STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

September 30, 2019

Ms. Stephanie Karnavas
County of San Diego
1600 Pacific Highway, Room 355
San Diego, CA 92101

Ms. Erika Li
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

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

Re: Decision
Youth Offender Parole Hearings, 17-TC-29
Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); and Statutes 2017, Chapters 675 and 684 (AB 1308 and SB 394)
County of San Diego, Claimant

Dear Ms. Karnavas and Ms. Li:

On September 27, 2019, the Commission on State Mandates adopted the Decision denying the Test Claim on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

Commission on State Mandates
980 9th Street, Suite 300 Sacramento, CA 95814 | www.csm.ca.gov | tel (916) 323-3562 | email: csminfo@csm.ca.gov

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394) Filed on June 29, 2018 County of San Diego, Claimant	Case No.: 17-TC-29 *Youth Offender Parole Hearings* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 27, 2019*) (*Served September 30, 2019*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on September 27, 2019. Stephanie Karnavas and Laura Arnold appeared on behalf of the County of San Diego (claimant). Susan Geanacou appeared on behalf of the Department of Finance (Finance).

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 the Revised Proposed Decision to deny the Test Claim by a vote of 6-1, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	No
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

The test claim statutes require, with specified exceptions, that the state Board of Parole Hearings (BPH) conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), to review the suitability for parole during the 15th, 20th, or 25th year of incarceration of any prisoner who was 25 or younger at the time of their controlling offense and was sentenced to 15 years or more, or who was sentenced to life in prison without the possibility of parole (LWOP) for an offense committed when the offender was under 18. At the YOPH, the BPH is required to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."[1] Youthful offenders "found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 shall be paroled regardless of the manner in which the board set release dates . . . ."[2]

The test claim statutes were enacted primarily in response to U.S. and California Supreme Court cases, which found that the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment, is violated when a juvenile offender commits a crime before reaching the age of 18 and receives a sentence of death, mandatory LWOP, or an equivalent mandatory sentence. The courts held that a state must instead provide these juvenile offenders, at sentencing, "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[3]

The Commission finds that this Test Claim was timely filed.

The Commission further finds, and the claimant agrees,[4] that the plain language of the test claim statutes does not impose any state-mandated activities on local agencies. All duties imposed by the test claim statutes are assigned to the BPH – a state agency. In addition, it is the BPH that is required to provide state-appointed counsel to inmates at YOPHs – not the local agency.[5]

The claimant, however, seeks reimbursement for costs associated with district attorneys and public defenders presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review before the BPH, pursuant to the California Supreme Court's decisions in *People v. Franklin* and *In re Cook*.[6] In *Franklin*, the court found that a juvenile offender, at sentencing, must have sufficient opportunity that he or she "may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile

[1] Penal Code sections 4801(c).

[2] Penal Code section 3046(c).

[3] *Miller v. Alabama* (2012) 567 U.S. 460, 479; *People v. Caballero* (2012) 55 Cal.4th 262, 268-269.

[4] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 2; Exhibit H, Claimant's Comments on the Proposed Decision, page 1.

[5] Penal Code section 3041.7; California Code of Regulations, title 15, section 2256(c).

[6] *People v. Franklin* (2016) 63 Cal.4th 261; *In re Cook* (2019) 7 Cal.5th 439.

offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors."[7] In addition, *Cook* found that the *Franklin* proceedings apply to offenders who are entitled to a YOPH, and whose judgment and sentence are already final.[8] The court in *Cook* explained that youthful offenders who are currently incarcerated and want to receive a *Franklin* proceeding can file a motion with the superior court under Penal Code section 1203.01, using the original caption and case number and citing the Supreme Court's decision in *Cook*.[9]

The Commission finds that the test claim statutes, including the resultant *Franklin* proceedings, do not impose a state-mandated program on local agencies. Article XIII B, section 6 requires reimbursement only for mandates imposed by the Legislature or any state agency. And, in this case, the court in *Cook* noted that the Legislature has *not* enacted any laws to specify what evidence-gathering procedures should be afforded to youth offenders who will be eligible for a YOPH, and explained that the Legislature still remains free to enact statutes governing the procedure.[10]

Even if a court were to agree with the claimant that the test claim statutes mandated activities with regard to the *Franklin* proceedings, the test claim statutes changed the penalty for crimes committed by all YOPH eligible offenders and, thus, the test claim statutes, including the resultant *Franklin* proceedings, do not impose "costs mandated by the state" pursuant to Government Code section 17556(g). Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or *changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction*."

Incarceration and parole are part of the penalty for the underlying crime.[11] Under the test claim statutes, some youthful offenders have received a reduction (sometimes by decades) in the minimum number of years of incarceration they must serve before becoming eligible for parole, and other such offenders who were ineligible for parole are now eligible. Thus, as stated in *Franklin*, the test claim statutes, by operation of law, "superseded the statutorily mandated sentences"[12] by capping the number of years the offender may be imprisoned before becoming eligible for release on parole:

> [S]ection 3051 has changed the manner in which the juvenile offender's original sentence operates by capping the number of years that he or she may be

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[7] *People v. Franklin* (2016) 63 Cal.4th 261, 286.

