / ___ / ___, 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] 09 / 01 / 2024, 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: 2025 - 2026 Total Costs: \$50,000,000.00

☒ Identifies all dedicated funding sources for this program;

State: CA-None

Federal: None

Local agency's general purpose funds: Yes. General Funds

Other nonlocal agency funds: None

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: _____

Crime Statistics Report for the Department of Justice (Case No. 12-PGA-01, 02-TC-04 and 02-TC-11);

Crime Statistics Report for the Department of Justice Amended (07-TC-10.)

☒ 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 41 to 44.
- ☒ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages None to None.

- ☒ 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 None to None.
- ☒ 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 36 to 39.

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](#).)

Leyne Milstein

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Interim City Manager

Print or Type Title


Leyne Milstein (Jul 17, 2025 14:48 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

2025-07-17

Created:	2025-07-16
By:	CSM Sign (csmsign@csm.ca.gov)
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Race-Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

County of Santa Clara

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

Margaret Olaiya. Director of Finance

Street Address, City, State, and Zip:

70 West Hedding Street, East Wing, San Jose, CA 95110

Telephone Number

(408)299-5201

Email Address

margaret.olaiya@fin.sccgov.org

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Page 93 (1-4)

Effective date; January 1, 2023

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Margaret Olaiya

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Director of Finance

Print or Type Title

Margaret Olaiya
Margaret Olaiya (Jul 17, 2025 21:19 PDT)

Signature of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

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2025-07-18

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Section 1

Proposed Test Claim Title:

Race -Blind Charging

Section 2

Local Government (Local Agency/School District) Name:

County of Sutter

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

Nathan Black, Auditor/Controller

Street Address, City, State, and Zip:

1160 Civic Center Blvd. Suite D, Yuba City, CA 95993

Telephone Number

(530)822-7127

Email Address

NBlack@co.sutter.ca.us

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Nathan Black

Name of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Auditor/Controller

Print or Type Title

Nathan Black
Nathan Black (Jul 18, 2025 16:44 PDT)

Signature of Authorized Local Government Official
pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

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2025-07-18

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Test Claim: Race-Blind Charging

Assembly Bill No. 2778, Statutes 2022, Chapter 806, Section 2
Adding Penal Code § 741(b); Effective Date: January 1, 2023

Claimants: County of Santa Clara, County of Sutter, City of Sacramento

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5. Written Narrative

Test Claim of:	No. CSM _____
	Race-Blind Charging
	Assembly Bill No. 2778
County of Santa Clara, County of Sutter,	Statutes 2022, Chapter 806, Section 2
City of Sacramento	Penal Code § 741, subd. (b)(1)–(6)
	(Page 93 (1-4).)
Claimants	Effective Date: January 1, 2023

Claimants agree to file this test claim as a joint effort and claimants attest to all of the following in the test claim filing:

(1) The claimants allege state-mandated costs result from the same statutes or executive order;

(2) The claimants agree on all issues of the test claim; and

(3) The claimants have designated one person to act as the sole representative for all claimants. (Cal. Code Regs, tit. 2, § 1183.1, subd. (b).)

Beginning on January 1, 2025, the test claim statute requires local prosecution agencies to develop and execute a new race-blind initial charging evaluation process in which local prosecutors make an initial charging determination based on case documentation that has been redacted to remove any direct means of identifying the race of suspects, victims, and witnesses. Specifically, the test claim statute requires that case documentation be redacted, that the initial charging evaluation determine whether the case should be charged or not charged, and that a prosecutor without knowledge of specified facts perform the initial charging evaluation based on the redacted case documentation. (A.B. No. 2778, Stats. 2022, ch. 806, § 2, Pen. Code, § 741, subd. (b)(1)–(6), eff. Jan. 1, 2023.)

II. In enacting A.B. 2778, the Legislature intended to reduce racial bias.

“In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or ‘unconscious’ bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved.” (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (a) [citing Baughman et al., *Blinding Prosecutors to Defendants’ Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System* (Dec. 2015) *Behavioral Science & Policy*, p. 70].)

“One method to address bias is to ‘acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions.’” (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (b) [quoting Baughman, *supra*, at p. 71].)

"We've seen it time and time again where a person of color is given a harsher punishment for the same crime a non-person of color commits. Creating a system where a person's race is unknown during the time of initial charging is imperative. It is long past time we start addressing the issue of punishing a person based on the crime and not the color of their skin." (AB 2778 Assembly Floor Analysis, p. 3.)

"In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done 'race blind.' The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases."¹ (A.B. No. 2778, Stats. 2022, ch. 806, § 1, subd. (c).) "[T]he spirit, goal, and legislative intent behind Penal Code section 741" is "to reduce the potential for unconscious bias to influence the initial charging decision in a case." (Cal. Dept. of Justice, Race-Blind Charging Guidelines (Jan. 1, 2024) p. 1.)

III. The California Constitution requires the State to reimburse all local agencies.

Article XIII B, section 6 of the California Constitution states:

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 intent of Article XIII B, section 6 is "to [p]reclude 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 San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Thus, the subvention requirement of Section 6 is "directed to state-mandated increases in the services provided by [local

¹ The Stanford Computational Policy Lab has since relocated to Harvard University. The Harvard Computational Policy Lab similarly assisted Santa Clara in implementing the test claim statute. (See Declaration of J. Gibbons-Shapiro, ¶ 13.)

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

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

2. Under the first alternative test set forth by the California Supreme Court, a “new program or higher level of service” is established by “programs that carry out the governmental function of providing services to the public.” (*County of Los Angeles, supra*, 43 Cal.3d at p. 56.)

3. Under the second alternative test set forth by the California Supreme Court, a “new program or higher level of service” is established by “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.” (*County of Los Angeles, supra*, 43 Cal.3d at p. 56.)

4. The mandated activity is a new law when compared with the legal requirements in effect immediately before the enactment of the test claim statute, and it increases the level of service provided to the public in enforcing a state policy. (*San Diego Unified School Dist., supra*, 33 Cal.4th at pp. 874–875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.)

IV. The test claim statute mandates new activities on Claimants.

The requirements for prosecution agencies to independently develop and execute a process to review and to redact information based on general criteria are mandated by the State. The California Supreme Court has stated that claimants must be legally or practically compelled to perform an activity, explaining:

Legal compulsion occurs when a statute or executive action uses mandatory language that “‘require[s]’ or ‘command[s]’” a local entity to participate in a program or service. [citations omitted] Stated differently,

legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey.

(*Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; see also *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 874.)

Claimants are legally compelled as they “*shall* independently develop and execute versions of this redaction and review process.” (Pen. Code, § 741, subd. (b).) The test claim statute consistently uses such “mandatory language”—namely, the word “shall” employed fourteen separate times in the test claim statute—to impose new duties on Claimants, none of which existed prior to the enactment of the test claim statute.

Penal Code section 741, subdivision (b), requires, “[P]rosecution agencies *shall* independently develop and execute versions of this redaction and review process.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, subd. (b), italics added [adding Section 741, subd. (b) to the Penal Code].)

Penal Code section 741, subdivision (b)(1), requires, “Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation *shall* be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which *shall* precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the ‘narrative’ portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(1).)

Penal Code section 741, subdivision (b)(2), requires, “The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, *shall* determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other

evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation *shall* be performed by a prosecutor who does not have knowledge of the redacted facts for that case.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(2).)

Penal Code section 741, subdivision (b)(3), requires, “After completion of a race-blind initial charging evaluation, the case *shall* proceed to a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint or allow the case to be submitted to a grand jury.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(3).)

Penal Code section 741, subdivision (b)(4)(A), requires, “Each of the following circumstances *shall* be documented as part of the case record:

(i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.

(ii) The initial charging evaluation determined that the case *shall* be charged and the second review determined that no charge be filed.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(A).)

Penal Code section 741, subdivision (b)(4)(B), requires, “The explanation for the charging decision change *shall* be documented as part of the case record.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(B).)

Penal Code section 741, subdivision (b)(4)(C), requires, “The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, *shall* be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(4)(C).)

Penal Code section 741, subdivision (b)(5), requires, “If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for

that inability *shall* be documented and retained by the agency. This documentation *shall* be made available by the agency upon request.” (A.B. No. 2778, Stats. 2022, ch. 806, § 2, italics added; Pen. Code, § 741, subd. (b)(5).)

Penal Code section 741, subdivision (b)(6), requires, “The county *shall* collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

V. The test claim statute imposes a new program or higher level of service on Claimants.

The actions compelled by Penal Code, subdivision (b), impose a new program or higher level of service under either prong of the California Supreme Court’s test.

First, the test claim statute mandates actions that “carry out a governmental function of providing services to the public.” (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal.4th at p. 874 (citation omitted).) Upon declaring that unconscious bias may infect the criminal justice system, the test claim statute identifies a corrective measure, a model of race blind charging that was previously trialed by other district attorney offices. (A.B. No. 2778, Stats. 2022, ch. 806, § 1.) The test claim statute mandates this model statewide, thereby expanding an important public service to address racial bias in the criminal justice system.

Courts have repeatedly found that state laws aimed at providing beneficial and protective public services create programs or higher levels of service under this prong, and accordingly involve reimbursable State mandates. For example, permitting conditions establishing heightened stormwater drainage requirements involved a program because they benefitted the public with increased pollution abatement. (*Department of Fin.*, *supra*, 85 Cal.App.5th at pp. 555–556.) Similarly, a law requiring local agencies to contribute costs of educating area pupils with special needs at state schools created a program because “the education of handicapped children is clearly a governmental function providing a service to the public.” (*Lucia Mar Unified Sch. Dist.*, *supra*, 44 Cal.3d at p. 835.) And a law requiring that public school districts afford hearings with specified protections to students facing expulsion created a higher level of service for an existing program because “[p]roviding public schooling clearly constitutes

a governmental function, and enhancing the safety of those who attend such schools constitutes a service to the public.” (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal.4th at p. 879.) Here, likewise, the test claim statute concerns a program because counties provide an important service to the public in carrying out a race blind charging process.

Second, the test claim statute “implement[s] a state policy, impose[s] unique requirements on local governments and do[es] not apply generally to all residents and entities in the state.” (*San Diego Unified Sch. Dist.*, *supra*, 33 Cal.4th at p. 874 [citation omitted].) By its very terms, the test claim statute uniquely applies to prosecution agencies, and not to all residents and entities in the state. (See generally Pen. Code, § 741, subd. (b)(1)–(6).)

VI. A new program is mandated when local agencies incur increased costs.

Government Code section 17514 provides that “[c]osts mandated by the state’ means 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 Section 6 of Article XIII B of the California Constitution.”

Government Code section 17564, subdivision (a), provides that “[n]o 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.” Each Claimant alleges increased costs exceeding the \$1,000.00 minimum claim amount articulated in Government Code section 17564(a).

Government Code section 17556, subdivision (e), states that there are no costs mandated by the state, if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill. There is no evidence that additional ongoing revenue has been appropriated, specifically to fund the costs of the mandated activities in this test claim. Thus, Government Code section 17556, subdivision (e), does not apply to deny this claim.

Accordingly, the evidence in the record supports the finding that the Claimants have incurred increased costs mandated by the State, pursuant to Government Code section 17514. However, to the extent a local agency receives any funding or grant funding and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the local agency.

The author of the bill intended for local governments to be reimbursed for costs incurred to implement the Race-Blind Charging legislation. (Declaration of Kevin McCarty, ¶ 5.)

VII. The Commission on State Mandates has the authority to decide a test claim.

The Commission on State Mandates has the authority, pursuant to Government Code section 17551, subdivision (a), to hear and decide upon a claim by a local agency that the local agency or is entitled to be reimbursed by the State for costs mandated by the State, as required by section 6 of article XIII B of the California Constitution. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331–334; Gov. Code, §§ 17551, 17552.) The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. (*County of San Diego, supra*, 15 Cal.4th at p. 109.)

VIII. Claimant Santa Clara first incurred increased costs in Fiscal Year 2024–2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Santa Clara first incurring increased costs on June 24, 2024, to implement the activities required by the test claim statute. (See Declaration of J. Gibbons-Shapiro (JGS Dec.), ¶ 16.)

The activities performed by Claimant Santa Clara District Attorney's Office (DAO) included conducting the initial charging evaluation and entering documentation in the case record, including changes in the decision and reason for changes. (Pen. Code, § 741, subd. (b)(2),(4)-(5); JGS Dec. ¶ 7,10, 11–13.) Costs for these activities are \$1,589,814.00. (JGS Dec. Ex. 1, Task 1.)

Other activities performed were uploading electronic cases into CiberLaw, the DAO's case management system (Task 2); conducting background screening for vendor employees (Task 3); deploying redaction software and new Ciberlaw workflows (Task 4); and providing technical support for the redaction software and new CiberLaw workflows and end user support (Task 5). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶¶ 8–10, 12, 14, 16, 17, 19, 22, 25; JGS Dec. Ex. 1, Tasks 2–5.) Costs for Task 2 are \$74,735.84; costs for Task 3 are \$932.68; costs for Task 4 are \$14,683.31; and costs for Task 5 are \$14,111.96.

Additional activities include developing statistical reports and data dashboards (Task 6); programming and deploying a new program in Claimant Santa Clara's Criminal Justice Information Control (CJIC) system to redact local suspect criminal history documentation (Task 7); and providing training (Task 8). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶¶ 8–9, 19, 21; JGS Dec. Ex. 1, Tasks 6–8.) Costs for Task 6 are \$8,094.92; costs for Task 7 are \$9,324.00; and costs for Task 8 are \$46,256.00.

Additional activities include conducting governance meetings (Task 9); and integrating Axon Justice Premier with CiberLaw (Task 10). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶¶ 20, 23–24; JGS Dec. Ex. 1, Tasks 9, 10.) Costs for Task 9 are \$7,112.60; and costs for Task 10 are \$191,241.44.

Vendor Costs include the following:

HTC's costs for implementing new workflows in CiberLaw and the integration between CiberLaw and the redaction software in the amount of \$25,000.00. (JGS Dec. ¶¶ 8–12, 14–15; Pen. Code, § 741, subd. (b)(1)–(5); JGS Dec. Ex. 2, Task 1.)

Microsoft cloud hosting costs for running Redaction Software in the amount of \$35,415.95. (JGS Dec. ¶¶ 9, 14; Pen. Code, § 741, subd. (b)(1); JGS Dec. Ex. 2, Task 3.)

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Santa Clara has incurred increased actual and estimated costs in Fiscal Year 2024–2025 as follows:²

Total Costs of Santa Clara employees/third-party professionals costs	
(JGS Dec. Ex. 1, Tasks 1–10)	\$1,956,306.75

² Santa Clara's costs are greater than the other Claimants in part due to its larger size, greater number of arrests, and higher wages due to significantly higher costs of living.

Total Vendor Costs (JGS Dec. Ex. 2, Tasks 1–4.) \$60,415.95

Total Actual and Estimated Costs 2024–2025 \$2,016,722.70

IX. The actual or estimated annual costs that will be incurred by Claimant Santa Clara to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Santa Clara will incur increased actual and estimated costs in **Fiscal Year 2025–2026** as follows:

The activities performed by Claimant Santa Clara District Attorney’s Office (DAO) include conducting the initial charging evaluation and entering documentation in the case record, including changes in the decision and reason for changes (Task 1). (Pen. Code § 741, subd. (b)(2)(4)–(5); JGS Dec. ¶ 7, 10, 11–13; JGS Dec. Ex. 1, Task 1.) Costs for these activities are \$3,179,628.00. (JGS Dec. Ex. 1, Task 1.)

Other activities performed include uploading electronic cases into CiberLaw (Task 2); and providing technical support for the Redaction Software and new CiberLaw workflows and end user support (Task 5). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 17, 19, 22, 25; JGS Dec. Ex. 1, Tasks 2–5.) Costs for Task 2 are \$149,471.68; and costs for Task 5 are \$9,689.12.

Additional activities include developing statistical reports and data dashboards (Task 6). (Pen. Code, § 741, subd. (b)(6); JGS Dec. ¶ 18; JGS Dec. Ex. 1, Tasks 6–8.) Costs for Task 6 are \$8,094.92.

Additional activities include conducting governance meetings (Task 9); and integrating Axon Justice Premier with CiberLaw (Task 10). (Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. ¶ 20, 23–24; JGS Dec. Ex. 1, Tasks 9, 10.) Costs for Task 9 are \$15,257.36; and costs for Task 10 are \$285,777.44.

Vendor Costs include the following:

HTC’s costs for implementing integration between CiberLaw and Axon Justice Premier in the amount of \$40,000. (JGS Dec. ¶ 15, 23; Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. Ex. 2, Task 2.)

Microsoft cloud hosting costs for running Redaction Software in the amount of \$59,110.32. (JGS Dec. ¶ 9, 14; Pen. Code, § 741, subd. (b)(1); JGS Dec. Ex. 2, Task 3.)

Axon Justice Premier software for submitting electronic cases in the amount of \$534,000.00. (JGS Dec. ¶ 23; Pen. Code, § 741, subd. (b)(1)–(6); JGS Dec. Ex. 2, Task 4.)

Costs of Santa Clara Employees/third-party professionals (JGS Dec. Ex. 1, Tasks 1-10)	\$3,647,918.52
Vendor Costs (JGS Dec. Ex. 2, Tasks 1-4)	<u>\$633,110.32</u>
Total Actual and Estimated Costs 2025–2026	\$4,281,028.84

X. Claimant Sutter first incurred increased costs in Fiscal Year 2024–2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Sutter first incurring increased costs on June 14, 2024, when the contract with Sicuro Analytics was executed to implement the activities required by the test claim statute.

In preparation for the implementation of this legislation, as each law enforcement agency has different forms, and the fields which could contain race-based information could be located in various fields, it soon became apparent that to do this manually would be extremely time consuming and expensive. As a result, due to salary savings, Sutter hired a consultant, Sicuro Analytics, which has a Race Blind Charging Solution that is programmed to use artificial intelligence (“AI”) to redact all race-based descriptions. This can include, but is not limited to, names, race, complexion, and physical description. (Greeson Dec. ¶ 3, 4.)

Activities performed by Sutter include when law enforcement agencies reports within Sutter County are received, they are scanned in the Race Blind Charging Solution program. This web-based application uses Artificial Intelligence (“AI”) to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and redacts the data. The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. (Pen. Code, § 741, subd. (b)(1) –(2); Greeson Dec. ¶ 4.)

The prosecutor decides the initial charge(s) to file based upon the redacted report and then the prosecutor must decide if the original charges were correct. If the prosecutor determines the original charges were not correct, substantial notes are required to document the reason for the change in charges. (Pen. Code, § 741, subd. (b)(1), (4); Greeson Dec. ¶ 4.)

In Fiscal Year 2024-2025, Sutter incurred actual and estimated costs of implementing the activities mandated by the test claim statute, Penal Code section 741, subdivision (b)(1)–(6), to be as follows:

Race Blind Charging Services

Sicuro Implementation Costs

Invoice 0624-2	\$2,310	June, 2024 Services
Invoice 0724-2	\$4,950	July, 2024 Services
Invoice 0824-2	\$6,600	August, 2024 Services
Invoice 0924-2	\$4,620	September, 2024 Services
Invoice 1224	\$11,880	December, 2024 Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0225	\$1,760	February, 2025 Services
Invoice 0325	\$1,760	March, 2025 Services
Invoice 0425	\$1,760	April, 2025 Services
Invoice 0525	\$1,760	May, 2025 Services
Invoice 0625	\$1,760	June, 2025 Services

Total Actual and Estimated Costs 2024-2025: \$39,160.00

XI. The estimated annual costs that will be incurred by Claimant Sutter to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

In Fiscal Year 2025–2026, Sutter incurred estimated costs of implementing the activities mandated by the test claim statute, Penal Code section 741, subdivision (b)(1)–(6), to be as follows:

a. Race-Blind Charging Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0725	\$1,760	July, 2025 Services
Invoice 0825	\$1,760	August, 2025 Services
Invoice 0925	\$1,760	September, 2025 Services
Invoice 1025	\$1,760	October 2025 Services
Invoice 1125	\$1,760	November 2025 Services
Invoice 1225	\$1,760	December 2025 Services
Invoice 0126	\$1,760	January 2026 Services
Invoice 0226	\$1,760	February 2026 Services
Invoice 0326	\$1,760	March 2026 Services
Invoice 0426	\$1,760	April 2026 Services
Invoice 0526	\$1,760	May 2026 Services
Invoice 0626	\$1,760	June 2026 Services

Total County of Sutter 2025–2026 increased estimated costs: \$21,120.00

XII. Claimant Sacramento first incurred increased costs in Fiscal year 2024-2025 for the activities required by the test claim statute.

This test claim is filed within 365 days of Claimant Sacramento first incurring costs in September 2024, to implement the activities required by the test claim statute. Benner Dec. ¶ 6 (a).)

The activities performed by Sacramento include implementing a two-step redaction process to identify racial information within the documents provided by arresting agencies, to redact that information, to produce the resulting material for review by the prosecutor performing the initial charging evaluation, and reasonably ensure correct redaction is applied in accordance with the implemented race-blind charging guidelines. (Pen. Code, § 741, subd. (b)(1)–(6); Benner Dec. ¶ 3.)

Secretaries drafted a procedures document, showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference if/when needed. Secretaries and DCAs were trained on the new procedures. (Pen. Code, § 741, subd. (b)(1)–(5); Benner Dec. ¶¶ 6 (a)–(c).)