[8] *In re Cook* (2019) 7 Cal.5th 439, 447-552.

[9] *In re Cook* (2019) 7 Cal.5th 439, 457.

[10] *In re Cook* (2019) 7 Cal.5th 439, 459; see also, *People v. Franklin* (2016) 63 Cal.4th 261, 286, where the court noted that BPH had not yet adopted regulations applicable to a YOPH.

[11] *People v. Nuckles* (2013) 56 Cal.4th 601, 608 ("These competing arguments focus on the nature of parole and whether it constitutes part of the punishment for the underlying crime. It does."), and 610 ("The restraints on liberty and constructive custody status further demonstrate that service of parole is part of the punishment imposed following a defendant's conviction.")

[12] *People v. Franklin* (2016) 63 Cal.4th 261, 278.

> imprisoned before becoming eligible for release on parole. The Legislature has effected this change by operation of law, with no additional resentencing procedure required.[13]

This reasoning is further confirmed by subsequent appellate court decisions interpreting *Franklin*, one of which holds that the test claim statute "has in effect abolished de facto life sentences" for juvenile offenders:

> Section 3051 specifically and sufficiently addresses these concerns regarding cruel and unusual punishment. *This is because section 3051 has in effect abolished de facto life sentences in California.* Section 3051 universally provides each juvenile offender convicted as an adult with a mandatory parole eligibility hearing on a legislatively specified schedule, and after no more than 25 years in prison. When the Legislature enacted section 3051, it followed precisely the urging of the *Caballero* court to provide this parole eligibility mechanism.[14]

Thus, the test claim statutes changed the penalty for crimes committed by all YOPH eligible offenders by capping the number of years the offender may be imprisoned before becoming eligible for release on parole, and all of the activities alleged in this case to comply with the test claim statutes, including the resultant *Franklin* proceedings, relate directly to the enforcement of the youthful offender's underlying crime. Therefore, there are no costs mandated by the state pursuant to Government Code section 17556(g).

Accordingly, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2014 Effective date of Statutes 2013, chapter 312, adding Penal Code section 3051 and amending Penal Code sections 3041, 3046, and 4801.

01/01/2016 Effective date of Statutes 2015, chapter 471, amending Penal Code sections 3051 and 4801.

07/11/2016 The date the claimant first incurred costs to implement the test claim statutes.

01/01/2018 Effective date of Statutes 2017, chapter 684, amending Penal Code sections 3051 and 4801.[15]

06/29/2018 The claimant filed the Test Claim.[16]

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[13] *People v. Franklin* (2016) 63 Cal.4th 261, 279.

[14] *People v. Garcia* (2017) 7 Cal.App.5th 941, 950 (emphasis added).

[15] Statutes 2017, chapters 675 (AB 1308) and 684 (SB 394) both amended sections 3051 and 4801 of the Penal Code in the same manner, but, pursuant to Government Code section 9605(b), chapter 684 is the controlling legislation, due to being chaptered subsequent to chapter 675 – i.e., AB 1308 was "chaptered out" by SB 394.

[16] Exhibit A, Test Claim.

01/08/2019 The Department of Finance (Finance) requested an extension of time to file comments on the Test Claim, which was approved for good cause but limited to a period of 30 days.

01/09/2019 The County of Los Angeles filed comments on the Test Claim.[17]

03/13/2019 Finance filed late comments on the Test Claim.[18]

03/25/2019 Commission staff issued the Draft Proposed Decision.[19]

05/15/2019 The claimant filed rebuttal comments and comments on the Draft Proposed Decision.[20]

05/16/2019 The County of Los Angeles filed late comments on the Draft Proposed Decision.[21]

07/12/2019 Commission staff issued the Proposed Decision for the July 26, 2019 hearing.[22]

07/17/2019 The claimant requested postponement of the hearing and a comment period on the Proposed Decision

07/18/2019 The claimant's request was approved for good cause.

08/02/2019 The claimant filed comments on the Proposed Decision.[23]

II. Background

This Test Claim alleges that Penal Code sections 3041, 3046, 3051, and 4801, as added and amended by Statutes 2013, chapter 312; Statutes 2015, chapter 471; and Statutes 2017, chapter 684, impose a reimbursable state-mandated program on counties.

Generally, the test claim statutes require the state Board of Parole Hearings (BPH) to conduct a new type of parole hearing, a Youth Offender Parole Hearing (YOPH), for reviewing the suitability for parole of any prisoner who was 25 or younger at the time of their controlling offense, or who was sentenced to life in prison without the possibility of parole for an offense committed when the individual was under 18, during the 15th, 20th, or 25th year of incarceration. The test claim statutes also require that BPH meet with prison inmates, including those eligible for consideration at a YOPH, during the sixth year prior to their minimum eligible parole release date. At this meeting, referred to as a consultation, BPH is required to provide inmates with information about the parole hearing process, factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their conduct and behavior. The test claim statutes exclude inmates sentenced pursuant to the state's Three Strikes

[17] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim.

[18] Exhibit C, Finance's Late Comments on the Test Claim.

[19] Exhibit D, Draft Proposed Decision.

[20] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision.

[21] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision.

[22] Exhibit G, Proposed Decision.

[23] Exhibit H, Claimant's Comments on the Proposed Decision.

Law or One Strike Law (for certain sex offenses) from eligibility for a YOPH and the consultation process described above. The statutes also exclude from eligibility for a YOPH, inmates who committed an additional crime involving malice aforethought (such as murder) after reaching age 26, and those inmates who commit an additional crime for which a new life sentence was imposed after reaching age 26.

The goal of the test claim statutes is "to provide a judicial mechanism for reconsidering the sentences of adults who served a significant amount of time in state prison for the conviction of crimes they committed as children."[24] This mechanism "ensures that youth offenders will face severe punishment for their crimes, but it also gives them hope and the chance to work toward the possibility of parole."[25] The Legislature stated its intent:

> The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity. . . . It is the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.[26]

The claimant seeks reimbursement for costs it alleges were incurred by county public defenders and prosecutors "as a result" of the test claim statutes.[27] The claimant does not identify any costs associated with the YOPH, but alleges costs incurred to defend and prosecute the youth offender at the sentencing hearing, in which the court considers the mitigating circumstances attendant in the youth's crime and life so that it can impose a time when the youth offender will be able to seek a YOPH.[28]

[24] Exhibit I, Senate Committee on Public Safety Analysis of SB 260, April 9, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 4.

[25] Exhibit I, Senate Rules Committee Analysis of SB 394, as amended September 15, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), page 6.

[26] Statutes 2013, chapter 312 (SB 260), section 1.

[27] Exhibit A, Test Claim, page 13.

[28] Exhibit A, Test Claim, pages 20-23.

A. The History of Juvenile Sentencing in California.

Under common law, any person aged 14 or older who was convicted of a crime was liable as an adult.[29] Those younger than seven were not subject to criminal prosecution.[30] For children between the ages of 7 and 14, the prosecution bore the burden to prove beyond a reasonable doubt that the child had the mental capacity to discern between good and evil.[31] In April 1850, the new California Legislature enacted statutes to the effect that a child under the age of 14 could not be punished for a crime, but could be found to have a sound mind manifesting a criminal intent if the child knew the distinction between good and evil.[32] However, a report by the California Prison Committee in 1859 showed that there were over 300 boys in San Quentin State Prison, some as young as 12, and that there were 600 children confined in adult jails statewide.[33]

During this time, no separate court existed in California for the processing of juvenile offenders, although several reform schools were constructed in an unsuccessful attempt to prevent juveniles from being housed in adult prisons.[34] In response to juvenile court statutes passed in Colorado,

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[29] Exhibit I, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see Exhibit I, Blackstone, *Commentaries on the Laws of England*, Book the Fourth, Chapter II, pages 21-25, https://oll.libertyfund.org/titles/2142#lf1387-02_label_2446 (accessed on February 6, 2019), pages 21-25.

[30] Exhibit I, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see Exhibit I, Blackstone, *Commentaries on the Laws of England*, Book the Fourth, Chapter II, pages 21-25, https://oll.libertyfund.org/titles/2142#lf1387-02_label_2446 (accessed on February 6, 2019), pages 21-25.

[31] Exhibit I, Charles E. Springer, Vice-Chief Justice, Supreme Court of Nevada, U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, "Justice for Juveniles" (1986), https://www.ncjrs.gov/pdffiles1/Digitization/103137NCJRS.pdf (accessed on February 6, 2019), pages 18-20; also see Exhibit I, Blackstone, *Commentaries on the Laws of England*, Book the Fourth, Chapter II, pages 21-25, https://oll.libertyfund.org/titles/2142#lf1387-02_label_2446 (accessed on February 6, 2019), pages 21-25.

[32] Statutes 1850, chapter 99, sections 3-4. See also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 4.

[33] Exhibit I, Macallair, *The San Francisco Industrial School and the Origins of Juvenile Justice in California: A Glance at the Great Reformation* (2003), 7 U. C. Davis Journal of Juvenile Law & Policy, issue 1, https://jjlp.law.ucdavis.edu/archives/vol-7-no-1/SF_Industrial.pdf (accessed on February 1, 2019), page 24.