Secretaries activities include electronically uploading police reports, manually redacting them, sending them to a filing attorney, recording the initial decision, and documenting the decision from the second review. (Pen. Code, § 741, subd. (b)(1)–(3); Benner Dec. ¶ 8.)

Implementation of Penal Code section 741, subdivision (b)(6), requires regular updates in the form of meetings and emails to gauge the success of the implemented procedures. Continued review of the process ensures the filing DCAs are adequately staffed to keep up with the increased workload. (Pen. Code, § 741, subd. (b)(6); Benner Dec. ¶ 7.)

In performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Sacramento incurred increased actual and estimated costs in Fiscal Year 2024–2025 as follows:

Time spent by Secretarial Staff \$30,597.60.

Time spent by Attorneys Staff \$91,680.00

Total Sacramento actual and estimated increased costs 2024–2025:
\$122,277.60

(Benner Dec. ¶¶ 9,11.)

XIII. The actual or estimated annual costs that will be incurred by Claimant Sacramento to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Based on performing the aforementioned activities required by Penal Code section 741, subdivision (b)(1)–(6), Sacramento incurred increased actual and estimated costs in Fiscal Year 2025–2026 as follows:

Time spent by Secretarial Staff \$61,195.20

Time spent by Attorney Staff \$183,360.00

Total Sacramento actual and estimate of increased costs 2025–2026:
\$244,555.20.

(Benner Dec. ¶ 12.)

XIV. A statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

Claimants estimate the statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed is \$50,000,000.00.

XV. Identification of all of the funding sources available for this program.

Claimants are unaware of any funding resources available for this program.

(a.) Dedicated state funds.

Claimants are unaware at this time of any dedicated state funds available for the Race Blind Charging program.

(b.) Dedicated federal funds.

Claimants are unaware at this time of any dedicated federal funds available for the Race Blind Charging program.

(c.) Other nonlocal agency funds.

Claimants are unaware at this time of any other dedicated nonlocal agency funds available for the Race Blind Charging program.

(d.) The local agency's general purpose funds.

Claimants anticipate using their general-purpose funds for the Race Blind Charging program.

(e.) Fee authority to offset costs.

Claimants are unaware at this time of any fee authority available for the Race Blind Charging program.

XVI. Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

Claimants are aware at this time of a prior approved mandate related to the Race Blind Charging program: "Crime Statistics Reports for the Department of Justice; Crime Statistics Reports for the Department of Justice Amended." (Case No. 12-PGA-01, 02-TC-04 and 02-TC-11 and 07-TC-10.)

XVII. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order.

Claimants are unaware at this time of any legislatively determined mandate related to the Race Blind Charging program.

DECLARATION OF JAMES GIBBONS-SHAPIRO

1. I, James Gibbons-Shapiro, declare:
2. I have been employed by the County of Santa Clara (the "County") in its District Attorney's Office (DAO) since 1997 and currently hold the title of Assistant District Attorney. I have occupied this position since 2014.
3. As an Assistant District Attorney, I am responsible, *inter alia*, for overseeing the DAO's internal IT team and approving all changes made to the County's Criminal Justice Information Control (CJIC) system and to the portion of County's Microsoft Government Cloud managed by the DAO IT Team ("the Cloud"). In this position, I also help oversee the County's actions in carrying out the new programs mandated by Penal Code section 741, subdivision (b) ("Section 741(b)"), described in detail below. I have personal knowledge of the facts set forth in this Declaration and the attached exhibits, and if called to testify to the statements made herein, I could and would do so competently.
4. Section 741(b) was added by Assembly Bill No. 2778 (Stats. 2022, ch. 806) and became effective on January 1, 2023. Assembly Bill No. 2778 requires all offices of the district attorneys to implement Section 741(b) by January 1, 2025.
5. Section 741(b) mandates that all prosecution agencies in California provide new programs beginning on January 1, 2025. The DAO is a prosecution agency in California.
6. As an Assistant District Attorney, I am familiar with the DAO's new activities arising from Section 741(b) and the estimated, actual and anticipated costs incurred in carrying out these activities.
7. Under Section 741(b), the DAO must conduct an initial race-blind charging evaluation, an entirely new requirement in determining whether to charge an individual with a crime. (Pen. Code, § 741, subd. (b); see Ex. 1, Task 1.) To conduct this initial race-blind charging evaluation, the DAO must redact case information received from law enforcement agencies and suspect criminal history documentation. (Pen. Code, § 741, subd. (b)(1)–(2).)
8. To comply with Section 741(b), the DAO must redact all indicia of race from cases received from law enforcement agencies, such as police reports, and from suspect criminal history documentation. Pursuant to Penal Code Section 741, subdivision (b)(1), the DAO may apply the redactions "mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction." (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Tasks 4, 7; Ex. 2, Tasks 1, 3.)

9. To the extent possible, the DAO has used software to apply redactions as it has a greater rate of accuracy and is more cost effective in light of the high volume of cases processed in Santa Clara County. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Tasks 4, 7; Ex. 2, Tasks 1, 3.) Because the DAO decided to perform redactions using software (as discussed further in paragraphs 14, 16, and 17), the DAO is not incurring ongoing personnel costs (beyond the software implementation and maintenance tasks discussed in further detail below) specifically related to this activity.
10. The DAO must also implement a new initial charging evaluation process where a prosecutor with no knowledge of the redacted facts must decide whether to charge the suspect based on the redacted documents. (Pen. Code, § 741, subd. (b)(2); see Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) All cases must be put through this initial charging evaluation except for those classes of crimes or factual circumstances that the prosecution agency removes or excludes, for example, due to the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics, or the relevance of racial animus to the charging decision. (Pen. Code, § 741, subds. (b)(2), (c); see Ex. 1, Task 1, 4; Ex. 2, Task 1.)
11. After the initial charging evaluation, the DAO proceeds to a second, complete review using the unredacted reports and all available documents where a prosecutor will decide whether to submit the case to the grand jury or charge the suspect in a criminal complaint, including the applicable charges and enhancements. (Pen. Code, § 741, subd. (b)(3); see Ex. 2, Task 1.)
12. Pursuant to Section 741, subdivision (b)(4)(A), the DAO documents as part of the case record whether the prosecutor's charging decision changed between the initial evaluation and the second review, as well as the reason for the change in the charging decision. (See Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) The DAO is also required to document the reason if they are unable to put a case through a race-blind initial charging evaluation. (Pen. Code, § 741, subd. (b)(4)(B); see Ex. 1, Tasks 1, 4; Ex. 2, Task 1.) This documentation must be made available upon request. (Pen. Code, § 741, subd. (b)(4)(C).)
13. Complying with Section 741(b)'s new mandates, including conducting the initial charging evaluation and entering documentation in the case record, adds to the time that the DAO's attorneys spend reviewing cases and making charging decisions. (See Ex. 1, Task 1.) Between January 1 and June 30, 2025, DAO attorneys will have spent an estimated 30 additional minutes per case and will have reviewed an estimated 13,473 cases. Between July 1, 2025 and June 30, 2026, DAO attorneys are expected to have spent an estimated 30 additional minutes per case and to have reviewed an estimated 26,946 cases.
14. In Santa Clara County, redactions are automatically applied to police reports using software provided by Harvard University's Computational Policy Lab (CPL)

(“the Redaction Software”). (See Ex. 1, Tasks 4–5; Ex. 2, Tasks 1, 3.) Although CPL provides the Redaction Software at no cost to the County, the County incurs usage costs for hosting the Redaction Software in the Cloud, where it leverages technologies such as advanced optical character recognition and generative artificial intelligence. (See Ex. 2, Task 3.)

15. In addition, the County contracted with HTC Global Services, Inc. (HTC) to integrate the DAO’s case management system, CiberLaw, with the Redaction Software and develop and implement new workflows in its case management system, CiberLaw. (See Ex. 2, Task 1.) These workflows enable DAO attorneys to (1) conduct the initial charging evaluations, including reviewing the redacted cases (Pen. Code, § 741, subd. (b)(2)); (2) document any change in the charging decision between the initial charging evaluation and the second review and the reason for the change (Pen. Code, § 741, subd. (b)(4)(A)–(B)); and (3) document the reason if they are unable to put a case through a race-blind initial charging evaluation (Pen. Code, § 741, subd. (b)(5)).
16. The County first incurred costs relating to Section 741(b) on June 24, 2024, when it started conducting project planning meetings with CPL, as described in Paragraph 17. (Pen. Code, § 741, subd. (b)(1)–(6); see Ex. 1, Task 4.)
17. The process of implementing the new Redaction Software and CiberLaw workflows involved the following actions, among others, taken by County employees and third-party professionals:
 - a. Conducting regular project planning meetings with CPL beginning on June 24, 2024 to ensure the Redaction Software was installed and tested at least four weeks prior to the January 1, 2025 implementation deadline. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
 - b. Configuring remote access for CPL to the Cloud and to County networks, which enabled CPL to support the Redaction Software and retrieve data (which is used by CPL to increase the accuracy of redactions and reduce errors). (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
 - c. Conducting the federal and state criminal background checks of CPL employees, as required by the FBI Criminal Justice Information Services (CJIS) Security Policy and California Department of Justice (DOJ) CLETS Policies, Practices, and Procedures, who needed access to DAO systems containing federal Criminal Justice Information (CJI) and other information derived from the California Law Enforcement Telecommunications System (CLETS) in order to deploy the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 3.)
 - d. Providing CPL with a historical sample of several hundred police reports for purposes of configuring and improving the accuracy of the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
 - e. Deploying the Redaction Software in the Cloud, which involved the following activities:

- i. Provisioning the Cloud resources and creating production and non-production networks to ensure communication among the Cloud resources (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - ii. Configuring the Cloud networks to communicate with the DAO's on-premises network, which hosts CiberLaw (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - iii. Conducting security review of the system architecture (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - iv. Collaborating with Microsoft to obtain their recommendations on implementing the Redaction Software in the Cloud and troubleshooting issues (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - v. Configuring the Cloud to set the appropriate access levels;
 - vi. Installing the Redaction Software in the Cloud (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - vii. Validating the Cloud components were functioning as expected after deployment (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - viii. Providing system logs to CPL to troubleshoot issues (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4); and
 - ix. Performing user acceptance testing (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4).
- f. Conducting meetings with HTC to discuss project scope and workflow design. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
- g. Conducting meetings with HTC and CPL to design the integration between the Redaction Software and CiberLaw. Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
- h. Assisting HTC with developing new user interfaces and integrations with the Redaction Software, including the following activities:
 - i. Defining functional and technical requirements as well as changes to functionality and the frontend user experience (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4);
 - ii. Deploying the software updates into testing and production environments (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4); and
 - iii. Conducting user acceptance testing (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4).
- i. Conducting meetings with CPL to review how the Redaction Software is performing and address issues that arise. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 4.)
- j. Providing ongoing technical support for the Redaction Software, including working with CPL to troubleshoot redaction errors that arise during production and providing CPL with error details for use in improving the Redaction Software. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 5.)
- k. Collaborating with CPL and HTC to deploy and validate software updates that address bugs or improve user experience for the Redaction Software

and CiberLaw workflows. (Pen. Code § 741, subd. (b)(1); see Ex. 1, Task 5.)

18. Section 741, subdivision (b)(6), requires counties to collect data from the race-blind initial charging evaluation process and make the data available for research purposes. The process for implementing this requirement included the following actions taken by County employees:

- a. Developing reports and data dashboards to provide statistics to gauge how the Redaction Software is running and at what rate attorneys are changing their charging decisions between the initial charging evaluation and the second review (Pen. Code, § 741, subd. (b)(6); see Ex. 1, Task 6); and
- b. Pulling, cleaning, and providing data from CiberLaw to CPL for purposes of conducting research on the effectiveness of race-blind charging (Pen. Code, § 741, subd. (b)(6); see Ex. 1, Task 6).

19. To implement Section 741(b), it was reasonably necessary for the DAO to educate staff on Section 741(b)'s requirements and how to implement it, including how to use the new tools conduct an initial charging evaluation. The training included all DAO attorneys because attorneys regularly rotate onto assignments where they are responsible for conducting charging evaluations. These activities included the following:

- a. Conducting a two-hour user training session for 98 attorneys, including background on the law and instructions on navigating the new user interface. (See Ex. 1, Task 8.)
- b. Instructing support staff on how to identify which documents require redaction and how to flag them for redaction in CiberLaw. (See Ex. 1, Task 5.)
- c. Assisting end users in response to service requests, for example, by explaining how to navigate the new workflows and the steps for conducting the initial charging evaluation and the second review. (See Ex. 1, Task 5.)

20. To implement Section 741(b), it was also reasonably necessary to conduct regular governance meetings within the DAO to monitor the project status, review the statistical reports, and assess the impact on attorneys' workload. During these governance meetings, two Assistant District Attorneys, one Supervising District Attorney, and the DAO's IT Manager have met to decide how to implement Section 741(b), how to allocate resources to cover the additional work required to implement the Redaction Software and new CiberLaw work flows, and how to ensure the charging units are adequately staffed to cover the additional work required to conduct initial charging evaluations. During these meetings, they also review (1) the statistical reports to assess at what rate attorneys are changing their charging determinations between the initial charging

evaluation and the second review; and (2) individual cases where there has been a change to determine if there is a legitimate rationale for the change. By conducting these reviews, the DAO ensures that it is effectuating the Legislature's intent in enacting Section 741(b); namely, to eliminate racial bias from charging decisions. (Pen. Code, § 741, subd. (b)(1)–(6); see Ex. 1, Task 9.)

21. To date, the Redaction Software provided by CPL is able to redact only police reports. To comply with the January 1, 2025 deadline, the DAO relied on local law enforcement agencies to manually redact state and local suspect criminal history documentation. Beginning in February 2025, the DAO worked with the County's Technology Services and Solutions (TSS) department to modify the County's CJIC system, which maintains local suspect criminal history documentation, to apply those redactions automatically by creating a new program in CJIC. The new program went live in March 2025. The process of implementing the new program in CJIC involved the following actions, among others, taken by County employees:
- a. Assigning resources to develop and implement the new program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - b. Cloning the existing program and modifying it to replace database values indicating race in the program's screen, PDF and printed versions. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - c. Creating a new transaction in CJIC for end users to use to access the program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - d. Conducting unit testing and quality assurance testing of the new program.
 - e. Deploying the new program to the test environment and remediating issues that arose during the deployment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - f. Launching the new program into the production environment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - g. Modifying CJIC to permit individual end users to be assigned access to the new transaction. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - h. Notifying stakeholders regarding the availability of the new program. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
 - i. Resolving service requests and issues that arose after deployment. (Pen. Code, § 741, subd. (b)(1); see Ex. 1, Task 7.)
22. To implement Section 741(b), it was reasonably necessary for the DAO to fully convert to the electronic submission of cases by local police departments. Prior to the effective date of AB 2778, some units in local police departments still submitted their cases to the DAO in paper. In order to apply the Redaction Software, the DAO required these units to submit their cases electronically using a temporary custom solution built by the DAO. The process of transitioning these units to submitting their cases electronically required a County employee to establish user accounts in the DAO's custom solution for the end users in local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 5.)

23. Beginning in February 2025, the DAO started the process of transitioning from this custom solution to Axon Justice Premier for the electronic submission of cases from local police departments, including integrating Axon Justice Premier with CiberLaw. Axon Justice Premier is reasonably necessary to implement Section 741(b) because it ensures that local police departments can submit their cases electronically, thereby enabling those cases to be redacted and presented to DAO attorneys for review during the initial charging evaluation without having to manually scan the documents. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10; Ex. 2, Tasks 2, 4.)
24. The process of implementing the electronic submission of cases in Axon Justice Premier has involved the following actions, among others, taken by County employees and third-party professionals:
- a. Gathering business requirements for integrations related to CiberLaw and Axon. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - b. Attending regular project planning and design meetings.
 - c. Coordinating with Axon and HTC to define the scope of the project and the technical and business requirements. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - d. Conducting meetings with Axon to design the integration between Axon and CiberLaw. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - e. Conducting meetings with HTC to discuss project scope and workflow design. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - f. Developing design documentation and diagrams for integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - g. Conducting security and IT architecture review of the design documentation and diagrams. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - h. Assisting HTC with developing new user interfaces and integrations with Axon, including the following activities:
 - i. Defining functional and technical requirements as well as changes to functionality and the frontend user experience (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).
 - ii. Deploying the software updates into testing and production environments (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10); and
 - iii. Conducting user acceptance testing (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).
 - i. Deploying the integrations in the County's Information Sharing Environment, including the following activities:
 - i. Setting up and deploying development, test, and production environments (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - ii. Creating and developing system requirements based on business requirements (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);

- iii. Developing and deploying source codes and test scripts for integration (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - iv. Defining and developing quality assurance test plans for functional and load testing (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - v. Defining and developing quality assurance test cases (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - vi. Coordinating release planning (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - vii. Configuring pre-production settings (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - viii. Deploying integrations in the production environment (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10);
 - ix. Drafting and delivering documentation, including the runbook (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10); and
 - x. Performing knowledge transfer to relative stakeholders (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10).
 - j. Coordinating with Axon and HTC to review development progress and backlog through the scrum process. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - k. Notifying local police departments of the new workflow and solution. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - l. Conducting user acceptance testing with end users in both DAO and local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - m. Training end users in both the DAO and local police departments. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - n. Providing ongoing technical support for Axon, CiberLaw, and the ISE, including working with Axon and HTC to troubleshoot errors that arise during production as related to the integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
 - o. Collaborating with Axon and TSS to deploy and validate software updates that address bugs or improve user experience for Axon and CiberLaw workflows as related to the integrations. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 10.)
25. DAO staff must also manually upload the electronic cases into CiberLaw in order to leverage the integration between CiberLaw and the Redaction Software and the new CiberLaw workflows for conducting an initial charging evaluation. (Pen. Code, § 741(b)(1)–(6); see Ex. 1, Task 2.)
26. In 2024-2025 the County estimates the increased costs of implementing the activities mandated by the test claim statute to be as follows:
- a. An estimated \$1,956,306.75 for an estimated 8,714 hours of employee and third-party professional labor. (See Ex. 1, Tasks 1–10.)
 - b. An estimated \$60,415.95 in vendor costs during the 2024-2025 fiscal year. (See Ex. 2, Tasks 1–4.)

Total 2024-2025 estimated increased costs are \$2,016,722.70.

27. In 2025-2026 the County estimates the costs of implementing the activities mandated by the test claim statute to be as follows:

- a. An estimated \$3,647,918.52 beginning in the 2025-2026 fiscal year, accounting for an estimated 16,231 hours of employee and third-party professional labor. (See Ex. 1, Tasks 1–10.)
- b. An estimated \$633,110.32 in vendor costs during the 2025-2026 fiscal year. (See Ex. 2, Tasks 1–4.)

Total 2025-2026 estimated increased costs are \$4,281,028.84.

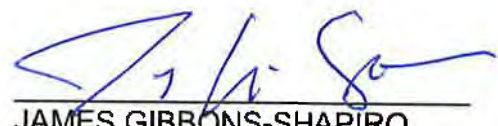
28. If not reimbursed by the State, the County would pay for all the costs discussed above from its General Fund.

29. To the best of my knowledge, the County has not received any local, State, or federal funding and does not have a fee authority to offset the increased direct and indirect costs that the County will incur to implement the programs mandated by Section 741(b).

30. To the best of my knowledge, there are no legislatively determined mandates on Section 741(b).

31. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

32. Executed on July 16, 2025, at San José, California.



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Test Claim: Race-Blind Charging
 Claimant: County of Santa Clara
 Section: 6 Declaration-James Gibbons-Shapiro

Exhibit 1: Estimated costs of County employees and third-party professionals incurred by implementing Penal Code Section 741(b).

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
1. Conducting the initial charging evaluation and entering documentation in the case record; documenting changes in decision and reason for changes. (JGS Decl. ¶ 7, 10, 11–13; Pen. Code, § 741, subd. (b)(2), (4)–(5).)	Deputy District Attorney I-IV	\$236.00	6,736.5	\$1,589,814.00	13,473	\$3,179,628.00	\$4,769,442.00
2. Uploading electronic cases (e.g., police reports and suspect criminal history documentation) into CiberLaw. (JGS Decl. ¶ 25; Pen. Code, § 741, subd. (b)(1)–(4).)	Justice System Clerk; Legal Secretary	\$111.88	668	\$74,735.84	1336	\$149,471.68	\$224,207.52
3. Conducting background screening for CPL employees. (JGS Decl. ¶ 17, subd. (c); Pen. Code, § 741, subd. (b)(1).)	Criminal Investigator II	\$266.48	3.5	\$932.68	0	\$0.00	\$932.68

Test Claim: Race-Blind Charging
Claimant: County of Santa Clara
Section: 6 Declaration-James Gibbons-Shapiro

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
4. Deploying Redaction Software and new Ciberlaw workflows. (JGS Decl. ¶ 8–10, 12, 14, 16, 17; Pen. Code, § 741, subd. (b)(1)–(6).)	IT Manager	\$258.04	34	\$8,773.36	0	\$0.00	\$8,773.36
	Infrastructure Engineer	\$218.51	20	\$4,370.20	0	\$0.00	\$4,370.20
	Network Engineer	\$102.65	15	\$1,539.75	0	\$0.00	\$1,539.75
5. Providing technical support for the Redaction Software and new CiberLaw workflows and end user support. (JGS Decl. ¶ 17, 19, 22; Pen. Code, § 741, subd. (b)(1)–(5).)	IT Manager	\$258.04	26	\$6,709.04	24	\$6,192.96	\$12,902.00
	Infrastructure Engineer	\$218.51	32	\$6,992.32	16	\$3,496.16	\$10,488.48
	Network Engineer	\$102.65	4	\$410.60	0	\$0.00	\$410.60
6. Developing statistical reports and data dashboards. (JGS Decl. ¶ 18; Pen. Code, § 741(b)(6).)	IT Manager	\$258.04	8	\$2,064.32	8	\$2,064.32	\$4,128.64
	Business Intelligence Analyst	\$201.02	30	\$6,030.60	30	\$6,030.60	\$12,061.20
7. Programming and deploying new CJIC program. (JGS Decl. ¶ 8–9, 21; Pen. Code, § 741, subd. (b)(1).)	Senior Application Developer	\$252.00	20	\$5,040.00	0	\$0.00	\$5,040.00
	Quality Assurance Engineer	\$252.00	16	\$4,032.00	0	\$0.00	\$4,032.00

Test Claim: Race-Blind Charging
 Claimant: County of Santa Clara
 Section: 6 Declaration-James Gibbons-Shapiro

Task	Resource Type	Average Hourly Rate	FY 2024-2025 Hours	FY2024-2025 Cost per Task	FY 2025-2026 Hours	FY 2025-2026 Cost per Task	Total Cost
	System Engineer	\$252.00	1	\$252.00	0	\$0.00	\$252.00
8. Providing training. (JGS Decl. ¶ 19; Pen. Code, § 741, subd. (b)(1)–(5).)	Deputy District Attorney I-IV	\$236.00	196	\$46,256.00	0	\$0.00	\$46,256.00
9. Conducting governance meetings. (JGS Decl. ¶ 20; Pen. Code, § 741, subds. (b)(1)–(6), (c).)	Assistant District Attorney	\$380.37	6	\$2,282.22	12	\$4,564.44	\$6,846.66
	Assistant District Attorney	\$381.99	6	\$2,291.94	12	\$4,583.88	\$6,875.82
	Supervising District Attorney	\$337.06	6	\$2,022.36	12	\$4,044.72	\$6,067.08
	IT Manager	\$258.04	2	\$516.08	8	\$2,064.32	\$2,580.40
10. Integrating Axon Justice Premier with CiberLaw. (JGS Decl. ¶ 23–24; Pen. Code, § 741, subd. (b)(1)–(6).)	IT Manager	\$258.04	52	\$13,418.08	52	\$13,418.08	\$26,836.16
	Senior IT Project Manager	\$230.00	208	\$47,840.00	208	\$47,840.00	\$95,680.00

Test Claim: Race-Blind Charging
 Claimant: County of Santa Clara
 Section: 6 Declaration-James Gibbons-Shapiro

Exhibit 2: Estimated vendor costs incurred by Penal Code Section 741(b).

Costs	FY 2024-2025	FY 2025-2026	Total Cost
1. HTC's costs for implementing new workflows in CiberLaw and integration between CiberLaw and the Redaction Software. (JGS Decl. ¶¶ 8–12, 14–15; Pen. Code, § 741(b)(1)–(5).)	\$25,000.00	\$0.00	\$25,000.00
2. HTC's costs for implementing integration between CiberLaw and Axon Justice Premier. (JGS Decl. ¶¶ 15, 23; Pen. Code, § 741(b)(1)–(6).)	\$0.00	\$40,000	\$40,000
3. Microsoft cloud hosting costs for running Redaction Software. (JGS Decl. ¶¶ 9, 14; Pen. Code, § 741(b)(1).)	\$35,415.95	\$59,110.32	\$94,526.27
4. Axon Justice Premier software for submitting electronic cases. (JGS Decl. ¶¶ 23; Pen. Code, § 741(b)(1)–(6).)	\$0.00	\$534,000.00	\$534,000.00
TOTAL	\$60,415.95	\$633,110.32	\$693,526.27

Test Claim: Race-Blind Charging
Claimant: County of Sutter
Section: 6 Declaration-Jeff C. Greeson

1. I, Jeff C. Greeson, am an attorney at Law, Licensed to practice before the courts of this state, and the Chief Deputy District Attorney for the County of Sutter (“Sutter”). I have been one of the individuals charged with assisting in the implementation of AB 2778, Penal Code 741(b)(1-6), in Sutter County.
2. Prior to the enactment of this test claim legislation, when a report was received from a law enforcement agency, there was no requirement that any of the information in the report was subject to redaction. The prosecutor to whom the case was assigned would review the report and determine the appropriate charges against the alleged offender.
3. In the initial review of this legislation, it was obvious that to do the required redactions manually would be cost prohibitive, we determined there would be cost savings by utilizing a contractor. Our office selected Sicuro Analytics. We are informed and believe that Sicuro has also contracted with other counties to formulate a program to enable compliance with the Race-Blind Charging mandate.
4. Throughout the day, various local law enforcement agencies within Sutter County bring their reports to the District Attorney’s Office. When reports are received, they are scanned into Sicuro’s program commonly referred to as the Race Blind Charging Solution. This web-based application uses Artificial Intelligence (hereinafter referred to as “AI”) to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and redacts the data. (Penal Code Section 741(b)(1).The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. The prosecutor then decides which charge(s) to file based upon the redacted report. Once the initial charges are decided, the prosecutor then must review the original, unredacted report, and the prosecutor must decide if the original charges were correct. (Penal Code Section 741(b)(1). If the prosecutor determines the original charges were not correct, substantial notes are required to document the reason for the change in charges. (Penal Code Section 741(b)(4). The documentation requirements are substantial.
5. There is a 48-hour limit from the time of arrest before a defendant is arraigned. We sometimes receive reports late in the morning and even into the early afternoon, yet have to decide by 1:00 p.m., so that formal charges are at the courthouse by 3:00 p.m. for calendar call.
6. The process requires the prosecutor to review each report twice, and then make required documentation for changes in the charges. (Penal Code Section 741(b)(3). This was never required prior to the enactment of AB 2778. It should also be noted that each of the law enforcement agencies that submit reports to our office have their own report forms, and fields are located in different areas on the forms. Furthermore, law enforcement agencies are continually changing and modifying their forms. This requires continual updates to the AI process within Sicuro's Race Blind Charging Solution so that all of the racial indicia can be redacted. Sicuro is compiling statistics which need to be gathered and maintained. (Penal Code Section 741 (b)(6).

Test Claim: Race-Blind Charging
Claimant: County of Sutter
Section: 6 Declaration-Jeff C. Greeson

7. Our office has not yet had an opportunity to fully track our attorney time and compare the additional staff burden that we will bear when we fully implement case review under Sicuro's Race Blind Charging Solution. We are currently facing a staffing crisis with attorneys, and cannot devote the resources necessary to reliably document how much more time it will add to an average work day.
8. I am informed and believe, and based upon such information, allege that Sicuro is reviewing the Municipal and Superior Court's website to see what charges were historically alleged, in order to determine whether there is a statistical discrepancy compared to charging after implementation of Sicuro's application.
9. In 2024-2025 Sutter estimates the costs of implementing the activities mandated by the test claim statute, Penal Code 741 (b)(1-6) to be as follows:

- a. Sutter initially incurred increased costs when the contract with Sicuro was executed on June 14, 2024.
- b. Race-Blind Charging Services

Sicuro Implementation

Invoice 0624-2	\$2,310	June, 2024 Services
Invoice 0724-2	\$4,950	July, 2024 Services
Invoice 0824-2	\$6,600	August, 2024 Services
Invoice 0924-2	\$4,620	September, 2024 Services
Invoice 1224	\$11,880	December, 2024 Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0225	\$1,760	February, 2025 Services
Invoice 0325	\$1,760	March, 2025 Services
Invoice 0425	\$1,760	April, 2025 Services
Invoice 0525	\$1,760	May, 2025 Services
Invoice 0625	\$1,760	June, 2025 Services

Total 2024-2025 actual and estimated costs are: \$39,160.

10. In 2025-2026 Sutter estimates the costs of implementing the activities mandated by the test claim statute, Penal Code 741 (b)(1-6) to be as follows:

- a. Race-Blind Charging Services

Sicuro Subscription, User Portal, and Overhead

Invoice 0725	\$1,760	July, 2025 Services
Invoice 0825	\$1,760	August, 2025 Services
Invoice 0925	\$1,760	September, 2025 Services
Invoice 1025	\$1,760	October, 2025 Services

Test Claim: Race-Blind Charging
Claimant: County of Sutter
Section: 6 Declaration-Jeff C. Greeson

Invoice 1125	\$1,760	November, 2025 Services
Invoice 1225	\$1,760	December, 2025 Services
Invoice 0126	\$1,760	January, 2026 Services
Invoice 0226	\$1,760	February, 2026 Services
Invoice 0326	\$1,760	March, 2026 Services
Invoice 0426	\$1,760	April, 2026 Services
Invoice 0526	\$1,760	May, 2026 Services
Invoice 0626	\$1,760	June, 2026 Services

Total 2025-2026 estimated costs are: \$21,120.

11. If not reimbursed by the State, Sutter would pay for all the costs discussed above from its General Fund.
12. To the best of my knowledge, Sutter has not received any local, State, or federal funding and does not have a fee authority to offset the increased direct and indirect costs that the County will incur to implement the programs mandated by Section 741(b)(1-6).
13. To the best of my knowledge, there are no legislatively determined mandates on Section 741(b)(1-6).
14. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed this 11th day of July, 2025 at Yuba City, California.



Jeff C. Greeson, Chief Deputy District Attorney
County of Sutter

1 DECLARATION OF MICHAEL BENNER IN SUPPORT OF
2 CITY OF SACRAMENTO'S REQUEST FOR REIMBURSEMENT PURSUANT TO
3 THE IMPLEMENTATION OF RACE-BLIND CHARGING PROCEDURES
4 IN ACCORDANCE WITH PENAL CODE SECTION 741, SUBDIVISION (b)

5 I, Michael Benner, declare:

6 1. I have been employed by the Office of the City Attorney for the City of
7 Sacramento for 22 years and I currently serve as Supervising Deputy City Attorney
8 for the Community Advocacy and Public Safety Division ("CAPS"). My duties
9 include, but are not limited to, the following:

- 10 • Supervise and oversee the handling by deputies of civil, criminal and
11 administrative law matters, including the preparation of legal opinions,
12 ordinances, resolutions, contracts, and other legal documents.
- 13 • Assign, train, direct and evaluate subordinate professionals,
14 paralegals, and investigation support staff and provide input as to
15 training, duties and evaluation of other support staff.
- 16 • Provide training guidance for staff involved in various aspects of
17 professional work; recommend and implement disciplinary actions
18 when necessary.
- 19 • Ensure workloads are balanced; ensure production and performance
20 of quality work; and promote efficiency in the office.
- 21 • Help to develop and administer Office policies and procedures within
22 assigned scope of responsibility; monitor the efficiency and
23 effectiveness of professional workflow, and perform other duties as
24 assigned.

25 2. I am personally aware of the implementation of the race-blind charging
26 guidelines pursuant to Penal Code Section (PC) 741, subdivision (b) and the specific
27 requirements listed in PC 741(b), which took effect on January 1, 2025.

28 3. In an effort to comply with the specific statutory requirements listed in Penal

1 Code section 741(b)(1-6), the Sacramento City Attorney's Office ("CAO") has
2 implemented a two-step redaction process to identify racial information within the
3 documents provided by arresting agencies, to redact that information, and to produce the
4 resulting material for review by the prosecutor performing the initial charging evaluation,
5 and reasonably ensure correct redaction is applied in accordance with the implemented
6 race-blind charging guidelines.

7 4. Since the implementation of this program on January 1, 2025, the CAPS Division
8 workload has significantly increased because of the additional time and effort required
9 to comply with the procedures mandated under this program.

10 5. On information and belief, since the implementation of this program on January
11 1, 2025, and to date, the support staff in the CAPS Division, in accordance with the
12 implemented redaction guidelines, has redacted a total of approximately 571 police
13 reports which equate to a total of 190 hours of labor time.

14 6. On information and belief, to implement the new redaction and reviewing
15 requirements of PC741 (b) , the following actions were taken by the CAO:

16 a. Beginning in September 2024, City of Sacramento first incurred costs
17 relating to Penal Code Section 741 (b) when Deputy City Attorneys (DCAs) and Legal
18 Secretaries (Secretaries) began to develop a procedure to implement the required
19 changes. Meetings were held on an as-needed basis, at least monthly, through
20 implementation in January 2025.

21 b. Secretaries drafted a procedures document, showing a step-by-step
22 process of redacting documents, tracking filing decisions, and recording each case for
23 future reference if/when needed. (Penal Code Section 741 (b)(1).) Prior to race-blind
24 charging (RBC), there was only one DCA assigned to make criminal filing decisions.
25 Prior to RBC, the average daily time spent making criminal filing decisions by the single
26 DCA was 4 hours per day. Since RBC became required, this time has doubled to 8
27 hours per day. As such, we have assigned a second DCA to assist in making filing
28 decisions, as making criminal filing decisions is in addition to the multiple other

responsibilities the DCAs have. (Penal Code Section 741(b)(1-6). The total increase in DCA time spent making charging decisions due to RBC has increased to approximately 20 hours per week.

c. Secretaries and DCAs were trained on the new procedures and given a trial/error period that began in December 2024.

7. On information and belief, implementation of PC 741(b)(6) has required regular updates in the form of meetings and emails to gauge the success of the implemented procedures. Continued review of the process ensures the filing DCAs are adequately staffed to keep up with the increased workload.

8. As of May 2025, our Secretaries are training an additional Secretary on the procedures required by PC 741(b)(1-3), including electronically uploading police reports, manually redacting them, sending them to a filing attorney, recording the initial decision, and then documenting the decision from the second review.

9. On information and belief, the additional time spent by Secretarial staff is an average of 38 hours per month. At an average rate of pay of \$67.10, this is a monthly cost of \$2,549.80 per Secretary, totaling \$30,597.60 per Secretary each year. CAO has two Secretaries in this assignment, making the annual Secretarial cost for implementing PC 741(b) requirements \$61,195.20.

10. On information and belief, as noted in paragraph 6(b), above, since the implementation of this program on January 1, 2025, and to date, the prosecuting DCAs in the CAPS Division have spent an average of eight (8) hours per day performing the initial and second reviews of the redacted and unredacted police reports to comply with the requirements under this program. (Penal Code Section 741(b)(1-5). This equates to an increase of 4 additional hours per day, or 960 hours annually, of DCA time that is a direct result of PC 741(b) requirements. CAO has one DCA per day making filing decisions. At an average rate of pay of \$191.00, this is an increased cost of \$183,360.00 incurred by the CAO for DCA time spent implementing the race-blind charging guidelines.

1 11. On information and belief, the total estimated costs (reflecting actual costs and
2 projections through June 30, 2025) for the CAO in fiscal year 2024-25 resulting from
3 implementation of PC 741(b) requirements, is \$122,277.60, for six months of work at
4 the rates described in Paragraphs 9 and 10, above.

5 12. On information and belief, the total estimated costs for the CAO in fiscal year
6 2025-26 resulting from implementation of PC 741(b) requirements, is \$244,555.20, as
7 described in Paragraphs 9 and 10, above.

8 13. If not reimbursed by the State, the CAO would be forced to pay for all the costs
9 discussed above from its General Fund, which may result in decreased city services.

10 14. To the best of my knowledge, the CAO has not received any local, State, or
11 Federal funding and does not have a fee authority to offset the increased direct and
12 indirect costs that the CAO has and will incur to implement the changes mandated by
13 PC 741(b).

14 15. The City of Sacramento prosecutes criminal disobediences of city codes that
15 includes violations, misdemeanors, and infractions.

16 I declare under penalty of perjury according to the laws of the State of California
17 that the foregoing is true and correct.

18 Executed on July 1, 2025, in Sacramento, California.

19
20
21 
22 Michael Benner (Jul 1, 2025 12:25 PDT)
23 Michael J. Benner
24 Supervising Deputy City Attorney
25 City of Sacramento
26
27
28

Assembly Bill No. 2778

CHAPTER 806

An act to add Section 741 to the Penal Code, relating to crimes.

[Approved by Governor September 29, 2022. Filed with
Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, McCarty. Crimes: race-blind charging.

Existing law provides a district attorney the discretion to file criminal charges against an individual. Existing law allows a district attorney to complete necessary investigations into alleged criminal conduct and make the decision of whether to proceed with filing criminal charges. Existing law allows a district attorney to participate in any project or program to improve the administration of justice.

This bill would, beginning on January 1, 2024, require the Department of Justice to develop and publish "Race-Blind Charging" guidelines whereby all prosecuting agencies, as specified, implement a process to review a case for charging based on information, from which all means of identifying the race of the suspect, victim, or witness have been removed or redacted. Following the department's guidelines, the bill would require prosecution agencies to independently develop and execute a process to review and to redact information based on general criteria, including, beginning January 1, 2025, how cases are to be redacted, that the initial charging evaluation is to determine whether the case should be charged or not charged, and that a prosecutor without knowledge of specified facts is required to perform the initial charging evaluation based on redacted information. The bill would require a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint, or allow the case to be submitted to a jury. If the decision to charge or not to charge after a second review is different from the charging determination after the initial charging evaluation, the bill would require documentation of the change in charging determination as well as an explanation for the change to be part of the case record and would require these documents to be disclosed, upon request, after sentencing or dismissal of the charges, unless the documents are privileged or work product. The bill would require a decision not to put a case through a race-blind charging evaluation to be documented. The bill would authorize a prosecuting agency to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation, including homicides, hate crimes, and cases involving public integrity. The bill would make related legislative findings and declarations.

By imposing a higher level of service on local prosecutors, the bill would impose a state-mandated local program.

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 finds and declares all of the following:

(a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or “unconscious” bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., *Blinding Prosecutors to Defendants’ Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System* (Dec. 2015) *Behavioral Science & Policy*, 70.)

(b) One method to address bias is to “acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions.” (id. 71) In other contexts, such as science, employment, or academia, the “blinding” of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)

(c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done “race blind.” The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.

SEC. 2. Section 741 is added to the Penal Code, to read:

741. (a) Beginning January 1, 2024, the Department of Justice shall develop, issue, and publish “Race-Blind Charging” guidelines for a process whereby all prosecution agencies, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted.

(b) Following the department's guidelines, prosecution agencies shall independently develop and execute versions of this redaction and review process with the following general criteria:

(1) Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

(2) The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case.

(3) After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

(4) (A) Each of the following circumstances shall be documented as part of the case record:

(i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.

(ii) The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

(B) The explanation for the charging decision change shall be documented as part of the case record.

(C) The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law.

(5) If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

(6) The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

(c) Each prosecution agency may remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. This list of exclusions and the reasons for exclusion shall be available upon request to the Department of Justice and members of the public. Due to the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision, each of the following crimes may be excluded from a race-blind initial charging evaluation process:

- (1) Homicides.
- (2) Hate crimes.
- (3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.
- (4) Domestic violence and sex crimes.
- (5) Gang crimes.
- (6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.
- (7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.
- (8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.
- (9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.
- (10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

SEC. 3. 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.

O

CONCURRENCE IN SENATE AMENDMENTS

AB 2778 (McCarty)

As Amended June 21, 2022

Majority vote

SUMMARY

Requires the Department of Justice (DOJ) to develop a "Race-Blind Charging" guideline for enumerated prosecutorial agencies to follow which, at the initial charging stage, would require redacting documents of certain identifying information related to the race of the suspect, victim, or witness.

Senate Amendments

- 1) Specify that "Race-Blind Charging" guidelines must redact direct, rather than all, means of identifying the race of a suspect, victim, or witness.
- 2) State that the prosecution agency shall be the agency to redact the charging documents received from law enforcement agencies.
- 3) Require the prosecution agency to disclose, upon request, certain documents explaining the reason a specified charging decision was made.
- 4) Made non-substantive grammatical changes.

COMMENTS

- 1) Required that, commencing January 1, 2024, the DOJ develop and publish guidelines for a process called "Race-Blind Charging" which must be adhered to by agencies prosecuting misdemeanors or felonies.
- 2) Required any initial review of a case for charging, be based on documents from which all means of identifying the race of the suspect, victim, or witness has been redacted.
- 3) Provided that, beginning January 1, 2025, prosecution agencies shall independently develop and execute versions of the process created by the DOJ.
- 4) Stated that the prosecution agencies' redaction process adhere to the following:
 - a) Redacting racially identifying information from criminal histories, reports received from law enforcement agencies, and other pertinent documents. Such redactions may occur manually, by hand, performed by personnel not involved in the charging process. Or such redactions may occur by use of computer programming so long as the method reasonably assures correct redaction;
 - b) Applying any such redactions to any part of the police report which would reasonably assure any racial identifying information is sufficiently removed;
 - c) Only using a prosecutor without knowledge of the redacted facts to make the initial charging decision;

- d) After the initial charging decision is made, i.e. whether at least one crime has been determined to have been committed, then the case may proceed to a second review where the previously redacted information is revealed;
- e) At the second review stage, specific charges and enhancements may be considered and charged;
- f) Documenting the following:
 - i) Whether the initial charging decision determined that no charges be filed, but the second review determined a charge be filed;
 - ii) Whether the initial charging decision determined a charge be filed, but the second review determined no charge be filed; and,
 - iii) An explanation for the charging decision under these circumstances.
- 5) Stated that any documentation or explanation for the change between the initial charging evaluation and the second review must be released or disclosed upon request after sentencing or dismissal of all charges filed, subject to applicable laws.
- 6) Required, in cases where race-blind initial charging did not occur, the prosecution agency to document and retain the reason for such occurrence and to make it available upon request.
- 7) Provided that the county shall collect the data from the race-blind charging process and make such data available for research purposes.
- 8) Authorized a prosecuting agency to remove certain offenses or factual circumstances from race-blind charging, including:
 - a) Homicide;
 - b) Hate crimes;
 - c) Physical confrontations captured on video;
 - d) Domestic violence and sex crimes;
 - e) Gang crimes;
 - f) Financial crimes where redacting voluminous documentation is impractical;
 - g) Offenses involving public integrity such as conflict of interest;
 - h) Cases directly investigated by the prosecuting agency, or in which the prosecution agency assisted; and,
 - i) Cases charged by way of grand jury indictment or investigation.