[34] Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5,

Illinois, and Washington D. C., California passed its own juvenile court law in 1903.[35] The 1903 act applied to children under the age of 16 who were not already inmates at any prison or reform school, and who violated any state or local law.[36] It required counties having more than one judge to designate a judge to hear all juvenile cases under the act, with such proceedings to be closed to the public.[37] Children under 16 who were arrested would be brought before a police judge or justice of the peace, who could allow the child to remain at home, assign them a probation officer, commit them to a reform school, or have a guardian appointed, though any order removing the child from the home would be certified to the designated juvenile case judge for hearing.[38] No child under 12 could be committed to a jail, prison, or police station.[39] A child

"From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 6-10.

[35] Statutes 1903, chapter 43; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 10-13.

[36] Statutes 1903, chapter 43, section 1; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[37] Statutes 1903, chapter 43, section 2; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[38] Statutes 1903, chapter 43, sections 7-8; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[39] Statutes 1903, chapter 43, section 9; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

12 or older, but under 16 could be sentenced to a jail or prison where adults were confined, but could not be housed with adult inmates, or meet or be in the presence or sight of adult inmates.[40]

In 1909, the law was amended to include all children under the age of 18.[41] However, there were provisions allowing for a child under 18 to be prosecuted as an adult if the court found, after a hearing, that the child was unfit to be dealt with under the juvenile court law, as well as allowing a person over 18 but under 20 to be prosecuted as a juvenile if the court found this appropriate after a hearing.[42] A child under 14 charged with a felony could not be sentenced to adult prison unless they had first been sent to a state school and proven to be incorrigible.[43] Statutes 1911, chapter 133 amended the law to extended these protections to all persons under 21 not currently an inmate in a state institution.[44]

The Juvenile Court Law of 1915 repealed the 1909 act and the 1911 amendments thereto.[45] It applied to any person under 21, and made special provisions for determining whether offenders under 18 could be transferred to adult court, and for when offenders over 18 but under 21 could be treated as juvenile or regular offenders, allowing such offenders to request a trial in regular court, as juvenile court trials did not include the right to a trial by jury.[46] A child under 16 could, after conviction, (but not before) be sentenced to a jail or prison where adults were confined, but could not be housed with adult inmates, or meet or be in the presence or sight of adult inmates,

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[40] Statutes 1903, chapter 43, section 9; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 13.

[41] Statutes 1909, chapter 133, section 1; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 14.

[42] Statutes 1909, chapter 133, sections 17-18.

[43] Statutes 1909, chapter 133, section 20; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 14.

[44] Statutes 1911, chapter 369, section 1.

[45] Statutes 1915, chapter 631.

[46] Statutes 1915, chapter 631, sections 6-8; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 16-17.

and any person sentenced to a reform school or other institution other than a state prison could be returned to court and committed to state prison upon a finding of incorrigibility.[47]

In 1937, the California Legislature enacted the Welfare and Institutions Code, which provided, among other things, for a new juvenile court law.[48] It applied to all persons under 21, and established detention homes and forestry camps as alternative facilities to the state schools for housing juvenile offenders; however, in other respects it was similar to the Juvenile Court Law of 1915.[49]

The Youth Correction Authority Act, enacted in 1941, added sections 1700 to 1783 to the Welfare and Institutions Code, and established what would become, in 1942, the California Youth Authority (CYA), and ultimately, the contemporary Division of Juvenile Justice (DJJ).[50] The 1941 Act allowed for offenders under 23 at the time of their apprehension to be committed to CYA facilities, as opposed to state prisons, unless sentenced to very long or short terms (death, life imprisonment, or not more than 90 days incarceration).[51] All offenders committed to the CYA by a juvenile court had to be discharged after either two years or reaching the age of 21, whichever was later.[52] Misdemeanor offenders committed to CYA had to be discharged after two years or upon turning 23, whichever was later.[53] Felons committed to CYA had to be discharged by the age of 25.[54] However, if any person committed to CYA was due to be discharged before the maximum term of incarceration allowed for their commitment offense, and

[47] Statutes 1915, chapter 631, sections 10 and 14.

[48] Statutes 1937, chapter 369, sections 550-911.

[49] Statutes 1937, chapter 369, sections 550-911; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 19.

[50] Statutes 1941, chapter 937; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), page 21; and Exhibit I, "The History of the Division of Juvenile Justice," https://www.cdcr.ca.gov/Juvenile_Justice/DJJ_History/index.html (accessed on February 7, 2019), pages 2-8.

[51] Statutes 1941, chapter 937, page 2526.

[52] Statutes 1941, chapter 937, page 2531.

[53] Statutes 1941, chapter 937, page 2531.

[54] Statutes 1941, chapter 937, page 2532.

if the CYA believed the person was still dangerous, the CYA could go to court and seek to have the person committed to state prison for such maximum term, less the time spent at CYA.[55]

In 1961, a new Juvenile Court Law was passed, codified at Welfare and Institutions Code sections 500-914, and became popularly known as the Arnold-Kennick Juvenile Court Law, which is the basis for current juvenile justice laws in California.[56] It prohibited detaining persons under 18 "in any jail or lockup" unless charged with a felony, and if so detained, contact with adults detained in the same facility was forbidden.[57] It categorically prohibited committing anyone under 16 to a state prison.[58] It provided that anyone under 21 could be prosecuted as a juvenile, upon a finding of suitability by the juvenile court.[59] In felony cases, the juvenile court had the power, for those 16 or older at the time of the offense, to determine whether the offender was more properly subject to prosecution in juvenile court, and, if the offender was found "not a fit and proper subject" for juvenile court, to direct the district attorney to prosecute the offender as an adult "under general law."[60] Lastly, juvenile offenders were given expanded notice rights, the right to counsel, and the right to proof of the allegations against them by a preponderance of the evidence.[61] This was later changed to a proof beyond a reasonable doubt standard, by the ruling of the United States Supreme Court.[62]

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[55] Statutes 1941, chapter 937, pages 2532-2533.

[56] Statutes 1961, chapter 1616; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 25-26.

[57] Statutes 1961, chapter 1616, page 3461.

[58] Statutes 1961, chapter 1616, page 3462.

[59] Statutes 1961, chapter 1616, page 3472.

[60] Statutes 1961, chapter 1616, page 3485.

[61] Statutes 1961, chapter 1616, pages 3466-3482; see also Exhibit I, Diane Nunn & Christine Cleary, Judicial Council of California, Administrative Office of the Courts, Journal of the Center for Families, Children & the Courts, Volume 5, "From the Mexican California Frontier to Arnold-Kennick – Highlights in the Evolution of the California Juvenile Court, 1850-1961" (2004), http://www.courts.ca.gov/documents/JournalVol5.pdf (accessed on February 1, 2019), pages 25-26.

[62] *In re Winship* (1970) 397 U.S. 358. Before the Arnold-Kennick Juvenile Court Law, the juvenile court basically had essentially "unbridled discretion" to adjudicate a minor as a ward of the state, as the proceedings were not considered adversarial; rather, the state was proceeding as *parens patriae* (Latin for "parent of the country"), as a minor had rights not to liberty, but to custody, and state intervention did not require due process, as the state was merely providing the custody to which the minor was entitled, and which the parents had failed to provide. This did not deprive the minor of rights, for minors, who could be compelled, among other things, to go to school and to obey their parents, had no rights. (*In re Gault* (1967) 387 U.S. 1, 15-21.)

B. Juvenile Sentencing Statutes in Effect in California Immediately Prior to the Enactment of the Test Claim Statutes.

Immediately prior to the enactment of the test claim statutes,[63] juvenile offenders were processed pursuant to Welfare and Institutions Code section 602(a), which provided that anyone under 18 who committed a crime fell within the jurisdiction of the juvenile court and could be adjudged a ward thereof, unless they were 14 or older and were charged with special circumstances murder or specified sex offenses, in which case they had to be prosecuted "under the general law, in a court of criminal jurisdiction" (i.e., as adults).[64] Additionally, pursuant to Welfare and Institutions Code section 707(d)(1), prosecutors could "direct file" charges in adult criminal court (bypassing the juvenile court altogether) against juveniles 16 or older if they were accused of one of the 30 felonies described in Welfare and Institutions Code section 707(b), such as rape, robbery, child molestation, assault with a firearm, murder, attempted murder, and voluntary manslaughter.[65] Lastly, prosecutors could direct file against juveniles 14 or older for crimes or circumstances specified in Welfare and Institutions Code section 707(d)(2), such as personal use of a firearm during the commission of a felony, gang related offenses, or hate crimes.[66] As a result, numerous offenders were sentenced to terms in state prison for crimes committed when they were under 18. There were approximately 5,700 such persons incarcerated in state prisons as of August 14, 2013.[67]

C. The United States and California Supreme Court Decisions that Directly Led to the Enactment of the Test Claim Statutes.

Prior to the enactment of the test claim statutes, a series of rulings from the United States and California Supreme Courts found that imposition of the harshest penalties on offenders who were juveniles at the time of the offense, without considering such offenders' youth and attendant characteristics, violated the Constitution's Eighth Amendment prohibition against cruel and unusual punishment.[68] As described below, the sentences imposed on juvenile offenders that were found to violate the U.S. Constitution included the death penalty, mandatory sentences of life without the possibility of parole (LWOP), and life with the possibility of parole where the parole eligibility date falls outside the juvenile offender's natural life expectancy (LWOP equivalent). The courts found that although proper authorities may determine that youths should remain incarcerated for their natural lives, the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the

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[63] Statutes 2013, chapter 312, effective January 1, 2014 (SB 260).

[64] Former Welfare and Institutions Code section 602.

[65] Former Welfare and Institutions Code sections 707(a), 707(b), and 707(d)(1).

[66] Former Welfare and Institutions Code section 707(d)(2).