According to the Author

"We've seen it time and time again where a person of color is given a harsher punishment for the same crime a non-person of color commits. Creating a system where a person's race is unknown during the time of initial charging is imperative. It is long past time we start addressing the issue of punishing a person based on the crime and not the color of their skin."

Arguments in Support

According to the Yolo County District Attorney's Office, "In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or 'unconscious' bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman *et al. Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System* (Dec. 2015) Behavioral Science & Policy, 70.) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." *id.* 71) In other contexts, such as science, employment, or academia, the 'blinding' of evaluators assists in dispelling concerns of discrimination or bias in decision making, (*id.* 71-72)

"In 2021, our office partnered with the Stanford Computational Policy lab to develop a program to find and redact race data from police reports in order that an initial charging determination could be performed 'race blind.' We became the first office in the state to incorporate this process into our case management system, which uses the same initial (redacted) and secondary (unredacted) processes to charge our cases, with a few exceptions, *e.g.*, hate crimes. While the road to race blind charging had its challenges, we feel we have now "paved the way" and removed operational obstacles for other offices to do the same.

"AB 2778 would help decrease the specter of racial bias in one of its most prominent places in the criminal justice system - the initial charging assessment. By stripping police reports of all race-related data of the suspect, victim, or witness, it reduces the potential for unconscious bias and increases community confidence in the charging process by having the initial charging assessment done 'race-blind.' "

Arguments in Opposition

None submitted.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) *DOJ*: The DOJ reports costs of \$559,000 in fiscal year (FY) 2022-23, 984,000 in FY 2023-24 and approximately \$3 million annually thereafter to the DOJ in additional staff and infrastructure to develop and publish race-blind charging guidelines and implement a process to review cases for charging based on information, from which any means of identifying the race of the suspect, victim or witness have been removed or redacted (General Fund).
- 2) *Local Reimbursements*: Unknown, potentially reimbursable costs, possibly in the millions of dollars annually additional staff and possible third party IT vendor contracts for county district attorney offices to independently develop and execute a process based on the process created by the DOJ to review and redact certain information about a suspect, witness or

victim information reports before charging anyone (Local Funds, General Fund). Costs may also include additional staff and IT infrastructure to collect data from a race-blind charging process and document why a DA office did not use a race-blind charging process in any case. General Fund costs will depend on whether this bill imposes a state-mandated local program as determined by the Commission on State Mandates.

VOTES:

ASM PUBLIC SAFETY: 7-0-0

YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago, Seyarto

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ASSEMBLY FLOOR: 72-0-6

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C A L I F O R N I A

DEPARTMENT of JUSTICE

D I V I S I O N O F C R I M I N A L L A W

RACE-BLIND CHARGING GUIDELINES

Penal Code Section 741

JANUARY 1, 2024



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GUIDELINES FOR RACE-BLIND CHARGING PURSUANT TO PENAL CODE SECTION 741

The California Department of Justice is issuing the following Race-Blind Charging Guidelines in accordance with Penal Code section 741, subdivision (a). These Guidelines address the specific statutory requirements listed in Penal Code section 741, as well as provide practical guidance as to how to implement those requirements.¹ Studies have shown that unconscious bias may infect decisions within the criminal justice system, despite the best intentions of the actors involved.² These Guidelines are intended to operate in accordance with the spirit, goal, and legislative intent behind Penal Code section 741, which is namely to reduce the potential for unconscious bias to influence the initial charging decision in a case.

I. Redaction of Cases Received from Law Enforcement Agencies and Suspect Criminal History Documentation; General Statement of Purpose and Scope

- (a) Redaction Requirement: Effective January 1, 2025, Penal Code section 741, subdivision (b) (1) requires prosecution agencies to redact all case materials received from law enforcement agencies, including police reports and suspect criminal history documentation, to remove direct means of identifying the suspect(s)', victim(s)', and witness(es)' race in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation.
- (b) Method of Redaction: The redaction process may occur in a separate version of the documents and may be done mechanically, by hand, by personnel not associated with the charging of the case, or by automation using computer software. The method used for redaction must reasonably ensure correct redaction. The redaction may be applied to the entire report or only to the "narrative" portion of the report, so long as the portion submitted for initial review is sufficient for that review and the unredacted portions are not part of the initial charging evaluation. (§ 741, subd. (b)(1).)
- (c) Research supports the notion that implicit bias is most likely to occur in situations where prosecutors are making a high volume of quick decisions.³ Accordingly, when implementing race-blind charging procedures, prosecution agencies should be especially mindful of these Guidelines when handling these routine cases.

1 The Department of Justice contemplates these Guidelines applying, at a minimum, to all criminal cases. The language of Penal Code section 741 does not appear to apply to juvenile cases.

2 Assem. Bill No. 2778 (Stats. 2022, ch. 806, § 1), citing Baughman et al., *Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System* (Dec. 2015) *Behavioral Science & Policy*, 70.

3 See Smith, Robert J., and Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion* (2011) *Seattle UL Rev.* 35, 795; Singh, Balbir, et al., *When Practice Fails to Reduce Racial Bias in the Decision to Shoot: The Case of Cognitive Load* (2020) *Social Cognition* 38.6, 555-570; Kleider-Offutt, Heather M., Amanda M. Clevinger, and Alesha D. Bond, *Working Memory and Cognitive Load in the Legal System: Influences on Police Shooting Decisions, Interrogation and Jury Decisions* (2016) *Journal of Applied Research in Memory and Cognition* 5.4, 426-433.

II. Race-Blind Initial Charging Evaluation; Purpose and Scope

- (a) (1) Penal Code section 741, subdivision (b) requires a two-step process for charging cases—
(1) a “race-blind initial charging evaluation” based only on redacted reports, and then (2) the “ordinary charging evaluation” based on unredacted reports and all available evidence. The initial charging evaluation is intended to perform a gate-keeping and recording function prior to the actual charging process, rather than the more thorough second review to determine individual charges or decide charges with certainty. Accordingly, the initial charging evaluation shall determine only whether a case should be charged or not be charged against a particular defendant and shall not determine individual charges. (§ 741, subd. (b)(2).)
- (2) A case “should be charged” for purposes of this section if the reviewing prosecutor determines, based on redacted material, that a charge, of any type, should be alleged in the case. A case “should not be charged” for the purposes of this section if the reviewing prosecutor determines that no charge, of any type, should be alleged in the case.
- (3) A “case” for these purposes means the collection of charges as they would appear in a single criminal complaint. Other evidence may be considered as part of this initial charging evaluation, so long as the other evidence does not reveal redacted facts. (§ 741, subd. (b)(2).) The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case. (§ 741, subd. (b)(2).)
- (4) The prosecutor performing the initial charging evaluation shall use some means, handwritten or electronic, to record the decision of the initial charging evaluation for each case (i.e., “should be charged” or “should not be charged” or words to that effect).
- (b) (1) The initial charging evaluation shall be based solely on redacted information, including redacted reports, criminal histories, and narratives. (§ 741, subd. (b)(2).)
- (2) At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency may, at its option, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent “supplemental” reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.
- (3) Only the materials used by the prosecution agency to make the initial charging evaluation must be redacted as provided below.

III. Redaction Process for Initial Charging Evaluation

- (a) Each prosecution agency must create a redaction process for the materials used for the initial charging evaluation to ensure that the “direct means” of identifying the race of the suspect(s), victim(s), and/or witness(es) have been removed or redacted, as required by Penal Code section 741, subdivision (a). Personnel not associated with evaluating or charging the case shall perform the redaction, either manually or through automation, so long as the method used reasonably ensures correct redaction. (§ 741, subd. (b)(1).)

- (b) For purposes of this section, the “direct means” for identifying the race of the suspect(s), victim(s) and witness(es) are (1) the stated race or ethnicity, (2) the first or last name, and (3) the skin color or complexion. In addition, the prosecution agency may redact other information that provides an indirect means for identifying the race of the suspect(s), victim(s), and/or witness(es).
- (c) For purposes of this section, “redaction” means that, by way of removal or obliteration, the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation. The charging prosecutor, at the initial charging evaluation stage, should also not be privy to any other evidence that could reveal the race of any suspect, victim or witness including, but not limited to, photographs, recordings, surveillance videos, or cell phone data.
- (d) A prosecution agency may use any appropriate means to effectively and efficiently locate the direct means for identifying race within a document, to redact that information, and to produce the resulting material for review by the prosecutor performing the initial charging evaluation. The method used must reasonably ensure correct redaction. (§ 741, subd. (b)(1).) Examples of redaction processes that would satisfy the statute include, but are not limited to the following:
 - (1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.
 - (2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.
 - (3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency’s case management system, is then applied to the OCR’d narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office’s case management system.
 - (4) The prosecution agency, either internally or working with a third-party vendor, develops a “batched” process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office’s case management system.

- (e) The method of redaction used should reasonably ensure correct redaction. (§ 741, subd. (b) (1).) Where software is used, it should be validated before implementation. The software selected should also have appropriate safeguards to prevent unauthorized access to the sensitive information.
- (f) Software appropriate for review and redaction of materials includes, but is not limited to, the following:
 - (1) Adobe Acrobat Pro DC: Adobe Acrobat Pro DC allows users to redact sensitive information from PDF documents by permanently removing the selected text, images, or metadata. To use this software, the document is opened in Acrobat Pro DC and the user employs the “Redact” tool from the “Protect” tab. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.
 - (2) Foxit PhantomPDF: Foxit PhantomPDF is a PDF editor that allows users to redact sensitive information from PDF documents. To use this software, the document is opened in Foxit PhantomPDF and then the user employs the “Redaction” tool from the “Protect” tab. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.
 - (3) PDFsam Basic: PDFsam Basic is a free, open-source PDF editor that allows users to redact sensitive information from PDF documents. To use this software, the document is opened in PDFsam Basic, the user then employs the “Redact” tool. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.
 - (4) ABBYY FlexiCapture: ABBYY FlexiCapture is a data capture and document processing software that can be used to redact sensitive information from documents. To use this software, the document is uploaded into ABBYY FlexiCapture, the user then employs the “Redaction” tool. The user then highlights the sensitive information to be redacted, and the software will replace the selected information with a black box.
- (g) When redacting case materials describing multiple suspects, victims or witnesses, multiple names or other descriptors should be replaced with a generic term that allows the reviewing prosecutor to distinguish between multiple suspects, victims, or witnesses. For example, replace “John Doe” with “Person 1,” or replace “dark complexion” with “complexion 1.”
 - (1) As a further example, an original version of a narrative would read as follows: “John Smith, who was robbed, identified his attacker as a Black male wearing jeans shorts and a red tank top. Joe Doe, a Black male, was later detained by police wearing jean shorts and a red tank top and Joe Doe is a male with dark complexion and long black hair. Later, John Smith was brought to the scene of Joe Doe’s detention and identified Joe Doe as his robber.”
 - (2) The redacted version could read as follows: “[Person 1], who was robbed, identified his attacker as a [race] male wearing jeans shorts and a red tank top. [Person 2] was later detained by police wearing jean shorts and a red tank top and [Person 2] is a male with [complexion 1] and long black hair. Later, [Person 1] was brought to the scene of [Person 2’s] detention and identified [Person 2] as his robber.”

IV. Use of Artificial Intelligence (AI) Tools for Redaction

- (a) Incorporating AI tools for redaction can greatly improve the efficiency and accuracy of the redaction process. However, it is important to ensure that the AI system used is validated before implementation and that appropriate safeguards are in place to prevent unauthorized access to sensitive information.
- (b) AI tools can use natural language processing (NLP) algorithms to identify sensitive information in the document. The AI system can be trained on a large set of examples to recognize specific types of information, such as names or complexion, that need to be redacted.
- (c) Once the information to be redacted has been identified, the AI system can automatically redact the information by removing it or replacing it with generic terms discussed in these guidelines. The AI system may be trained on a set of examples to know the preferred method of redaction for specific types of information.
- (d) The AI system's performance should be monitored to ensure the accuracy of the redaction. In cases where the AI system creates an error, a human reviewer can manually review the document and make any necessary corrections.

V. Second Review for Charging

- (a) After completion of the race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence, i.e., whatever available evidence the charging prosecutor deems appropriate in the normal course of charging a case. (§ 741, subd. (b)(3).) During the second review, the prosecutor may consider and charge in a criminal complaint any applicable charges and enhancements, or the case may be submitted to a grand jury. (§ 741, subd. (b)(3).)
- (b) The second review is intended to be the ordinary charging process for the prosecution agency without limitation on the information or evidence that a charging prosecutor may consider, the methodologies used, or the timeframe in which this charging consideration is performed.
- (c) The prosecutor performing the second review for charging must be the same prosecutor who performed the initial charging review. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review must be performed anew by a different prosecutor, who will then also ultimately perform the second review for charging.
- (d) It is expected that the second complete review using all available evidence will sometimes result in prosecutors changing their determination from the initial charging evaluation.

VI. Documentation of Charging Decision

- (a) The prosecution agency should document all charging decisions—both the initial charging evaluation and the second, complete review. This includes documenting either of the following circumstances as part of the case record for a case:
 - (1) The initial charging evaluation determined that the case should not be charged, and the second review determined that a charge, of any type, shall be filed, or
 - (2) the initial charging evaluation determined that the case should be charged, and the second review determined that no charge, of any type, would be filed (§ 741, subd. (b)(4)(A)(i)-(ii).

- (b) The prosecution agency shall also document the explanation for an occurrence of either of the above two circumstances as part of the case record or within the case management system. (§ 741, subd. (b)(4)(B).) The charging prosecutor should specifically explain why the change described in (a)(1) or (a)(2) occurred.
- (c) If this explanation is being documented within a case management system or captured using a form, each prosecution agency may develop and utilize any number of predefined explanations (e.g., review of video revealed a legal defense; awaiting additional evidence/rejected for follow-up; important evidence not collected (e.g., third-party statements); suspect eligible for pre-filing diversion; suspect provided proof of status (e.g., driver's license, program completion); suspect's custody status/existing sentence affected charging decision; suspects probation or parole status affected charging decision; victim's concerns or requests affected charging decision; race redaction made mistake(s) that affected charging decision), so long as an "other" category (with space for explanation) also exists for any explanation not covered by the predefined choices.
- (d) The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, must be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Penal Code section 1054.6 or any other applicable law. Responses to such requests shall be governed by the terms of the California Public Records Act (Government Code section 7920, et seq.). (§ 741, subd. (b)(4)(C).)

VII. Inability to Conduct Race-Blind Initial Charging Evaluation

- (a) If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability must be documented and retained by the agency. (§ 741, subd. (b)(5).)
- (b) If such an explanation is being documented within a case management system, or captured using a form, each prosecution agency may develop any number of predefined explanations (e.g., redaction process failed to account for term revealing race), so long as an "other" category (with space for explanation) also exists for any explanation not covered by the predefined choices.
- (c) A list of cases in which the race-blind initial charging evaluation was unable to be performed, and the explanation for why the evaluations were not able to be performed shall be made available to the public upon request. (§ 741, subd. (b)(5).) The information may be redacted to the extent necessary to protect core attorney work product under Penal Code section 1054.6. Responses to such requests shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).

VIII. Collection of Data and Availability for Research Purposes

- (a) Each county in which a prosecution agency resides must, on an annual basis, collect the data resulting from the race-blind initial charging evaluation process as described in these guidelines (§ 741, subd. (b)(6)), except as such information is protected by privilege including, but not limited to, that found in Penal Code section 1054.6. Each county must ensure that the data is collected, stored and transmitted in a way appropriate to protect sensitive information.

- (b) The collected data must be made available for research purposes to bona fide accredited public or private nonprofit educational institutions, or to any other nonprofit bona fide research institution accredited by the United States Department of Education or the Council for Higher Education, for bona fide research purposes.
- (c) Responses to requests for research data shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).
- (d) Only the raw data generated by the process, rendered anonymous for privacy, shall be provided for research; the underlying materials, reports, or criminal history information are not required to be produced by these Guidelines. The raw data would include crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures.

IX. Exceptions to the Race-Blind Process

- (a) Prosecution agencies may exclude the crimes listed at Penal Code section 741, subdivision (c) from the race-blind charging process.
- (b) Each prosecution agency may further remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. (§ 741, subd. (c).) “Classes of crimes” refers to subdivisions within particular sections of the Penal Code describing different crimes, e.g., section 368 describes different types of elder abuse, or a generic description that could be subsumed under multiple Penal Code sections, e.g., fraud.
- (c) Prosecuting agencies shall keep a list of crimes or classes of crimes that they do not include in race-blind review and the reasons for their exclusion from that review. This list of exclusions and the reasons for exclusion shall be available upon request to the Department of Justice and members of the public. (§ 741, subd. (c).) Requests for this data shall be governed by the terms of the California Public Records Act (Government Code section 7920 et seq.).

X. Glossary of Terms

- (a) **Race-Blind Initial Charging Evaluation:** The first step discussed in Penal Code section 741 for charging a criminal case, in which the case information and suspect criminal history documentation are redacted to remove the direct means for identifying the race of the suspect(s), victim(s) and witness(es) and used to determine whether, as a general matter, the case should be charged. This evaluation is performed by a prosecutor who does not have knowledge of the redacted information.
- (b) **Redacted:** To censor or conceal specific information in a document or record. In the context of the race-blind process for charging a criminal case as required by Penal Code section 741, the redaction is applied to the case information and suspect criminal history documentation in order to perform the race-blind initial charging evaluation. For purposes of race-blind charging, “redaction” does not require the “black box” style for concealing information. Rather, it encompasses any means of removal or obliteration of the direct means for identifying race, such that the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation.

- (c) **Narrative:** A description or account of an event or situation, often in chronological order. In the context of the race-blind process for charging a criminal case required by Penal Code section 741, the narrative refers to the portion of the report that may be redacted for the purpose of the race-blind initial charging evaluation.
- (d) **Second Review for Charging:** The second step in the race-blind process required by Penal Code section 741 for charging a criminal case, in which the case information and suspect criminal history documentation are reviewed using the unredacted information, along with all available evidence. This review mimics the ordinary criminal charging process that pre-existed the race-blind process, and is used to determine the most applicable individual charges and enhancements.
- (e) **Criminal Complaint:** A written accusation or formal charge made by a prosecutor against a person suspected of committing a crime.
- (f) **Reasonably ensure correct redaction:** This refers to the level of confidence that the redaction process will accurately identify and remove sensitive information from the document without causing harm to the rest of the information contained in the document. The redaction process should have a low error rate and should not cause unintended consequences, such as removing information that should not have been redacted or altering the meaning of the document. Methods employed by prosecution agencies to ensure correct redaction may also include the following:
 - (1) Regularly reviewing a random sample of the redacted documents to ensure that sensitive information has been accurately removed;
 - (2) Conducting user testing to ensure that the redaction process is user-friendly and easy to use;
 - (3) Monitoring the redaction process to ensure that there are no unintended consequences, such as removing information that should not have been redacted or altering the meaning of the document;
 - (4) Keeping a record of the redaction process and documenting any issues or concerns that arise during the process.
- (g) **Validated:** This refers to the process of testing and verifying that the software used for redaction is accurate, reliable, and suitable for the intended purpose. This includes testing the software on a representative set of documents to ensure that it correctly identifies and redacts sensitive information. Methods employed by prosecution agencies to ensure validation of software include the following:
 - (1) Conducting a thorough evaluation of the software's accuracy, reliability, and suitability for the intended purpose;
 - (2) Testing the software on a representative set of documents to ensure that it correctly identifies and redacts sensitive information;
 - (3) Monitoring the software's performance over time to ensure that it remains accurate and reliable;
 - (4) Keeping a record of the software validation process and documenting any issues or concerns that arise during the process;
 - (5) Regularly updating the software to ensure that it remains accurate and up- to-date.

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 24, 2025, I served the:

- **Current Mailing List dated July 23, 2025**
- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued July 24, 2025**
- **Test Claim filed by the City of Sacramento, County of Santa Clara, and County of Sutter on June 10, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 24, 2025 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/23/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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CALIFORNIA
DISTRICT
ATTORNEYS
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Exhibit B



August 18, 2025

Commission on State Mandates
980 9th St., Ste. 300
Sacramento, CA 95814

Via [CSM Dropbox](#)

Dear Commission on State Mandates,

The California District Attorneys Association (CDA A) supports Test Claim 24-TC-07 filed by the County of Sutter, the County of Santa Clara, and the City of Sacramento for costs incurred from the implementation of Assembly Bill (AB) 2778 (Stats. 2022, ch. 806, § 2), codified at Penal Code section 741.

This year, district attorney offices in California have had to incur new costs to implement Race Blind Charging as required by Penal Code section 741. Section 741 has the laudable, brand-new goal of addressing the possibility of implicit bias in the filing of criminal charges by blinding prosecutors who make charging decisions to the race of the suspects, witnesses, officers, descriptions of these parties, and their names.

The new law requires a new multistep process for the review of cases, the implementation of either sophisticated and costly word and phrase redaction/replacement tools or the labor-intensive application of manual redactions, the collection of data, and other new functions that all create new costs. The law does not change the tight deadlines that district attorneys face when filing criminal charges, or any other laws. It adds new requirements on top of those laws that impose a new program and a higher level of service.

CDA A is a statewide organization of California prosecutors. The Association has more than 3,500 members, including elected and appointed district attorneys, city attorneys principally engaged in the prosecution of criminal cases, and the attorneys and other staff employed by these officials.

We urge the Commission on State Mandates to approve this test claim so that all district attorney offices in the state can get the funding for the costs they have incurred and are incurring to implement this new law.

Very truly yours,

Greg Totten
Chief Executive Officer

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 August 19, 2025, I served the:

- **Current Mailing List dated August 18, 2025**
- **Finance's Comments on the Test Claim filed August 19, 2025**
- **California District Attorneys Association's (CDAA) Comments on the Test Claim filed August 18, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 19, 2025 at Sacramento, California.



David Chavez
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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August 19, 2025

Juliana Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Commission on
State Mandates
Filed Date
08/19/2025

Test Claim 24-TC-07, Race-Blind Charging

Dear Director Gmur:

The Department of Finance (Finance) has completed its review of test claim 24-TC-07 submitted to the Commission on State Mandates (Commission) by the City of Sacramento and the Counties of Santa Clara and Sutter (Claimants), in which the Claimants allege they incurred reimbursable, state-mandated costs associated with Chapter 806, Statutes of 2022 (Assembly Bill 2778).

Assembly Bill 2778 added Penal Code section 741 to require the Department of Justice to develop "Race-Blind Charging" guidelines. Beginning January 1, 2025, prosecuting agencies must use these guidelines to redact information from arrest reports and criminal history reports that can be used to identify the race of the suspects, victims, and witnesses.

The purpose of the redactions is to allow prosecuting agencies to use the redacted materials to make a race-blind initial charging evaluation. After the initial charging evaluation, the prosecuting agency shall make a second evaluation using unredacted materials, after which charges may be filed, dropped, or the case referred to the grand jury.

Penal Code section 741 requires prosecuting agencies to document each of the following as part of the case record:

- If the initial evaluation determined the case not be charged, and the second evaluation determined the case be filed.
- If the initial evaluation determined the case be charged, and the second evaluation determined the case not be filed.
- The explanation for the charging decision.

The documented change between the initial evaluation and the second review, and the explanation for the change, shall be disclosable upon request after sentencing in the case, or after all charges are dismissed. Counties are further required to collect the

data resulting from the initial race-blind evaluations, and to make the data available for research purposes.

Penal Code section 741 (c) (1) through (10), inclusive, states prosecuting agencies may remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation and also requires prosecuting agencies to make these lists publicly available. The crimes that may be excluded are:

- Homicides
- Hate crimes
- Charges involving a physical altercation caught on video
- Domestic violence and sex crimes
- Gang crimes
- Charges involving sexual assault, physical abuse, or neglect, where the charging decision involves a forensic interview of a child, or the interview of multiple witnesses or defendants
- Financial crimes where redaction is not practicable, or is cost-prohibitive, because of the volume of redactions
- Cases involving public integrity, including conflict of interest crimes
- Cases where the prosecuting agency itself investigated the alleged crime or participated in the pre-charging investigation
- Cases where charges arose from a grand jury indictment, or where the prosecuting agency initiated the charging and filing of the case via a grand jury indictment

The Claimants state as follows:

- Santa Clara County states it first incurred increased costs of \$2,016,722.70 in 2024-25 to perform the activities mandated by Penal Code 741. The County estimates full-year costs in 2025-26 of \$4,281,028.84.
- Sutter County states it first incurred increased costs of \$39,160 in 2024-25 to perform the activities mandated by Penal Code 741. The County estimates full-year costs in 2025-26 of \$21,120.
- The City of Sacramento states it first incurred increased costs of \$122,277.60 in 2024-25 to perform the activities mandated by Penal Code 741. The City estimates full-year cost in 2025-26 of \$244,555.20.

If the Commission determines AB 2778 imposes state-mandated, reimbursable costs on local agencies, Finance asserts the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741 (c) (1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation. Given that application of a race-blind initial charging evaluation process in these instances is not statutorily mandated, the associated costs are not state-reimbursable.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst, at (916) 445-3274.

Sincerely,

Rosanna Nguyen

ROSANNA NGUYEN

Program Budget Manager

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 August 19, 2025, I served the:

- **Current Mailing List dated August 18, 2025**
- **Finance's Comments on the Test Claim filed August 19, 2025**
- **California District Attorneys Association's (CDAA) Comments on the Test Claim filed August 18, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 19, 2025 at Sacramento, California.



David Chavez
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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**2024-2025
CAL CITIES OFFICERS**

August 19, 2025

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First Vice President

Gabe Quinto
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**Re: Support for Test Claim 24-TC-07 – Implementation of Race-Blind
Charging Pursuant to AB 2778**

Dear Commissioners:

Second Vice President

Teresa Acosta
Council Member
Carlsbad

On behalf of the League of California Cities, we write in support of Test Claim 24-TC-07, filed by the County of Sutter, the County of Santa Clara, and the City of Sacramento.

Immediate Past President

Daniel T. Parra
Council Member
Fowler

**AB 2778, Adding Section 741 to the California Penal Code, Contains Costs
Mandated by the State.**

Section 3 of AB 2778 states: "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."

Penal Code section 741 establishes a first-of-its-kind mandate that prosecuting agencies conduct a race-blind review prior to filing charges. Specifically, Penal Code section 741 requires:

- Redacting all race-identifying information from police and criminal history reports (Pen. Code, §§ 741(a), 741(b)(1));
- Conducting an initial charging decision based solely on the redacted information (Pen. Code, § 741(b)(2));
- Performing a second review of the unredacted reports, documenting any changes in the charging decision and the reasons for those changes (Pen. Code, § 741(b)(3)–(4)); and
- Collecting and maintaining detailed data on charging decisions for research purposes (Pen. Code, § 741(b)(6)).



In sum, every municipality in California that prosecutes criminal cases must comply with Penal Code section 741, and Penal Code section 741 expressly requires that prosecuting agencies engage in new and additional processes. In turn, these processes necessarily engender new costs. Therefore, it is the opinion of Cal Cities that AB 278 contains costs mandated by the state and that reimbursement to local agencies is warranted. (See *Coast Community College Dist. v. Com. on State Mandates* (2022) 13 Cal.5th 800; *County of San Diego v. Com. on State Mandates* (2003) 91 Cal.App.5th 625; *Hayes v. Com. on State Mandates* (1992) 11 Cal.App.4th 1564.)

Thank you for your consideration.

Respectfully submitted,


Kurt Wendlenner (Aug 19, 2025 13:42:54 PDT)

Kurt Wendlenner
Assistant General Counsel
League of California Cities

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 August 21, 2025, I served the:

- **Current Mailing List dated August 18, 2025**
- **League of California Cities' Comments on the Test Claim filed August 19, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 21, 2025 at Sacramento, California.



David Chavez
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/18/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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LETTER FROM DISTRICT ATTORNEYS ACROSS CALIFORNIA
IN SUPPORT OF TEST CLAIM 24-TC-07

Exhibit E

August 25, 2025

Commission on State Mandates
980 9th St., Ste. 300
Sacramento, CA 95814
Via [CSM Dropbox](#)



Dear Commission on State Mandates,

We, the undersigned District Attorneys, write in support of Test Claim 24-TC-07 filed by the County of Sutter, the County of Santa Clara, and the City of Sacramento for costs incurred from the implementation of Assembly Bill (AB) 2778 (Stats. 2022, ch. 806, § 2), codified at Penal Code section 741.

Penal Code section 741's requirement that local prosecution agencies conduct an initial race-blind charging review imposed a new program and a higher level of service, and mandated new activities for prosecuting agencies. Beginning on January 1, 2025, Penal Code section 741(b) requires the redaction or alteration of hundreds of thousands of police reports that prosecutors across the state review each year to decide whether or not to file criminal charges. Those changes require:

- Removing or redacting every "direct means of identifying the race of the suspect, victim, or witness," which includes the individual's first and last names, skin color and complexion, and stated race or ethnicity (Pen. Code, § 741(a), 741(b)(1));
- Reviewing the redacted reports to determine whether a crime should be charged (Pen. Code, § 741(b)(2));
- Completing a second review of the unredacted reports to see if knowledge of the additional information results in a different decision – if so, the decision change and the reason for the change must be documented (Pen. Code, § 741(b)(3)–(4)); and
- Collecting, tracking and maintaining data on the decisions, the changed decisions, and the reasons for the decisions for research purposes (Pen. Code, § 741(b)(6)).

The goal of AB 2778 is to do something completely new, which is to blind the prosecutor to all race indicators to address any unconscious bias the prosecutor might have in the decision to file criminal charges. (See Stats. 2022, ch. 806, § 1.)

The implementation of AB 2778 requires prosecuting agencies to dedicate new resources, create new processes, purchase new software, hire outside vendors, and manage these new processes to

LETTER FROM DISTRICT ATTORNEYS ACROSS CALIFORNIA
IN SUPPORT OF TEST CLAIM 24-TC-07

ensure that the work to review and make charging decisions for criminal cases in a timely way is being done, while also complying with this new, and additional mandate.

For example, California has strict laws about the deadlines by which criminal charges must be filed, that fall well before the statute of limitations for crimes. If a person is arrested and being held in custody, the charging decision must be made in time for an arraignment that will take place within two court days. In practice, that often means that investigative reports about the arrest are being completed and delivered to the prosecuting agency the day before, or in many instances just hours before, the deadline to file those charges in court. The new requirements mandated by AB 2778 must fit within that strict statutory deadline and have required significant and ongoing changes by prosecution agencies.

We have and are incurring significant costs to make this new law work.

We urge the Commission on State Mandates to approve this test claim, and to make sure that the costs necessary to implement this new state law are paid for by the State.

Sincerely,

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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 August 26, 2025, I served the:

- **Current Mailing List dated August 22, 2025**
- **California State Association of Counties' (CSAC) Comments on the Test Claim filed August 25, 2025**
- **District Attorneys' Comments on the Test Claim filed August 25, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 26, 2025 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/22/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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Monday, August 25, 2025

Commission on State Mandates
980 9th Street, Suite 300
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*Commission on
State Mandates*

Filed Date

August 25, 2025

RE: Race-Blind Charging. 24-TC-07.

Dear Chair Stephenshaw and Members of the Commission on State Mandates,

The California State Association of Counties (CSAC) submits this comment letter regarding the test claim submitted by Santa Clara County, Sutter County and the City of Sacramento (claimants) for Chapter 806, Statutes of 2022 (Assembly Bill [2778](#), McCarty). The primary purpose of CSAC is to represent county government before the California Legislature, California administrative agencies, and the federal government. This includes advocating on the value and need for county programs and services and for adequate funding to provide those services. CSAC submits this letter in accordance with the Commission's July 24, 2025 "[Notice](#) of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date" which states that written comments may be submitted until 5:00pm on Monday, August 25, 2025. CSAC wishes to provide the subsequent comments in support of test claim 24-TC-07 submitted by the claimants on June 10, 2025.

As thoroughly examined in the test claim, the requirements of AB 2778 (Penal Code section 741) create a new program for local agencies that was freely imposed by the state. The activities required therein, in the interest of reducing racial bias within the state's criminal justice system, are unique to prosecuting local governmental agencies and do not affect the private sector, nor are these newly required activities the result of carrying out federal requirements or voter-approved statewide initiatives. Further, at this time, CSAC is not aware of any offsetting revenue dedicated to these newly mandated activities that would be deducted from the costs claimed by local agencies.

Critically, the race-blind charging procedures prescribed in Penal Code section 741 for initial charging evaluations do not define a new crime, change an existing definition of a crime, or change the penalty for a crime or infraction. An initial charging assessment is an evaluative process used to determine whether a person should be formally charged with a crime. While

the process for an initial charging assessment is amended by the test claim statute to reduce racial bias, should that person ultimately be charged with a crime, the definition of the crime and the range of penalties for their crime or infraction is unchanged. In this manner, the test claim submitted for race-blind charging is not unlike the previously approved test claim for the racial and identity profiling ([18-TC-02](#)), which also mandated new activities in the interest of reducing racial discrimination and included similar data reporting requirements to the state.

For these reasons, CSAC urges the Commission to approve the test claim as submitted. Thank you for your consideration of our comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jacqueline Wong-Hernandez". The signature is fluid and cursive, with the first name "Jacqueline" being more prominent.

Jacqueline Wong-Hernandez
Chief Policy Officer

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 August 26, 2025, I served the:

- **Current Mailing List dated August 22, 2025**
- **California State Association of Counties' (CSAC) Comments on the Test Claim filed August 25, 2025**
- **District Attorneys' Comments on the Test Claim filed August 25, 2025**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 August 26, 2025 at Sacramento, California.



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: 8/22/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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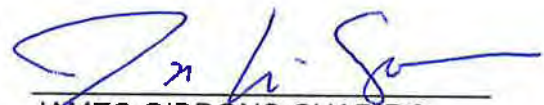
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DECLARATION OF JAMES GIBBONS-SHAPIO

1. I, James Gibbons-Shapiro, declare:
2. I have been employed by the County of Santa Clara in its District Attorney's Office (DAO) since 1997 and currently hold the title of Assistant District Attorney. I have occupied this position since 2014. I have personal knowledge of the facts set forth in this Declaration, and if called to testify to the statements made herein, I could and would do so competently.
3. The City of Sacramento, the County of Sutter, and the County of Santa Clara ("Claimants") filed a test claim with the Commission on State Mandates ("Commission") on June 10, 2025 ("Test Claim"). The Test Claim requested reimbursement for costs imposed on cities and counties in implementing Penal Code section 741, subdivision (b), which was added by Assembly Bill 2778 (Stats. 2022, ch. 806, § 2).
4. Under Penal Code section 741, subdivision (b), the DAO must conduct an initial race-blind charging evaluation, an entirely new requirement in determining whether to charge an individual with a crime. (Pen. Code, § 741, subd. (b).) To conduct this initial race-blind charging evaluation, the DAO must redact or remove all direct means of identifying the race of the suspect, victim, or witness from cases received from law enforcement agencies, such as police reports, and from suspect criminal history documentation. (*Id.*, § 741, subd. (b)(1)–(2).) The DAO must also implement a new initial charging evaluation process where a prosecutor with no knowledge of the redacted facts must decide whether to charge the suspect based on the redacted documents. (*Id.*, § 741, subd. (b)(2).) All cases must be put through this initial charging evaluation except for those classes of crimes or factual circumstances that the DAO removes or excludes under Penal Code section 741, subdivision (c). (*Id.* § 741, subd. (b)(2), (c).)
5. Penal Code section 741, subdivision (c), identifies the following classes of crimes and factual circumstances that may be excluded from the initial race-blind charging evaluation process: (i) homicides; (ii) hate crimes; (iii) charges arising from a physical confrontation where that confrontation is captured in video as evidence; (iv) domestic violence and sex crimes; (v) gang crimes; (vi) cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants; (vii) cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Penal Code sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation; (viii) cases involving public integrity, including, but not limited to, conflict of interest crimes under Government Code section 1090; (ix) cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement,

including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation; and (x) cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

6. In implementing Penal Code section 741, subdivision (b), the DAO has opted to exclude the crimes and factual circumstances listed in Penal Code section 741, subdivision (c)(1)–(10), from the initial race-blind charging evaluation process.
7. I submitted a declaration, dated July 16, 2025, in support of the Test Claim in which I detailed the costs that the County of Santa Clara has and will incur for Fiscal Years 2024–2025 and 2025–2026 in implementing the Test Claim Statute. None of the costs detailed therein or in the associated exhibits relate to the classes of crimes or factual circumstances identified in Penal Code section 741, subdivision (c)(1)–(10).
8. In its Comment on the Test Claim, filed on August 19, 2025, the Department of Finance asserts that the Commission should not provide reimbursement for costs related to implementing Penal Code section 741, subdivision (b), for the crimes and factual circumstances listed in Penal Code section 741, subdivision (c)(1)–(10) because they are not statutorily mandated. If the Commission approves the Test Claim, the DAO will not seek reimbursement for any costs related to the classes of crimes or factual circumstances identified in Penal Code section 741, subdivision (c)(1)–(10), unless and until such costs are mandated by the State.
9. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.
10. Executed on September 15, 2025, at San José, California.



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DECLARATION OF JEFF C. GREESON

1. I, Jeff C. Greeson, declare:
2. I am an attorney at Law, Licensed to practice before the courts of this state, and the Chief Deputy District Attorney for the County of Sutter ("Sutter"). I have been one of the individuals charged with assisting in the implementation of AB 2778, Penal Code 741(b)(1-6), in Sutter County. I have personal knowledge of the facts set forth in this Declaration, and if called to testify to the statements made herein, I could and would do so competently.
3. The City of Sacramento, the County of Sutter, and the County of Santa Clara ("Claimants") filed a test claim with the Commission on State Mandates ("Commission") on June 10, 2025 ("Test Claim"). The Test Claim requested reimbursement for costs imposed on cities and counties in implementing Penal Code section 741, subdivision (b), which was added by Assembly Bill 2778 (Stats. 2022, ch. 806, § 2).
4. Penal Code section 741, subdivision (c), identifies the following classes of crimes and factual circumstances that may be excluded from the initial race-blind charging evaluation process: (i) homicides; (ii) hate crimes; (iii) charges arising from a physical confrontation where that confrontation is captured in video as evidence; (iv) domestic violence and sex crimes; (v) gang crimes; (vi) cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants; (vii) cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Penal Code sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation; (viii) cases involving public integrity, including, but not limited to, conflict of interest crimes under Government Code section 1090; (ix) cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation; and (x) cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.
5. In implementing Penal Code section 741, subdivision (b), the Sutter County District Attorney's Office has opted to exclude the crimes and factual circumstances listed in Penal Code section 741, subdivision (c)(1)–(10), from the initial race-blind charging evaluation process.
6. I submitted a declaration, dated July 11, 2025, in support of the Test Claim in which I detailed the costs that the County of Sutter has and will incur for Fiscal Years 2024–2025 and 2025–2026 in implementing the Test Claim Statute. None

of the costs detailed therein or in the associated exhibits relate to the classes of crimes or factual circumstances identified in Penal Code section 741, subdivision (c)(1)–(10).

7. In its Comment on the Test Claim, filed on August 19, 2025, the Department of Finance asserts that the Commission should not provide reimbursement for costs related to implementing Penal Code section 741, subdivision (b), for the crimes and factual circumstances listed in Penal Code section 741, subdivision (c)(1)–(10) because they are not statutorily mandated. If the Commission approves the Test Claim, Sutter County will not seek reimbursement for any costs related to the classes of crimes or factual circumstances identified in Penal Code section 741, subdivision (c)(1)–(10), unless and until such costs are mandated by the State.
8. I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, or belief.
9. Executed on September 8, 2025, at Yuba City, California.



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September 18, 2025

Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

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

Re: Rebuttal to the Department of Finance
Race-Blind Charging, 24-TC-07
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section
741
City of Sacramento, County of Sutter, County of Santa Clara, Claimants

Dear Director Gmur:

The City of Sacramento, County of Sutter, and County of Santa Clara ("Claimants") file this rebuttal to the Comment of the California Department of Finance ("DOF") on test claim 24-TC-07 ("Test Claim"). The Test Claim argues that Penal Code section 741, added by Assembly Bill No. 2778 (Stats. 2022, ch. 806, § 2), imposes a reimbursable mandate pursuant to article XIII B, section 6 of the California Constitution ("Section 6").

Discussion

Section 6 requires the State of California ("State") to reimburse local governments for the costs of complying with a State statute, wherever (1) the statute "compels the local agency to act;" (2) "the compelled activity requires the agency to provide a new program or higher level of service;" and (3) none of seven statutory or four constitutional exceptions to the State's responsibility to reimburse local

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Re: Rebuttal to Department of Finance, 24-TC-03
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governments applies. (*Coast Cmty. Coll. Dist. v. Commission on State Mandates* (2022) 13 Cal. 5th 800, 808 [citation omitted].) The Test Claim argues that in enacting AB 2778, the California Legislature created a reimbursable mandate that compels cities and counties to provide a new program or higher level of service by implementing a wholly new initial race-blind charging process. The Test Claim estimates that the Claimants will incur the following costs for activities in compliance with the mandate in Section 741, subdivision (b): (1) for the City of Sacramento, approximately \$ 122,277.60 in Fiscal Year 2024–2025 and approximately \$244,555.20 in Fiscal Year 2025–2026; (2) for the County of Sutter, approximately, \$39,160 in Fiscal Year 2024–2025 and approximately \$21,120 in Fiscal Year 2025–2026; and (3) for the County of Santa Clara, approximately \$2,016,722.70 in Fiscal Year 2024–2025 and approximately \$4,281,028.84 in Fiscal Year 2025–2026.