[67] Exhibit I, Assembly Committee on Appropriations – Analysis of SB 260, as amended August 13, 2013, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140SB260 (accessed on January 16, 2019), page 2.

[68] *Roper v. Simmons* (2005) 543 U.S. 551; *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *People v. Caballero* (2012) 55 Cal.4th 262.

future. Thus, a sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including, but not limited to, his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole.[69]

The first of this series of decisions was *Roper v. Simmons*, the U. S. Supreme Court held that imposition of the death penalty on offenders who were under 18 (i.e., juveniles) at the time of committing their capital offenses violated the U. S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment.[70] The Court reasoned that any conclusion that a juvenile falls among the worst offenders is suspect:

> The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." (Citation.) Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. (Citation.) The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside."[71]

In *Graham v. Florida*, the U.S. Supreme Court ruled that imposing a life sentence without the possibility of parole on a juvenile offender who had not committed a homicide violated the Eighth Amendment prohibition against cruel and unusual punishment.[72] The Court explained that *Roper* had established that "because juveniles have lessened culpability they are less deserving of the most severe punishments."[73] The Court continued that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."[74] The Court further reasoned "[h]ere, in light of juvenile nonhomicide offenders' diminished moral responsibility, any limited deterrent effect provided by

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[69] *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *People v. Caballero* (2012) 55 Cal.4th 262; *Montgomery v. Louisiana* (2016) 577 U.S. __ [136 S.Ct. 718].

[70] *Roper v. Simmons* (2005) 543 U.S. 551; 568, 578-579.

[71] *Roper v. Simmons* (2005) 543 U.S. 551, 570.

[72] *Graham v. Florida* (2010) 560 U.S. 48, 74-75.

[73] *Graham v. Florida* (2010) 560 U.S. 48, 68.

[74] *Graham v. Florida* (2010) 560 U.S. 48, 68.

life without parole is not enough to justify the sentence."[75] The Court held that "An offender's age is relevant to the Eighth Amendment, and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."[76]

The Court in *Graham* concluded that a state is not required to guarantee freedom to a juvenile offender, but must give defendants, at the outset, "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," as follows:

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham *some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.* It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. *It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society*.[77]

Then, in *Miller v. Alabama*, the Court held that a mandatory life without parole sentence for a person who was under 18 at the time of their crime violated the Eighth Amendment prohibition on cruel and unusual punishment.[78] The defendants in *Miller* had been sentenced to LWOP after being convicted of murder, and given the nature of the conviction, the sentencing judges had no discretion to impose any other penalty.[79] The Court explained that "Such a scheme prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change. . . ."[80] The Court continued that the characteristics that make juveniles less culpable than adults – "their immaturity, recklessness and impetuosity – make them less likely to consider potential punishment."[81] The Court reasoned that "the mandatory penalty schemes at issue here prevent the sentence from taking account of these central considerations. . . .[I]mposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[82]

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[75] *Graham v. Florida* (2010) 560 U.S. 48, 72.

[76] *Graham v. Florida* (2010) 560 U.S. 48, 76.

[77] *Graham v. Florida* (2010) 560 U.S. 48, 75 (emphasis added).

[78] *Miller v. Alabama* (2012) 567 U.S. 460, 465.

[79] *Miller v. Alabama* (2012) 567 U.S. 460, 465-469.

[80] *Miller v. Alabama* (2012) 567 U.S. 460, 465.

[81] *Miller v. Alabama* (2012) 567 U.S. 460, 472.

[82] *Miller v. Alabama* (2012) 567 U.S. 460, 474.

The Court reasoned as follows:

> To recap: Mandatory life without parole for a juvenile *precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.* It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. (Citations.) And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.[83]

Thus, the Court in *Miller* concluded that the Eighth Amendment to the U.S. Constitution forbids a sentencing scheme that mandates LWOP on juvenile homicide offenders.[84] Rather, citing *Graham*, the court held that "a state must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[85] The Court concluded by stating the following:

> . . . we do not consider Jackson's and Miller's alternative argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger. But given all we have said in *Roper*, *Graham*, and this decision about children's diminished capacity and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." (Citations.) Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.[86]

After the U.S. Supreme Court's decisions in *Graham* and *Miller*, the California Supreme Court held, in *People v. Caballero*, that the imposition on a 16 year old defendant of a sentence of life imprisonment with a minimum of 110 years before parole eligibility, for a nonhomicide offense (attempted murder with firearm and gang enhancements), violated the Eighth Amendment to the

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[83] *Miller v. Alabama* (2012) 567 U.S. 460, 477-478 (emphasis added).

[84] *Miller v. Alabama* (2012) 567 U.S. 460, 479.

[85] *Miller v. Alabama* (2012) 567 U.S. 460, 479.

[86] *Miller v. Alabama* (2012) 567 U.S. 460, 479-480.