On August 19, 2025, the DOF filed a Comment on the Test Claim that raises no arguments to rebut and effectively supports the Claimants’ position in the Test Claim that the Claimants’ costs are reimbursable pursuant to Section 6. First, the DOF recognizes that, beginning on January 1, 2025, prosecuting agencies “*must use* [the guidelines issued by the California Department of Justice] to redact information from arrest reports and criminal history reports that can be used to identify the race of the suspects, victims, and witnesses.” (DOF Comment at p. 1 [italics added].) Second, the DOF recognizes that “[t]he purpose of the redactions is to allow prosecuting agencies to use the redacted materials to make a race-blind initial charging evaluation” and to subsequently conduct a second evaluation using the unredacted materials. (*Ibid.*) Third, the DOF recognizes that “Penal Code section 741 *requires* prosecuting agencies to document” any change in the charging decision between the first and second reviews and the reason for the change in the case record. (*Ibid.* [italics added].) Lastly, the DOF recognizes that the documented change and the reason for the change “*shall be* disclosable upon request” and that “[c]ounties are further *required* to collect the data resulting from the initial race-blind evaluations, and to make the data available for research purposes.” (*Id.* at pp. 1–2 [italics added].) By highlighting the mandatory activities required by Penal Code section 741, subdivision (b), the DOF’s Comment supports the Claimants’ claim that it compels cities and counties to act by providing a new program or higher level of service.

In its Comment, the DOF also points to Penal Code section 741, subdivision (c)(1)–(10), which states that prosecuting agencies may remove or exclude certain classes of crimes and factual circumstances from the race-blind charging initial evaluation including (1) homicides; (2) hate crimes; (3) charges involving a physical altercation caught on video; (4) domestic violence and sex crimes; (5) gang crimes; (6) charges involving sexual assault, physical abuse, or neglect, where the charging decision involves a forensic interview of a child, or the interview of multiple witnesses or defendants; (7) financial crimes where redaction is not practicable, or is cost-prohibitive, because of the volume of redactions; (8) cases involving public integrity, including

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conflict of interest crimes; (9) cases where the prosecuting agency itself investigated the alleged crime or participated in the pre-charging investigation; and (10) cases where charges arose from a grand jury indictment, or where the prosecuting agency initiated the charging and filing of the case via a grand jury indictment. The DOF asserts that the Commission on State Mandates ("Commission") "should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation." (Comment at p. 2.)

The Claimants are in agreement with the DOF that any activities performed by prosecuting agencies in relation to the classes of crimes or factual circumstances listed in Penal Code section 741(c)(1)–(10) are not reimbursable. The Counties of Sutter and Santa Clara have both submitted a declaration in which they assert that the costs they alleged in the Test Claim do not include costs related to the crimes and factual circumstances identified in Penal Code section 741, subdivision (c)(1)–(10) and that they will not seek reimbursement for any activities related to these crimes and factual circumstances if the Commission approves the Test Claim, unless and until such costs are mandated by the State. The Claimants' declarations are attached hereto and incorporated herein by this reference.

Kevin McCarty, the author of AB 2778 and the current Mayor of Sacramento, explains in his declaration that he worked with the bill's sponsor, the County of Yolo District Attorney's Office, in identifying which crimes to exclude in Penal Code section 741, subdivision (c). (McCarty Decl. at pp. 3–5.) These crimes were excluded because they required the review of additional evidence outside of the police report—including, for example, video and audio recordings, interviews with witnesses, victims, and suspects, DNA evidence, evidence from sexual assault kits, and digital evidence from cell phones, computers, and other electronic devices—in order to make a charging decision. (*Id.* at p. 5.) Lastly, in his declaration, Mr. McCarty states his understanding in authoring AB 2778 that it would require district attorney offices to invest substantial resources, including information technology and ongoing work by staff, both prosecutors and support staff. (*Id.* at p. 6.) Mr. McCarty's declaration is attached hereto and incorporated herein by this reference.

Conclusion

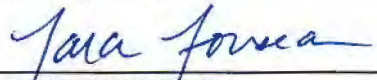
The Claimants respectfully request that the Commission on State Mandates find that the State must compensate the Claimants and other local governments for the costs they incur in complying with the State's mandatory new program under Penal Code section 741, subdivision (b).

Certification

Letter to: Commission on State Mandates
Re: Rebuttal to Department of Finance, 24-TC-03
Date: September 18, 2025
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I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Very truly yours,
TONY LOPRESTI
County Counsel



TARA FONSECA
Deputy County Counsel

RAJIV NARAYAN
Deputy County Counsel

1 **DECLARATION OF MAYOR KEVIN MCCARTY IN SUPPORT**
2 **OF CITY'S REQUEST FOR REIMBURSEMENT PURSUANT TO**
3 **THE IMPLEMENTATION OF RACE-BLIND CHARGING PROCEDURES**
4 **IN ACCORDANCE WITH PENAL CODE SECTION 741, SUBDIVISION (A)**

4 I, Kevin McCarty, declare:

5 1. I am currently the Mayor of the City of Sacramento in the state of California. I
6 assumed office on December 10, 2024, and my current term ends in 2028.

7 2. From 2014 to 2024 I served as Sacramento's Assemblymember representing
8 the 6th Assembly District which includes the majority of the City of Sacramento and parts of
9 the unincorporated County.

10 3. I was the author of the Race Blind Charging law, AB 2778, while I was a member
11 of the CA Assembly. The bill was approved by the Governor and filed with the Secretary of
12 State on September 29, 2022, and was codified as Penal Code (PC) 741.

13 4. The Yolo County District Attorney's Office, under District Attorney Jeff Reisig,
14 was the first office to fully implement Race Blind Charging. District Attorney Reisig was a
15 sponsor of AB 2778, and I worked with him and his office in drafting the bill.

16 5. After much discussion, the decision was made to exclude certain crimes from race
17 blind charging under section (c) of PC 741. Crimes excluded include homicides, domestic
18 violence, gang crimes, hate crimes, sex crimes, some financial crimes, public integrity cases,
19 and cases in which the prosecution agency is involved with the underlying investigation. The
20 reason for this is that these specific crimes in nearly all instances require the charging deputy to
21 review evidence beyond what is included in the police report, such as video evidence, body
22 worn camera video and audio footage, recordings of interviews, DNA evidence, evidence
23 included in sexual assault exams, and evidence from cell phones, computers, and other
24 electronic devices. By their very nature, these information sources include racially identifying
25 information that is unredactable, hence their exclusion from PC 741. In other cases, a charging
26 decision generally can be made based on the information included in the police report.

27 6. When I authored this bill, based on discussions with District Attorney Reisig, it
28 was clear that the implementation of race blind charging would require prosecution agencies to

1 invest in substantial resources beyond what is already required, including information
2 technology systems and additional hours of work by filing staff (prosecutors and support staff).
3 Accordingly, it was clear to me that the bill would impose a state-mandated local program.

4 I declare under penalty of perjury according to the laws of the State of California that the
5 foregoing is true and correct to the best of my knowledge and recollection.

6 Executed on September 9, 2025, in Sacramento, California.

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Hon. Kevin McCarty
Mayor, City of Sacramento

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 September 19, 2025, I served the:

- **Current Mailing List dated September 10, 2025**
- **Claimants' Rebuttal Comments filed September 18, 2025**

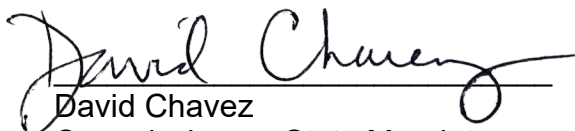
Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 September 19, 2025 at Sacramento, California.



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: 9/10/25

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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May 5, 2026

Exhibit H

Mr. Chris Hill
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Mr. Arthur Palkowitz
Law Offices of Arthur M. Palkowitz
12807 Calle de la Siena
San Diego, CA 92130

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

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Race-Blind Charging, 24-TC-07**
Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b),
effective January 1, 2023
City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

Dear Mr. Hill and Mr. Palkowitz:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments: Written comments may be filed on the Draft Proposed Decision **by May 26, 2026**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission 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(f).) 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 approval of a request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(j).)

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.

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

Mr. Hill and Mr. Palkowitz

May 5, 2026

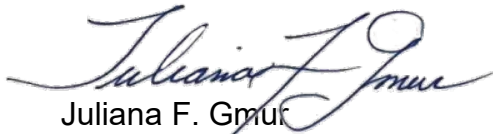
Page 2

Hearing: This matter is set for hearing on **Friday, August 14, 2026**, at 10:00 a.m. The Proposed Decision will be issued on or about July 31, 2026.

If you plan to address the Commission on this item, please notify the Commission Office not later than noon on the Tuesday prior to the hearing, **August 11, 2026**. Please also include the names of the people who will be speaking for inclusion on the witness list and the names and emails addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom. 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.

Very truly yours,



Juliana F. Gmur
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Penal Code Section 741(b)
Statutes 2022, Chapter 806, Section 2 (AB 2778)

Race-Blind Charging

24-TC-07

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

EXECUTIVE SUMMARY

Overview

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.¹

Staff recommends that the Commission approve this Test Claim as specified herein.

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

¹ Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

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.”²

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?	A test claim must be filed within 12 months of the effective date of a statute or an executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.³ The Commission’s regulations clarify that “within 12 months of incurring costs” means “within 12 months (365 days) of first incurring costs as a result of a statute or executive order, whichever is later.”⁴ Government Code section 17557(e) provides that a	Yes. Timely filed within one year of incurring costs ⁶ and has a period of reimbursement beginning July 1, 2023.

² *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.

³ Government Code section 17551(c).

⁴ California Code of Regulations, title 2, section 1183.1(c).

⁶ Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

Issue	Description	Staff Recommendation
	Test Claim “shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” The test claim statute became effective on January 1, 2023. The Test Claim was filed on June 10, 2025.⁵	
Does Penal Code section 741(b), as added by the test claim statute, impose new state-mandated activities?	The claimants contend that all requirements imposed by Penal Code section 741(b) are new and mandated by the state. The Department of Finance (Finance) contends that the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation.⁷	Yes. The test claim statute imposes new state-mandated activities as specified below: County and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to: 1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).) 2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race

⁵ Exhibit A, Test Claim, page 1.

⁷ Exhibit C, Finance's Comments on the Test Claim, page 2.

Issue	Description	Staff Recommendation
		from <i>only</i> the narrative portion of the police report. (Pen. Code, § 741(b)(1).) <i>Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.⁸</i> 3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review <i>must be performed anew</i> by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)⁹

⁸ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

⁹ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

Issue	Description	Staff Recommendation
		<i>However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.</i> 4. Document as part of the case record, the following information: • The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed. • The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed. • The explanation for the charging decision change. (Pen. Code, § 741(b)(4).) <i>However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).</i> 5. Document and retain the reason for the inability to put a case through a

Issue	Description	Staff Recommendation
		race-blind charging evaluation. (Pen. Code, § 741(b)(5).) <i>However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).</i> For counties only, to collect the data resulting from the race-blind initial charging evaluation process. Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)¹⁰

¹⁰ Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

Issue	Description	Staff Recommendation
Do the new, state-mandated activities imposed by Penal Code section 741(b), as added by the test claim statute, constitute a new program or higher level of service?	Article XIII B, section 6 of the California Constitution requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” New programs or higher levels of service have been defined as those “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.” ¹¹ Just one of these conditions need be met. ¹²	Yes. There is a new program or higher level of service. The new activities listed above are required to be performed by “prosecution agencies.”¹³ “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.¹⁴ Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to increase community confidence in the charging process, and to reduce the

¹¹ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537 citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

¹² *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

¹³ Penal Code section 741(a).

¹⁴ Government Code sections 26500, 41803.5, 72193.

Issue	Description	Staff Recommendation
		potential for unconscious bias.” ¹⁵
Does Penal Code section 741(b), as added by the test claim statute, result in costs mandated by the state within the meaning of Government Code sections 17514 and 17556.		Yes. There are costs mandated by the state. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute. ¹⁶ There is no evidence rebutting these costs. And none of the exceptions in Government Code section 17556 apply.

Staff Analysis

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.¹⁷

The Test Claim was timely filed within one year of the claimants incurring increased costs as a result of the test claim statute and has a period of reimbursement beginning July 1, 2023.¹⁸

¹⁵ Statutes 2022, chapter 806, section 1.

¹⁶ Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

¹⁷ Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

¹⁸ Government Code sections 17551(c), 17557(e); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson,

Staff finds that the following activities are new and mandated by the state:

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*¹⁹

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)²⁰

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:

Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

¹⁹ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

²⁰ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

- The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
- The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
- The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)²¹

Staff further finds that the new, state-mandated activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities are required to be performed by “prosecution agencies.”²² “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.²³ Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to

²¹ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

²² Penal Code section 741(a).

²³ Government Code sections 26500, 41803.5, 72193.

increase community confidence in the charging process, and to reduce the potential for unconscious bias.”²⁴

Finally, staff finds that the test claim statute results in increased costs mandated by the state and none of the exceptions in Government Code section 17556 apply to deny the claim. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.²⁵ There is no evidence rebutting these costs. The test claim statute does not create a new crime or eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Moreover, there is no evidence in the record that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Conclusion

Based on the forgoing analysis, staff finds that Penal Code section 741(b), as added by Statutes 2022, chapter 806, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties and cities, beginning July 1, 2023, for the following activities only:

- A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:
 - 1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
 - 2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*²⁶

²⁴ Statutes 2022, chapter 806, section 1.

²⁵ Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

²⁶ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
 - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)²⁷

²⁷ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

All other provisions of the test claim statute and claims for reimbursement are recommended for denial.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to approve 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 741(b)

Statutes 2022, Chapter 806, Section 2
(AB 2778)

Filed on June 10, 2025

City of Sacramento, County of Santa
Clara, and County of Sutter, Claimants

Case No.: 24-TC-07

Race-Blind Charging

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted August 14, 2026)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on August 14, 2026. [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	
Deborah Gallegos, Representative of the State Controller	
Karen Greene Ross, Public Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Alexander Powell, Representative of the Director of the Office of Land Use and Climate Innovation	

Summary of the Findings

This Test Claim addresses Penal Code section 741(b), added by the test claim statute, to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on

the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal charging process.²⁸

The Test Claim was timely filed within one year of the claimants incurring increased costs as a result of the test claim statute and has a period of reimbursement beginning July 1, 2023.²⁹

The Commission finds that the following activities are new and mandated by the state:

- A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:
 1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
 2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)’, victim(s)’, and witness(es)’ race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*³⁰

²⁸ Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

²⁹ Government Code sections 17551(c), 17557(e); California Code of Regulations, title 2, section 1183.1(c); Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

³⁰ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)³¹

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
 - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system,

³¹ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)³²

The new, state-mandated activities constitute a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. The activities are required to be performed by “prosecution agencies.”³³ “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which are county district attorneys and city prosecutors.³⁴ Thus, the test claim statute imposes unique requirements on local government. The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended “to increase community confidence in the charging process, and to reduce the potential for unconscious bias.”³⁵

Finally, the test claim statute results in increased costs mandated by the state and none of the exceptions in Government Code section 17556 apply to deny the claim. The claimants have filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.³⁶ There is no evidence rebutting these costs. The test claim statute does not create a new crime or eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission approves this claim for costs incurred by counties and cities beginning July 1, 2023.

COMMISSION FINDINGS

I. Chronology

01/01/2023	The test claim statute becomes effective
06/10/2025	The claimants filed the Test Claim. ³⁷

³² Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

³³ Penal Code section 741(a).

³⁴ Government Code sections 26500, 41803.5, 72193.

³⁵ Statutes 2022, chapter 806, section 1.

³⁶ Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

³⁷ Exhibit A, Test Claim.

08/18/2025 The California District Attorneys' Association (CDAA) filed comments on the Test Claim.³⁸

08/19/2025 Finance filed comments on the Test Claim.³⁹

08/19/2025 League of California Cities filed comments on the Test Claim.⁴⁰

08/25/2025 District Attorneys filed comments on the Test Claim.⁴¹

08/25/2025 California State Association of Counties (CSAC) filed comments on the Test Claim.⁴²

09/18/2025 The claimants filed rebuttal comments.⁴³

05/05/2026 Commission staff issued the Draft Proposed Decision.⁴⁴

II. Background

The test claim statute (Statutes 2022, chapter 806) added section 741 to the Penal Code to require county and city agencies that prosecute felonies and misdemeanors to develop and implement a process, after the Department of Justice issues guidelines on the program, to perform an initial “race blind” review and evaluation of a case before the prosecutor’s ordinary evaluation of the case for potential charging of a crime based on information that has been redacted to remove the direct means of identifying the race of the suspect, victim, or witness. The relevant background for this Test Claim is summarized below.

A. Existing Law Authorizes County District Attorneys and City Prosecutors to Pursue Criminal Misdemeanor and Felony Charges Following Receipt and Review of Law Enforcement Reports and Documents.

Under existing law, the county district attorney is the public prosecutor, who shall, within his or her discretion, initiate and conduct on behalf of the people all prosecutions for

³⁸ Exhibit B, California District Attorneys' Association's (CDAA) Comments on the Test Claim.

³⁹ Exhibit C, Finance's Comments on the Test Claim.

⁴⁰ Exhibit D, League of California Cities' Comments on the Test Claim.

⁴¹ Exhibit E, District Attorneys' Comments on the Test Claim. These comments were signed by the District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba.

⁴² Exhibit F, CSAC's Comments on the Test Claim.

⁴³ Exhibit G, Claimants' Rebuttal Comments.

⁴⁴ Exhibit H, Draft Proposed Decision.

public offenses.⁴⁵ The district attorney shall institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he or she has information that such offenses have been committed.⁴⁶ With the consent of the district attorney of the county, the city attorney of any general law city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law.⁴⁷ And whenever a charter of any city creates the office of city prosecutor or provides that a deputy city attorney shall act as city prosecutor, the city prosecutor is required prosecute misdemeanor offenses arising out of violations of state law.⁴⁸

Under existing law, the prosecuting attorney ordinarily has the sole discretion to determine who to charge and what charges to file and pursue.⁴⁹ The prosecuting agency makes these decisions based on a review of the reports, records, and files of the law enforcement agency submitting the case for possible prosecution.

If a defendant is arrested on criminal charges, an arraignment must generally occur within 48 hours of arrest.⁵⁰ An arraignment is the initial court hearing where a defendant is formally charged with a crime, advised of their constitutional rights, and asked to enter a plea.

For misdemeanor cases, defendants have a right to have their trial start by a deadline. For a defendant not in custody, the trial must start within 45 days of their arraignment or plea, whichever is later. For a defendant who is in custody, it must start within 30 days of their arraignment or plea, whichever is later.⁵¹

For felony offenses, the prosecuting attorney can decide to prosecute through an indictment following a preliminary hearing or by way of a grand jury. In both cases, the preliminary hearing and grand jury proceedings determine if sufficient evidence exists to hold a defendant for trial.⁵² While a proceeding before the grand jury typically occurs

⁴⁵ Government Code section 26500, as last amended by Statutes 1980, chapter 1094.

⁴⁶ Government Code section 26501, as added by Statutes 1947, chapter 424.

⁴⁷ Government Code section 41803.5, as last amended by Statutes 2002, chapter 784.

⁴⁸ Government Code 72193, as last amended by Statutes 1998, chapter 931.

⁴⁹ *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 745 (“The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”); *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451 (“[t]he prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek.”).

⁵⁰ Penal Code section 825, as last amended by Statutes 2003, chapter 149.

⁵¹ Penal Code section 1382, as last amended by Statutes 2009, chapter 424.

⁵² Penal Code section 859b, as last amended by Statutes 1996, chapter 122; section 872, as last amended by Statutes 2013, chapter 125; and section 904.6(a), as last amended by Statutes 2005, chapter 25.

before the arraignment, a preliminary hearing is required to be conducted within ten court days after the arraignment or plea, whichever is later, unless delayed for good cause.⁵³

These procedures did not change with the passage of the test claim statute.

B. The Test Claim Statute Adds a Race-Blind Charging Evaluation to the Charging Process and on January 1, 2024, DOJ Issued Race-Blind Charging Guidelines in Accordance with the Test Claim Statute.

The purpose of the test claim statute is to reduce the potential for unconscious bias in the charging process.⁵⁴ Section 1 of the test claim statute states the following:

- (a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or "unconscious" bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.)
- (b) One method to address bias is to "acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions." (id. 71) In other contexts, such as science, employment, or academia, the "blinding" of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)
- (c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done "race blind." The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.⁵⁵

As indicated above, the test claim statute came about following a pilot program in which the Yolo County District Attorney partnered with the Stanford Computational Policy lab in 2021 to develop a program to find and redact race data from police reports so that the initial charging determination could be performed "race blind." The process used an initial redacted review and a secondary unredacted review process to charge cases, with a few exceptions. "By stripping police reports of all race-related data of the

⁵³ Penal Code section 859b, as last amended by Statutes 1996, chapter 122.

⁵⁴ Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

⁵⁵ Exhibit A, Test Claim, page 57.

suspect, victim, or witness, it reduces the potential for unconscious bias and increases community confidence in the charging process by having the initial charging assessment done 'race-blind.'"⁵⁶ The test claim statute is modeled after this process.

Penal Code section 741(a) first requires the Department of Justice (DOJ), beginning January 1, 2024, to develop, issue, and publish Race-Blind Charging guidelines.⁵⁷

The claimants request reimbursement to comply with the requirements in Penal Code section 741(b).⁵⁸ Penal Code section 741(b) requires prosecution agencies, following the DOJ Guidelines, to independently develop and execute versions of the redaction and review process. "Prosecution agencies" are defined in Penal Code section 741(a) as "agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors," which as stated in the previous section are county district attorneys and city prosecutors.

Beginning January 1, 2025, Penal Code section 741(b)(1) states that cases received from law enforcement agencies and suspect criminal history documentation "shall be redacted" by the prosecution agency in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation.⁵⁹ Penal Code section 741(b)(1) states further explains,

This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

Penal Code section 741(b)(2) states that the initial charging evaluation based on redacted information "shall determine whether the case should be charged or not charged. Individual charges shall not be determined at this initial charging evaluation stage." Subdivision (b)(2) also requires a prosecutor who does not have knowledge of the redacted facts for that case to perform the initial charging evaluation.