U. S. Constitution and the U. S. Supreme Court's ruling in *Graham*.[87] The court recognized that Caballero "would have no opportunity to 'demonstrate growth and maturity' to try to secure his release, in contravention of *Graham's* dictate.[88] The Court held that the state may not deprive these juvenile offenders at sentencing of a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, and "must consider all mitigating circumstances attendant in the juvenile's crime and life" as follows:

> [W]e conclude that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. Although proper authorities may later determine that youths should remain incarcerated for their natural lives, *the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future. Under Graham's nonhomicide ruling, the sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole from the parole board. The Board of Parole Hearings will then determine whether the juvenile offender must be released from prison "based on demonstrated maturity and rehabilitation."* (Citation.)[89]

The court also held that offenders whose LWOP or LWOP equivalent sentences were already final could file a petition for writ of habeas corpus in the trial court to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings, as follows:

> Defendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for writs of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings. *Because every case will be different, we will not provide trial courts with a precise timeframe for setting these future parole hearings in a nonhomicide case. However, the sentence must not violate the defendant's Eighth Amendment rights and must provide him or her a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" under Graham's mandate*.[90]

In a footnote at the end of the *Caballero* decision, however, the court urged the Legislature "to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a

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[87] *People v. Caballero* (2012) 55 Cal.4th 262, 265.

[88] *People v. Caballero* (2012) 55 Cal.4th 262, 265.

[89] *People v. Caballero* (2012) 55 Cal.4th 262, 268-269 (emphasis added).

[90] *People v. Caballero* (2012) 55 Cal.4th 262, 269 (emphasis added).

de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity."[91]

On January 27, 2016, the U. S. Supreme Court issued its decision in *Montgomery v. Louisiana*.[92] The Court ruled that its decision in *Miller* (prohibiting mandatory LWOP sentences for offenders under 18) was retroactive, ordering the state of Louisiana to review for parole suitability the case of an inmate who had been given such a sentence at the age of 17, for a crime committed in 1963.[93] The court added that a state is not required to re-litigate the juvenile offender's sentence, but may remedy a *Miller* violation with parole considerations as follows:

> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. *A State may remedy a Miller violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.* See, e.g., Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity —and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.
>
> Extending parole eligibility to juvenile offenders does not impose an onerous burden on the States, nor does it disturb the finality of state convictions. Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*'s central intuition—that children who commit even heinous crimes are capable of change.[94]

D. The Test Claim Statutes

1. Statutes 2013, Chapter 312 (SB 260) Was Enacted To Require the State Board of Parole Hearings (BPH) To Conduct Youth Offender Parole Hearings (YOPHs) To Consider the Suitability of Release on Parole for Those Individuals Who Are Eligible for a YOPH and Committed Their Controlling Offense Before Reaching Age 18.

In response to the above rulings by the courts in *Graham*, *Miller*, and *Caballero*, the Legislature enacted Statutes 2013, chapter 312 to establish a parole eligibility mechanism to require the BPH to assess the growth and maturity of youthful offenders and to provide the offenders a meaningful opportunity for release. Section 1 of the bill states the following:

> The Legislature finds and declares that, as stated by the United States Supreme Court in Miller v. Alabama (2012) 183 L.Ed.2d 407, "only a relatively small

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[91] *People v. Caballero* (2012) 55 Cal.4th 262, 274, fn. 5.

[92] *Montgomery v. Louisiana* (2016) 577 U.S. __ [136 S.Ct. 718].

[93] *Montgomery v. Louisiana* (2016) 577 U.S. __ [136 S.Ct. 718; 725-726, 734-736].

[94] *Montgomery v. Louisiana* (2016) 577 U.S. __ [136 S.Ct. 718, 736] (emphasis added).

> proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior," and that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "parts of the brain involved in behavior control." The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity, in accordance with the decision of the California Supreme Court in People v. Caballero (2012) 55 Cal.4th 262 and the decisions of the United States Supreme Court in Graham v. Florida (2010) 560 U.S. 48, and Miller v. Alabama (2012) 183 L.Ed.2d 407. Nothing in this act is intended to undermine the California Supreme Court's holdings in In re Shaputis (2011) 53 Cal.4th 192, In re Lawrence (2008) 44 Cal.4th 1181, and subsequent cases [addressing the decisions of the executive branch whether or not to grant parole]. It is the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.[95]

Statutes 2013, chapter 312 added section 3051 and amended sections 3041, 3046, and 4801 of the Penal Code, creating YOPHs during the 15th, 20th, or 25th year of incarceration for inmates who committed their controlling offense before reaching age 18. Statutes 2013, chapter 312 required the parole of inmates found suitable for parole at a YOPH, notwithstanding consecutive life sentences or minimum terms before parole eligibility. The statute also required the state BPH, while reviewing suitability for parole at a YOPH, to provide for a meaningful opportunity to obtain release and to give great weight to the diminished culpability of juveniles, the hallmarks of youth, and any growth or maturity displayed by the prisoner.[96]

a. Amendments to Penal Code section 3041

The amendments to section 3041 changed how the state BPH met with inmates serving life sentences with a possibility of parole. Previously, BPH met with such inmates during their third year of incarceration, to review their files, make recommendations, and document activities or conduct relevant to granting or withholding postconviction credit.[97] The amendment changed the meeting (now called a consultation) to the sixth year before the inmate's minimum eligible

[95] Statutes 2013, chapter 312, section 1.