Penal Code section 741(b)(3) states that "[a]fter completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable

⁵⁶ Exhibit A, Test Claim, page 62 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

⁵⁷ See, Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

⁵⁸ Exhibit A, Test Claim, pages 22-24; Exhibit G, Claimants' Rebuttal Comments, page 7.

⁵⁹ Penal Code section 741(b)(1).

individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.”

Penal Code section 741(b)(4) and (5) require the following information to be documented and disclosed:

- Each of the following circumstances shall be documented as part of the case record:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
 - The explanation for the charging decision change.
- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 [which provides that attorney work product or privileged materials is not required to be disclosed] or any other applicable law.
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

Penal Code section 741(b)(6) requires counties to collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

Penal Code section 741(c) allows the prosecution agencies to exclude each of the following crimes from a race-blind initial charging evaluation process:

- (1) Homicides.
- (2) Hate crimes.
- (3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.
- (4) Domestic violence and sex crimes.
- (5) Gang crimes.
- (6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.
- (7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

- (8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.
- (9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.
- (10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

According to the Senate Appropriations Committee, the test claim statute results in:

Unknown, potentially reimbursable costs, possibly in the millions of dollars annually [for] additional staff and possible third party IT vendor contracts for county district attorney offices to independently develop and execute a process based on the process created by the DOJ to review and redact certain information about a suspect, witness or victim information reports before charging anyone (Local Funds, General Fund). Costs may also include additional staff and IT infrastructure to collect data from a race-blind charging process and document why a DA office did not use a race-blind charging process in any case.⁶⁰

On January 1, 2024, DOJ issued Race-Blind Charging Guidelines, which will be more fully addressed in the analysis.⁶¹ However, the Guidelines identify the following examples of the redaction process that satisfy the requirements of the test claim statute:

- (1) The police reports from the investigating agency are received by the prosecution agency, and the narrative portions of the reports are separated from the complete reports and the criminal history information. Those narrative portions are then reviewed by staff, and the direct means of identifying race are redacted by hand. The redacted narrative portions are then provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is hand recorded in a log for later comparison to the second review.
- (2) The police reports from the investigating agency are received by the prosecution agency as scanned files (e.g., a PDF) which may be opened using a standard commercial computer program for reviewing scanned files (e.g., Adobe Acrobat). The narrative is then separated from the complete file and redacted using that same program. After the narrative is separated and redacted, it is provided to the prosecutor performing the initial charging evaluation for review. The decision from the initial charging evaluation is recorded in a spreadsheet on a computer.

⁶⁰ Exhibit A, Test Claim, pages 62-63 (Assembly Floor Analysis, Concurrence in Senate Amendments on June 21, 2022, AB 2778, 2021-2022 Reg. Sess.).

⁶¹ Exhibit A, Test Claim, pages 64-75 (DOJ Race-Blind Charging Guidelines).

- (3) The police reports from the investigating agency are received by the prosecution agency as scanned files to which Optical Character Recognition (OCR) is performed on the narrative portion of the police reports using a commercial document image program (e.g., Adobe Acrobat). An application, which may or may not be incorporated into the prosecution agency's case management system, is then applied to the OCR'd narrative which locates (using a predetermined list) and automatically redacts the direct means of identifying race, producing a redacted version of the document. The redacted narrative is then provided to the prosecutor performing the initial charging evaluation. The decision from the initial charging evaluation is recorded in the office's case management system.
- (4) The prosecution agency, either internally or working with a third-party vendor, develops a "batched" process to replicate each of the steps in example (3) above automatically upon receipt of scanned police reports from investigating agencies. The decision from the initial charging evaluation is recorded in the office's case management system.⁶²

C. Prior Test Claim Decisions Addressing Racial Disparities in the Criminal Justice System.

The Commission has received and approved several prior test claims addressing racial disparities in the criminal justice system, as follows:

- *Criminal Procedure: Discrimination*, 24-TC-02. This Test Claim addressed the Racial Justice for All Act as amended in 2022, which prohibits the State from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin.⁶³ The Act allows the defendant to bring proceedings to obtain a judgment finding a violation of the Act by showing with a preponderance of the evidence that the judge, attorney, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin. One of the ways a defendant can show a violation can be based on statistical evidence; i.e., that the "defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or

⁶² Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

⁶³ Penal Code sections 745(j)(3) and 1473(f), as amended by Statutes 2022, chapter 739.

obtained.”⁶⁴ If the court finds a violation, then the court is required to vacate the conviction and sentence and find both or either to be legally invalid.⁶⁵

The Commission approved the Test Claim for the following reimbursable activity:

- Commencing January 1, 2024, provide counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered before January 1, 2021, and are currently serving a sentence in state prison or county jail or committed to the Division of Juvenile Justice, on their petition alleging a violation of the RJA under Penal Code section 745(a), when appointed by the court.⁶⁶
- *Racial Identify and Profiling*, 18-TC-02. This Test Claim addressed the Racial and Identity Profiling Act of 2015 and 2017 (Stats. 2015, ch. 466; Stat. 2017, ch. 46), which added and amended Government Code section 12525.5, Penal Code sections 13012 and 13519.4, and regulations adopted by DOJ, which require each reporting agency that employs peace officers to annually report to the Attorney General data in electronic format on all “stops” conducted by the agency’s peace officers, the following additional information: the time, date, and location of the stop; the reason for the stop; the perceived race or ethnicity, gender, LGBT status, and approximate age and English fluency of the person stopped; the actions taken by the officer during the stop; and the result of the stop. The Commission approved the Test Claim for numerous activities governing the reporting process.⁶⁷
 - *Crime Statistics Reports for the Department of Justice*, 07-TC-10. The Commission found that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program on local law enforcement agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:
 - Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of association with a person or group with one or more of the

⁶⁴ Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026), page 9.

⁶⁵ Penal Code section 745(e)(2)(A) - (B); Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026), page 14.

⁶⁶ Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (accessed on April 30, 2026).

⁶⁷ Commission on State Mandates, Adopted Decision, *Racial Identify and Profiling*, 18-TC-02, https://csm.ca.gov/decisions/18tc02_052220.pdf (accessed on April 30, 2026).

following actual or perceived characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.⁶⁸

- *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11. The Commission found that the following statutes imposed a reimbursable state-mandated program:
 - A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background. (Pen. Code, §13014, Stats. 1992, ch. 1338.)
 - Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin. (Pen. Code, §13023, Stats. 1989, ch. 1172.)
 - For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission found this to be reimbursable from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005.⁶⁹
- *Racial Profiling: Law Enforcement Training*, 01-TC-01. The Commission found that Penal Code section 13519.4, as amended by Statutes 2000 chapter 684, imposed a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution with respect to the initial racial profiling training for incumbent law enforcement officers, as specified in the Decision. The Commission denied reimbursement for the training in the Basic

⁶⁸ Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 07-TC-10, <https://csm.ca.gov/matters/02-TC-04/07-tc-10correctedsodtrans041210.pdf> (accessed on April 30, 2026).

⁶⁹ Commission on State Mandates, Adopted Decision, *Crime Statistics Reports for the Department of Justice*, 02-TC-04 and 02-TC-11, <https://csm.ca.gov/matters/02-TC-04/doc1.pdf> (accessed on April 30, 2026).

Training Course and for refresher training every five years on the ground that such costs did not result in costs mandated by the state.⁷⁰

III. Positions of the Parties

A. City of Sacramento, County of Santa Clara, and County of Sutter

The test claimants contend that Penal Code section 741(b), as added by the test claim statute, imposes a reimbursable state-mandated program on counties and cities and seek reimbursement for the following activities:

- Independently develop and execute versions of the redaction and review process. (Pen. Code, § 741(b).)
- Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the ‘narrative’ portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation. (Pen. Code, § 741(b)(1).)
- The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case. (Pen. Code, § 741(b)(2).)
- After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint or allow the case to be submitted to a grand jury. (Pen. Code, § 741(b)(3).)
- Each of the following circumstances shall be documented as part of the case record: (i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed. (ii) The

⁷⁰ Commission on State Mandates, Adopted Decision, *Racial Profiling: Law Enforcement Training*, 01-TC-01, <https://csm.ca.gov/decisions/01tc01sod.pdf> (accessed on April 30, 2026).

initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed. (Pen. Code, § 741(b)(4)(A).)

- The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. (Pen. Code, § 741(b)(4)(C).)
- If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. (Pen. Code, § 741(b)(5).)
- The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes. (Pen. Code, § 741(b)(6).)⁷¹

The claimants also make it clear that they are not seeking reimbursement for the activities listed above in relation to the classes of crimes or factual circumstances identified in Penal Code section 741(c)(1-10).⁷² The claimants filed a Declaration from Kevin McCarty, the current Mayor of Sacramento and author of the test claim statute when Mayor McCarty served in the Legislature, explaining that he worked with Yolo District Attorney's Office to identify which crimes to exclude because these crimes required the review of additional evidence outside of the police report including video and audio recordings, interviews with witnesses, victims and suspects, DNA evidence, evidence from sexual assault kits, and digital evidence from cell phones, computers, and other electronic devices in order to make a charging decision.⁷³

The claimants have filed declarations explaining how their counties and city have complied with the test claim statute and the costs incurred.

- County of Santa Clara. In County of Santa Clara, redactions are automatically applied to police reports using software provided by Harvard University's Computational Policy Lab (CPL). This software was provided to the County at no cost, but the County incurs usage costs for hosting the software in the Cloud.⁷⁴ The County also contracted with HTC Global Services, Inc. to integrate the case management system, Ciberlaw, with the redaction software and develop and implement workflows in its case management system. This enables the district attorney to conduct the initial and second charging evaluations, document any change in the charging decision, and document the reasons for not being able to

⁷¹ Exhibit A, Test Claim, pages 22-24.

⁷² Exhibit G, Claimants' Rebuttal Comments, page 7.

⁷³ Exhibit G, Claimants' Rebuttal Comments, page 9.

⁷⁴ Exhibit A, Test Claim, pages 36-37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

puta case through the evaluation.⁷⁵ The County identifies several activities to implement the new redaction software and Ciberlaw workflows, including collaboration with vendors; project planning meetings; developing data dashboards and reports; training staff; and conducting regular governance meetings to monitor project status, review statistical reports, and assess the impact on attorney workload.⁷⁶

Since the Redaction Software provided by CPL is able to redact only police reports, the County's district attorney's office worked with the County's IT Department to modify the County's CJIC system, which maintains local suspect criminal history documentation to apply redactions automatically by creating a new program beginning in March and several activities are listed to implement this new program.⁷⁷

In addition, to implement the test claim statute, the County contends it was "reasonably necessary" for the district attorney's office to fully convert to the electronic submission of cases by local police departments. Prior to the test claim statute, some units in the police department submitted their cases to the district attorney's office in paper. The Redaction Software now requires electronic submission, which required county employees to establish user accounts in the district attorney's custom solution for the end users in the police department.⁷⁸

Beginning February 2025, the County district attorney's office started the process of transitioning from the custom solution to Axon Justice Premier for the electronic submission of cases from local police departments, including integrating Axon Justice Premier with Ciberlaw, with several activities listed to accomplish this task.⁷⁹

For fiscal year 2024-2025, the County estimates increased costs of \$2,016,723 in labor and vendor costs.⁸⁰ For fiscal year 2025-2026, the County estimates costs of \$4,281,029 for labor and vendor costs.

⁷⁵ Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

⁷⁶ Exhibit A, Test Claim, pages 37-39 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

⁷⁷ Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

⁷⁸ Exhibit A, Test Claim, page 40 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

⁷⁹ Exhibit A, Test Claim, pages 41-42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

⁸⁰ Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara).

- Sutter County - The County of Sutter hired a consultant, Sicuro Analytics, which has a Race Blind Charging Solution that is programmed to use artificial intelligence (“AI”) to redact all race-based descriptions. This web-based application uses AI to determine which data fields could lead the assigned prosecutor to determine the race of the alleged offender and the application redacts the data. The prosecutor then logs into the Sicuro program and receives the redacted version for review and charging. Costs include Sicuro implementation costs and Sicuro subscription, user portal, and overhead costs.⁸¹

Sutter County has not yet had an opportunity to fully track attorney time and compare the additional staff burden as a result of fully implementing case review under Sicuro's Race Blind Charging Solution.⁸²

Sutter County identifies actual and estimated costs in fiscal year 2024-2025 of \$39,160.⁸³ Sutter County estimates costs in fiscal year 2025-2026 at \$21,120.⁸⁴

- City of Sacramento - The City of Sacramento had their secretaries draft a procedure showing a step-by-step process of redacting documents, tracking filing decisions, and recording each case for future reference when needed. Secretaries and district attorneys were trained on the new procedures.

Secretaries also electronically upload police reports, manually redact them, send them to a filing attorney, record the initial decision, and document the decision from the second review. Implementation of Penal Code section 741(b)(6) requires regular updates in the form of meetings and emails to gauge the success of the implemented procedures.⁸⁵

The City estimates that the total increase for two deputy city attorneys making charging decisions due to the mandate has increased an additional 20 hours per week.⁸⁶

⁸¹ Exhibit A, Test Claim, pages 29-31.

⁸² Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

⁸³ Exhibit A, Test Claim, page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

⁸⁴ Exhibit A, Test Claim, pages 31, 50 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter).

⁸⁵ Exhibit A, Test Claim, pages 52-54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

⁸⁶ Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

The additional time spent by secretarial staff is an average of 38 hours per month.⁸⁷

The City identifies costs of \$122,277.60 for fiscal year 2024-2025.⁸⁸ The City also estimates costs in fiscal year 2025-2026 at \$244,555.20.⁸⁹

The claimants estimate the statewide cost estimate of increased costs that all local agencies will incur to implement the alleged mandate at \$50,000,000.00.⁹⁰

B. Department of Finance

The Department of Finance (Finance) states that if the Commission determines the test claim statute imposes state-mandated, reimbursable costs on local agencies, the Commission should ensure reimbursement is not provided for the crimes or factual circumstances detailed in Penal Code section 741(c)(1) through (10), inclusive, where it is at the prosecuting agency's discretion to elect to employ the race-blind initial charging evaluation. "Given that application of a race-blind initial charging evaluation process in these instances is not statutorily mandated, the associated costs are not state-reimbursable."⁹¹

C. Interested Parties and Persons

The District Attorneys for the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperio, Inyo, Lassen, Los Angeles, Madera, Marin, Merced, Modoc, Mono, Monterey, Napa, Nevada, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Tuolumne, Ventura, Yolo, and Yuba;⁹² the California District Attorneys Association;⁹³ the League of Cities,⁹⁴ and the CSAC⁹⁵ all support the Test Claim and urge the Commission to find the test claim statute imposes a reimbursable state-mandated program on local prosecuting agencies.

⁸⁷ Exhibit A, Test Claim, page 53 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

⁸⁸ Exhibit A, Test Claim, page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

⁸⁹ Exhibit A, Test Claim, pages 32-33, 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

⁹⁰ Exhibit A, Test Claim, page 33.

⁹¹ Exhibit C, Finance's Comments on the Test Claim, page 2.

⁹² Exhibit E, District Attorneys' Comments on the Test Claim.

⁹³ Exhibit B, California District Attorneys' Association Comments on the Test Claim.

⁹⁴ Exhibit D, League of California Cities' Comments on the Test Claim.

⁹⁵ Exhibit F, CSAC's Comments on the Test Claim.

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.”⁹⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁹⁷

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.⁹⁸
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁹⁹
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.¹⁰⁰
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased

⁹⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁹⁹ *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).

¹⁰⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁰¹

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.¹⁰² The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁰³ 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.”¹⁰⁴

A. The Test Claim Was Timely Filed with the Period of Reimbursement Beginning July 1, 2023.

A test claim must be filed within 12 months of the effective date of a statute or an executive order, or within 12 months of incurring increased costs as a result of the statute or executive order, whichever is later.¹⁰⁵ The Commission’s regulations clarify that “within 12 months of incurring costs” means “within 12 months (365 days) of first incurring costs as a result of a statute or executive order, whichever is later.”¹⁰⁶

The effective date of the test claim statute is January 1, 2023.¹⁰⁷ The claimants filed the Test Claim on June 10, 2025, more than 12 months after the effective date of the statute.¹⁰⁸ The claimants contend the Test Claim was filed within one year of first incurring costs in fiscal year 2024-2025.¹⁰⁹ This is supported by declarations filed with the Test Claim.¹¹⁰ In addition, the delay in incurring costs is consistent with the test

¹⁰¹ *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.

¹⁰² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹⁰³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁰⁴ *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.

¹⁰⁵ Government Code section 17551(c).

¹⁰⁶ California Code of Regulations, title 2, section 1183.1(c).

¹⁰⁷ Exhibit A, Test Claim, page 56.

¹⁰⁸ Exhibit A, Test Claim, page 1.

¹⁰⁹ Exhibit A, Test Claim, page 26.

¹¹⁰ Exhibit A, Test Claim, page 37 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara, paragraph 16: “The County first incurred costs relating to Section 741 (b) on June 24, 2024, when it started conducting project planning meetings with CPL [Harvard University’s Computational Policy Lab], as described in Paragraph 17.”); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter, paragraph 9: “Sutter initially incurred increased costs when

claim statute, Penal Code section 741(b), which requires local agencies to develop their own process following the issuance of the DOJ Race-Blind Charging Guidelines on January 1, 2024, and before implementation is required to begin on January 1, 2025.¹¹¹ Thus, the Commission finds that the Test Claim was timely filed.

While costs were first incurred by the claimants in the 2024-2025 fiscal year, the potential period of reimbursement formally begins on July 1, 2023. Government Code section 17557(e) provides that a Test Claim “shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.” Because the claimant filed the Test Claim on June 10, 2025 (during FY 2024-2025), the period of reimbursement begins at the start of the prior fiscal year, which is July 1, 2023.

B. Penal Code Section 741(b) Imposes Some New State-Mandated Requirements on Counties and Cities.

The test claim statute requires counties and cities that prosecute felonies and misdemeanors to perform the activities listed below, some of which impose a new state-mandated program.

1. Performing the Activities Required in Section 741(b) Is Not Mandated by the State for the Crimes and Circumstances Listed in Section 741(c).

Penal Code section 741(c) allows prosecuting agencies to exclude the following classes of crimes or factual circumstances from the race-blind charging evaluation requirements imposed by section 741(b) due to “the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision:”

- (1) Homicides.
- (2) Hate crimes.
- (3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.
- (4) Domestic violence and sex crimes.
- (5) Gang crimes.
- (6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

the contract with Sicuro [Analytics] was executed on June 14, 2024.”); page 52 (Declaration of Michael Benner, Supervising Deputy City Attorney, City of Sacramento, paragraph 6.a.: “Beginning in September 2024, City of Sacramento first incurred costs relating to Penal Code Section 741(b) when Deputy City Attorneys (DCAs) and Legal Secretaries (Secretaries) began to develop a procedure to implement the required changes.”).

¹¹¹ Penal Code section 741(b)(1).

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

Reimbursement under article XIII B, section 6 of the California Constitution is only required when an activity is mandated by the state. A mandate can be found when the local agency has a legally enforceable duty to comply and is not found when the requirement is triggered by a local discretionary decision.¹¹²

The Commission finds that reimbursement is not mandated by the state to comply with the activities required by Penal Code section 741(b) for the crimes and factual circumstances identified in Penal Code section 741(c) since compliance is at the discretion of the local prosecuting agency and is not mandated by the state.

2. The Requirement to Independently Develop Versions of the Redaction and Review Process Following the Issuance of the DOJ Guidelines Is a New State-Mandated Activity. (Pen. Code, § 741(b).)

The introductory language in Penal Code section 741(b) states that following the DOJ guidelines, local “prosecuting agencies shall independently *develop* and execute versions of this redaction and review process.”

The DOJ Guidelines explain that this requirement means that

Each prosecution agency must create a redaction process for the materials used for the initial charging evaluation to ensure that the “direct means” of identifying the race of the suspect(s), victim(s), and/or witness(es) have been removed or redacted, as required by Penal Code section 741, subdivision (a). Personnel not associated with evaluating or charging the case shall perform the redaction, either

¹¹² *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (Kern High School Dist.) (2003) 30 Cal.4th 727, 731, 742-745; *Department of Finance v. Commission on State Mandates* (POBRA) (2009) 170 Cal.App.4th 1355, 1365-1366.

manually or through automation, so long as the method used reasonably ensures correct redaction. (§ 741, subd. (b)(1).)¹¹³

The Guidelines state: “For purposes of this section, the “direct means” for identifying the race of the suspect(s), victim(s) and witness(es) are (1) the stated race or ethnicity, (2) the first or last name, and (3) the skin color or complexion.”¹¹⁴

DOJ’s interpretation of section 741(b) is entitled to great weight and is consistent with the plain language in section 741(a).¹¹⁵ Section 741(a) says “the Department of Justice shall develop, issue, and publish ‘Race-Blind Charging’ guidelines for a process whereby *all prosecution agencies*, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted.” While the initial requirement to develop guidelines is imposed on DOJ, section 741(a) explains what the Legislature is requiring of local agencies in section 741(b); i.e. that local agencies are required to develop a process to redact information from which a direct means of identifying the race of the suspect, victim, or witness have been removed for the initial review of the case.

The requirement to develop a redaction and review process as required by Penal Code section 741(b) is new and imposes a state-mandated activity on counties and cities. The plain language of Penal Code section 741(b) states that local “prosecuting agencies *shall* independently develop and execute versions of this redaction and review process.” Under well-settled rules of statutory construction, the courts ordinarily construe the word “may” as permissive and the word “shall” as mandatory, particularly when the Legislature uses both words in a single statute.¹¹⁶ In this case, the Legislature is using the word “shall” in subdivision (b) for the requirement to develop a local process to redact, whereas in subdivision (c), the Legislature uses the word “may” to allow city and county prosecuting agencies to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. Thus, the plain language indicates that the word “shall” in subdivision (b) is mandatory.

This finding is consistent with the legislative intent of the test claim statute to establish a process to reduce the potential for unconscious bias in the charging process, which as

¹¹³ Exhibit A, Test Claim, page 67.

¹¹⁴ Exhibit A, Test Claim, page 68.

¹¹⁵ *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8 (An administrative interpretation of a statute [while subject to judicial review] is accorded great respect by the courts and will be followed if not clearly erroneous.).

¹¹⁶ *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542; *Independent Office of Law Enforcement Review v. Sonoma County Sheriff’s Office* (2026) 119 Cal.App.5th 668.

stated in the Background, above, can lead to violations under the Racial Justice for All Act¹¹⁷ when it is shown that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses.¹¹⁸

Accordingly, the requirement in Penal Code section 741(b) to independently develop versions of a redaction and review process following the DOJ Race-Blind Charging Guidelines imposes a new state-mandated requirement on counties and cities.

3. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(1) Imposes a New State-Mandated Activity to Redact the Narrative Portion of the Police Report by Hand or by Automation with the Use of Computer Programming to Ensure Correct Redaction for the Initial Race-Blind Charging Evaluation.

Penal Code section 741(b)(1) states:

Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the "narrative" portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

Redaction means removing the "direct means" of identifying the race of the suspect(s), victim(s), and/or witness(es).¹¹⁹ According to DOJ Guidelines,

. . . "redaction" does not require the "black box" style for concealing information. Rather, it encompasses any means of removal or obliteration of the direct means for identifying race, such that the prosecutor performing the initial charging evaluation would not be privy to facts revealing race as they would have been contained in the materials reviewed for the initial charging evaluation.¹²⁰

¹¹⁷ Penal Code section 745.

¹¹⁸ Penal Code section 745(a); Commission on State Mandates, Adopted Decision, *Criminal Procedure: Discrimination*, 24-TC-02, <https://csm.ca.gov/decisions/24-TC-02-092625.pdf> (access on April 30, 2026), page 9.

¹¹⁹ Penal Code section 741(a); Exhibit A, Test Claim, page 68 (DOJ Race-Blind Charging Guidelines).

¹²⁰ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

However, as explained by the plain language in section 741(b)(1), “[t]he redaction may be applied to the entire report or to only the ‘narrative’ portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.” DOJ Guidelines state:

At a minimum, for the initial charging evaluation, the prosecution agency must rely on the redacted narrative portion of the police reports received by the prosecution agency from a law enforcement agency. (§ 741, subd. (b)(1).) The prosecution agency *may, at its option*, consider for the initial charging evaluation all materials received, including the entire police report(s) and the criminal history of the suspect, so long as all materials have been redacted to remove direct means of identifying the race of the suspect(s), victim(s), and witness(es). (§ 741, subds. (b)(1) & (2).) Subsequent “supplemental” reports, received after an initial charging evaluation for a case has already been made, need not be redacted and no second or subsequent race-blind review is required.¹²¹

Thus, the minimum requirement imposed by section 741(b)(1) is to redact the *narrative portion of the police report* by hand or by automation with the use of computer programming to ensure correct redaction. Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not legally compelled by state law.¹²²

Moreover, there is no evidence in the law or the record that prosecuting agencies are practically compelled to redact the entire report.¹²³ As explained below, the initial review of the redacted race-blind narrative of the report is only needed to determine whether charges should be brought or not and is not used to determine the individual charges against a suspect.¹²⁴

¹²¹ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

¹²² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745.

¹²³ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816 (practical compulsion “arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.”); see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754 (where no “legal” compulsion exists, “practical” compulsion may be found if the local agency faces “certain and severe...penalties” such as “double...taxation” or other “draconian” consequences if they fail to comply with the statute).

¹²⁴ Penal Code section 741(b)(2).

This requirement is new. Local prosecuting agencies were not required to redact or remove the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report under prior law.

Therefore, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(1) imposes a new state-mandated activity to redact the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report by hand or by automation with the use of computer programming to ensure correct redaction for the initial race-blind charging evaluation.

4. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(2) Imposes a New State-Mandated Activity for a Prosecutor to Perform the Initial Race-Blind Charging Evaluation Based on Redacted Information in the Narrative of the Police Report to Determine Whether the Case Should Be Charged or Not Be Charged. However, Penal Code Section 741(b)(3) Does Not Impose a New State-Mandated Requirement to Conduct the Second, “Ordinary” Evaluation.

Penal Code section 741(b)(2) requires that a prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation:

The initial charging evaluation is intended to perform a gate-keeping and recording function prior to the actual charging process, rather than the more thorough second review to determine individual charges or decide charges with certainty. Accordingly, the initial charging evaluation shall determine only whether a case should be charged or not be charged against a particular defendant and shall not determine individual charges.

. . . A case “should be charged” for purposes of this section if the reviewing prosecutor determines, based on redacted material, that a charge, of any type, should be alleged in the case. A case “should not be charged” for the purposes of this section if the reviewing prosecutor determines that no charge, of any type, should be alleged in the case.¹²⁵

Penal Code section 741(b)(3) requires that after completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

The DOJ Guidelines state that the “second review is intended to be the *ordinary* charging process for the prosecution agency without limitation on the information or evidence that a charging prosecutor may consider” and that “[t]his review mimics the

¹²⁵ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines).

ordinary criminal charging process that *preexisted* the race-blind process, and is used to determine the most applicable individual charges and enhancements.¹²⁶

The DOJ Guidelines further state that “[t]he prosecutor performing the second review for charging must be the same prosecutor who performed the initial charging review. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging.”¹²⁷ This interpretation is consistent with the test claim statute, which attempts to eliminate unconscious bias in charging by the prosecutor of the case. Under the statute, the prosecutor who does not have knowledge of the redacted facts for that case initially reviews the redacted report to determine if the case should be charged, then conducts his or her evaluation of the case based on all information, as was done under prior law. As explained in the next section below, any change in the prosecutor’s determination of the case between the initial and secondary evaluation must be documented by that prosecutor. Thus, the same prosecutor is required to conduct both evaluations for the process to work.

The Commission finds that the initial evaluation is a new state-mandated activity, which was not required by prior law. State law did not previously require a race-blind evaluation to determine whether charges should be brought.

However, the second review of all materials to determine the exact charges to bring is does *not* impose a new state-mandated activity; it is “intended to be the ordinary charging process” for the prosecution agency to determine, based on the evidence, the applicable charges to include in a criminal complaint or a case submitted to the grand jury. This is true even if the prosecuting agency now has less time to bring charges because of the additional initial evaluation.

Thus, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(2) imposes a new state-mandated activity for a prosecutor who does not have knowledge of the redacted facts to perform the initial race-blind charging evaluation based on redacted information in the narrative of the police report to determine whether the case should be charged or not be charged. If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging.¹²⁸ However, the second, complete review for charging using unredacted reports and all available evidence pursuant to Penal Code section 741(b)(3) is not new and does *not* impose a new state-mandated activity.

¹²⁶ Exhibit A, Test Claim, pages 70, 73 (DOJ Race-Blind Charging Guidelines), emphasis added.

¹²⁷ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

¹²⁸ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines), emphasis added.

5. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(4) and (5) Impose New State-Mandated Requirements to Document Specified Information. However, the Costs To Make the Information Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).

Penal Code section 741(b)(4) requires prosecuting agencies to document as part of the case record, the following information:

- The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
- The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
- The explanation for the charging decision change.

Penal Code section 741(b)(4) further states that this information shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law. The DOJ Guidelines clarify that this information must be disclosed upon request *after* sentencing in the case or dismissal of all charges, and that any response shall be governed by the California Records Act.¹²⁹

Penal Code section 741(b)(5) also states if a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request. The DOJ Guidelines clarify that any response shall be governed by the California Records Act.¹³⁰

These activities were not required by prior law and are new. The Commission finds that except for the crimes and circumstances listed in Penal Code section 741(c), the requirement to document the information above imposes a new state-mandated requirement.

However, any costs incurred to disclose the information under the California Public Records Act are not eligible for reimbursement. As adopted by Proposition 42 (June 3, 2014), the voters amended article I, section 3(b)(7) of the California Constitution to state “each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.” Article XIII B, section 6(a)(4) was also

¹²⁹ Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

¹³⁰ Exhibit A, Test Claim, page 71 (DOJ Race-Blind Charging Guidelines).

amended to provide that reimbursement is *not* required for any legislative mandates contained in statutes within the scope of article I, section 3(b)(7) as follows:

(a) 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 that local government for the costs of the program or increased level of service, *except that the Legislature may, but need not, provide a subvention of funds for the following mandates:*

(4) Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.¹³¹

The analysis of Proposition 42 by the Legislative Analyst's Office concludes that the amendment "Eliminates the state's responsibility to pay local governments for their costs related to these laws."¹³²

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), the following activities are new and mandated by the state:

1. Document as part of the case record, the following information:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
 - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)
2. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

¹³¹ Emphasis added.

¹³² Exhibit X (1), Legislative Analyst's Office Report on Proposition 42, page 1. Reports by the Legislative Analyst are relevant for determining voter intent. *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 445.

6. Except for the Crimes and Circumstances Identified in Penal Code Section 741(c), Penal Code Section 741(b)(6) Imposes a New State-Mandated Requirement To Collect the Raw Data Resulting from the Race-Blind Initial Charging Evaluation Process. However, the Costs to Make the Data Available to the Public under the California Public Records Act Are Not Reimbursable Pursuant to Article XIII B, Section 6(a)(4).

Penal Code section 741(b)(6) requires that counties “shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.” The DOJ Guidelines state that responses to requests for research data shall be governed by the California Public Records Act.¹³³

The Guidelines further clarify that

Only the raw data generated by the process, rendered anonymous for privacy, shall be provided for research; the underlying materials, reports, or criminal history information are not required to be produced by these Guidelines. The raw data would include crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures.¹³⁴

The requirement to collect this data is new. Counties were not previously required to perform this activity. And based on the plain language, the requirement to collect the data is mandated by the state.

However, the requirement to disclose the data collected under Penal Code section 741(b)(6) pursuant to a public records request is not eligible for reimbursement pursuant to article XIII B, section 6(a)(4) of the California Constitution.

Accordingly, the Commission finds that, except for the crimes and circumstances identified in Penal Code section 741(c), Penal Code section 741(b)(6) imposes a new state-mandated requirement to collect the raw data resulting from the race-blind initial charging evaluation process.

7. The Other Costs Requested in the Test Claim Are Not Mandated by the Plain Language of the Test Claim Statute.

As explained in Section III. of this Decision under the claimants’ position, the claimants have also identified activities and costs they allege to be reasonably necessary to comply with the test claim statute, including costs for training, meetings, and modifying

¹³³ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

¹³⁴ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

a county's CJIC system that maintains local suspect criminal history documentation.¹³⁵ These activities are not required by the plain language of the test claim statute and, thus, they are not mandated by the state.

However, these activities and costs may be considered for reimbursement at the parameters and guidelines phase if they are supported by evidence in the record showing they are "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

C. The New State-Mandated Activities Constitute a New Program or Higher Level of Service.

As indicated above, the following requirements are new state-mandated requirements for county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state):

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from the narrative portion of the police report. (Pen. Code, § 741(b)(1).)
3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)¹³⁶

4. Document as part of the case record, the following information:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

¹³⁵ Exhibit A, Test Claim, pages 36 et seq. (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara; Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter; and Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

¹³⁶ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

- The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)
5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

In addition, the following activity is new and mandated by the state for counties only:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)¹³⁷

Article XIII B, section 6 of the California Constitution requires reimbursement when “the Legislature or any state agency mandates a new program or higher level of service on any local government.” New programs or higher levels of service have been defined as those “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.”¹³⁸ Just one of these conditions need be met.¹³⁹ In this Test Claim, both are met.

The new activities listed above are required to be performed by “prosecution agencies.”¹⁴⁰ “Prosecution agencies” are defined in Penal Code section 741(a) as “agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors,” which as stated in the Background, are county district attorneys and city prosecutors.¹⁴¹ Thus, the test claim statute imposes unique requirements on local government to carry out the policy of reducing the potential for unconscious bias in charging crimes.

The requirements also carry out the governmental function of providing services to the public. As explained in section 1 of the test claim statute, the requirements are intended

¹³⁷ Exhibit A, Test Claim, page 72 (DOJ Race-Blind Charging Guidelines).

¹³⁸ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537 citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis in original.

¹³⁹ *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

¹⁴⁰ Penal Code section 741(a).

¹⁴¹ Government Code sections 26500, 41803.5, 72193.

“to increase community confidence in the charging process, and to reduce the potential for unconscious bias.”¹⁴²

Accordingly, the Commission finds that the new state-mandated activities constitute a new program or higher level of service.

D. The New State-Mandated Requirements Result in Costs Mandated by the State Within the Meaning of Government Code Section 17514 and the Exceptions in Government Code Section 17556 Do Not Apply.

Finally, Government Code section 17514 defines “costs mandated by the state” as any increased costs which a local agency or school district is required to incur as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) specifically requires that no claim or payment shall be made unless the claim exceeds \$1,000. A finding of such costs mandated by the state also means that no exception in Government Code section 17556 applies.

The claimant has filed declarations signed under penalty of perjury identifying increased costs exceeding \$1,000 to comply with the test claim statute.¹⁴³ There is no evidence rebutting these costs.

The Commission further finds that none of the exceptions to costs mandated by the state in Government Code section 17556 apply to deny the claim. The test claim statute does not create a new crime or eliminate a crime, and its purpose is not to change the penalty for a crime, as required under section 17556(g) and, thus, the crime exception does not apply. As explained above, the purpose of the test claim statute is to reduce the potential for unconscious bias in the criminal justice system.¹⁴⁴ Moreover, there is no evidence that the Legislature has provided additional revenue specifically intended to fund the cost of the state-mandated activities, as provided in Government Code section 17556(e).

Accordingly, the Commission finds the new state-mandated requirements result in costs mandated by the state within the meaning of Government Code section 17514 and the exceptions to reimbursement in Government Code section 17556 do not apply.

V. Conclusion

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Penal Code section 741(b), as added by Statutes 2022, chapter 806, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties and cities, beginning July 1, 2023, for the following activities only:

¹⁴² Statutes 2022, chapter 806, section 1.

¹⁴³ Exhibit A, Test Claim, page 42 (Declaration of James Gibbons-Shapiro, Assistant District Attorney, County of Santa Clara); page 49 (Declaration of Jeff C. Greeson, Chief Deputy District Attorney, County of Sutter); and page 54 (Declaration of Michael J. Benner, Supervising Deputy City Attorney, City of Sacramento).

¹⁴⁴ Statutes 2022, chapter 806, section 1.

A. For county and city agencies that prosecute misdemeanors and felonies, except for those crimes and circumstances identified in Penal Code section 741(c) (which are not mandated by the state), to:

1. Independently develop versions of a redaction and review process following DOJ Race-Blind Charging Guidelines (issued January 1, 2024). (Pen. Code, § 741(b).)
2. Beginning January 1, 2025, redact by hand or by automation with the use of computer programming the direct means of identifying the suspect(s)', victim(s)', and witness(es)' race from *only* the narrative portion of the police report. (Pen. Code, § 741(b)(1).)

*Redacting any additional materials or “the entire report” received from law enforcement is within the discretion of the local prosecuting agency and is not mandated by the state.*¹⁴⁵

3. A prosecutor who does not have knowledge of the redacted facts shall perform the initial race-blind charging evaluation based on redacted information and shall determine whether the case should be charged or not be charged.

If the prosecutor who performed the initial charging review is no longer available, the race-blind initial charging review *must be performed anew* by a different prosecutor, who will then also ultimately perform the second review for charging. (Pen. Code, § 741(b)(2).)¹⁴⁶

However, performing the second review for charging pursuant to Penal Code section 741(b)(3) is not new, does not mandate a new program or higher level of service, and is not reimbursable.

4. Document as part of the case record, the following information:
 - The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.
 - The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.
 - The explanation for the charging decision change. (Pen. Code, § 741(b)(4).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

¹⁴⁵ Exhibit A, Test Claim, page 67 (DOJ Race-Blind Charging Guidelines); *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 731, 742-745; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

¹⁴⁶ Exhibit A, Test Claim, page 70 (DOJ Race-Blind Charging Guidelines).

5. Document and retain the reason for the inability to put a case through a race-blind charging evaluation. (Pen. Code, § 741(b)(5).)

However, the costs to disclose and make this information available to the public under the California Public Records Act are not eligible for mandate reimbursement pursuant to article XIII B, section 6(a)(4).

B. For counties only, to:

1. Collect the data resulting from the race-blind initial charging evaluation process.

Only the raw data generated by the process, rendered anonymous for privacy, is required to be collected and maintained. The raw data includes crimes the prosecution agency included in the race-blind process and crimes the prosecution agency excepted from the race-blind process, statistics regarding both changes and consistent charging decisions between the two stages, information regarding failed attempts to use the race-blind system, and the race information data of the suspects connected to those changes or failures. (Pen. Code, § 741(b)(6).)¹⁴⁷

All other provisions of the test claim statute and claims for reimbursement are denied.

¹⁴⁷ Exhibit A, Test Claim, page 72. (DOJ Race-Blind Charging Guidelines).

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 May 5, 2026, I served the:

- **Current Mailing List dated May 4, 2026**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued May 5, 2026**

Race-Blind Charging, 24-TC-07

Statutes 2022, Chapter 806, Section 2 (AB 2778); Penal Code Section 741(b), effective January 1, 2023

City of Sacramento, County of Santa Clara, and County of Sutter, Claimants

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 May 5, 2026 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/4/26

Claim Number: 24-TC-07

Matter: Race-Blind Charging

Claimants: City of Sacramento
County of Santa Clara
County of Sutter

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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Exhibit I

Proposition 42

SCA 3. (Resolution Chapter 123, 2013), Leno. Public Information.

Yes/No Statement

A **YES** vote on this measure means: The state would not be required to pay local governments for costs to follow state laws that give the public access to local government information.

A **NO** vote on this measure means: The state would still be required to pay local governments for certain costs of providing public access to local government information.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

- Reduced state payments to local governments in the tens of millions of dollars annually.
- Potential increased local government costs of tens of millions of dollars annually from possible additional state requirements on local governments to make information available to the public.

Ballot Label

Fiscal Impact: Reductions in state payments to local governments in the tens of millions of dollars annually. Potential future costs on local governments in the tens of millions of dollars annually.

BACKGROUND

California Has Thousands of Local Governments. Californians receive services from thousands of local governments—counties, cities, school and community college districts, and special districts (such as fire districts, flood control districts, and water districts). Each local government has a local governing body (such as a city council or county board of supervisors) that makes decisions about its programs, services, and operations.

Public Access to Local Government Information. The State Constitution requires that meetings of governing bodies and writings of public officials and agencies be open to public scrutiny. Two state laws establish rules local governments must follow to provide public access to local government information and meetings.

- ***California Public Records Act.*** This law allows every person to inspect and obtain copies of state and local government documents. It requires state agencies and local governments to establish written guidelines for public access to documents and to post these guidelines at their offices.
- ***Ralph M. Brown Act.*** This law governs meetings of the governing bodies of local governments. It requires local governing bodies to provide public notice of agenda items and to hold meetings in an open forum.

State Payments for Public Records and Brown Act Costs. Over the years, the Legislature has modified the Public Records Act and Brown Act from time to time. Some of these changes have increased local government responsibilities and costs. The state generally must pay local governments for their costs when it increases their responsibilities—a requirement that state officials consider when reviewing proposals that increase local government costs. Under current

law, the state must pay local governments for their costs to implement certain parts of the Public Records Act (such as the requirement to assist members of the public seeking records and to tell individuals seeking records whether the records can be provided). The amount of money the state owes local governments for their Public Records Act costs is not known yet, but is estimated to be in the tens of millions of dollars annually. In addition, the state previously has paid local governments for their costs resulting from certain parts of the Brown Act. However, California voters amended the State Constitution in 2012 to eliminate the state's responsibility to pay local governments for these Brown Act costs.

PROPOSAL

This measure:

- Adds to the State Constitution the requirement that local governments follow the Public Records Act and the Brown Act.
- Eliminates the state's responsibility to pay local governments for their costs related to these laws. (As noted above, state responsibility to pay for local Brown Act costs was eliminated in 2012.)

The measure applies to the current requirements of these laws, as well as any future changes to either law that are made to improve public access to government information or meetings.

FISCAL EFFECTS

Effect on State Costs and Local Revenues. By eliminating the state's responsibility for paying local government costs to follow the Public Records Act, the measure would result in savings to the state and comparable revenue reductions to local governments. The impact is likely in the tens of millions of dollars a year.

Potential Effect on Local Costs. The measure could also change the future behavior of state officials. This is because under Proposition 42, the state could make changes to the Public Records Act and it would not have to pay local governments for their costs. Thus, state officials might make *more* changes to this law than they would have otherwise. In this case, local governments could incur **additional costs—potentially in the tens of millions of dollars annually in the future.**