[96] Penal Code sections 3051(e) and 4801(c). The terms "inmate" and "prisoner" are interchangeable; for purposes of this Decision, whichever term is being used in the statute under discussion will be used.

[97] Pursuant to Penal Code section 2930 et seq., certain inmates are eligible to receive good conduct credits reducing their sentence by up to one-third; however, such credits can be taken away for misconduct inside the prison.

parole release date,[98] and required much more individualized recommendations to the inmate regarding suitability for parole and behavior that would indicate the same.

Statutes 2013, chapter 312 amended Penal Code section 3041(a) as follows (in strikeout and underline):

> (a) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170[99]) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the ~~third year of incarceration~~ sixth year prior to the inmate's minimum eligible parole release date for the purposes of reviewing and documenting the inmate's ~~file, making recommendations,~~ activities and conduct pertinent to both parole eligibility and to the granting or withholding of postconviction credit. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing. One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally set a parole release date as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner. In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e). The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision

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[98] The minimum eligible parole release date, in the case of inmates serving a life sentence with no other specific term of years, is seven years; in the case of inmates serving a life sentence with a specific term of years, e.g., 25 to life, the minimum eligible parole release date occurs after 25 years of incarceration, i.e., after serving the specific term of years. (Pen. Code, § 3046.)

[99] Inmates sentenced to Penal Code section 1170 have determinate sentences, i.e., a sentence for a fixed term of years, such as 12 years in prison, and are released on parole at the end of their sentences, without the need for a parole hearing in front of the BPH.

regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

b. Amendments to Penal Code section 3046

The amendments to section 3046 required that a prisoner found suitable for parole at a YOPH actually be granted parole, despite provisions elsewhere in that section requiring that inmates sentenced to a term of years to life sentence (e.g., 50 years to life) or to consecutive life sentences, serve their term of years or a minimum of seven years for each consecutive life sentence.[100] Statutes 2013, chapter 312 amended section 3046 as follows (in underline):

(a) No prisoner imprisoned under a life sentence may be paroled until he or she has served the greater of the following:

(1) A term of at least seven calendar years.

(2) A term as established pursuant to any other provision of law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.

(b) If two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, no prisoner so imprisoned may be paroled until he or she has served the term specified in subdivision (a) on each of the life sentences that are ordered to run consecutively.

(c) Notwithstanding subdivisions (a) and (b), a prisoner found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 shall be paroled regardless of the manner in which the board set release dates pursuant to subdivision (a) of Section 3041, subject to subdivision (b) of Section 3041 and Sections 3041.1 and 3041.2, as applicable.

(d) The Board of Prison Terms[101] shall, in considering a parole for a prisoner, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of the parole. The board shall enter on its order granting or denying parole to these prisoners, the fact that the statements and recommendations have been considered by it.

c. Addition of Penal Code section 3051

Statutes 2013, chapter 312 added section 3051 to the Penal Code, establishing the YOPH as a hearing conducted by the state BPH to review the suitability for parole of prisoners who were under 18 at the time of their controlling offense (i.e., juvenile offenders). "Controlling offense"

[100] For example, three consecutive life sentences would require a minimum of 21 years in prison (7+7+7) before eligibility for parole; or, two consecutive 25 years to life sentences would require a minimum of 50 years in prison before eligibility for parole (25+25).

[101] As of July 1, 2005, the Board of Prison Terms was abolished, and was replaced by the BPH, and any references to the Board of Prison Terms refer to the BPH. (Pen. Code, § 5075(a).)

is defined as the offense or enhancement for which the longest term of imprisonment was imposed. Section 3051 requires that juvenile offenders sentenced to a determinate sentence (i.e., a fixed term, such as 20 years) receive a YOPH by the BPH during their 15th year of incarceration, unless previously released. Juvenile offenders sentenced to a life term of less than 25 years to life are required to have a YOPH before the BPH during their 20th year of incarceration. Juvenile offenders sentenced to 25 years to life are required to have a YOPH during their 25th year of incarceration.[102] At a YOPH, the BPH is required to give great weight to, among other things, the diminished culpability of juveniles and the hallmark features of youth, when considering a prisoner's suitability for parole. Section 3051 also specifically excludes juvenile offenders convicted under the Three Strikes Law[103] or the One Strike Law,[104] or those who have committed very grave offenses after turning 18, from being given YOPHs. Lastly, it requires the state BPH to complete all YOPHs for prisoners eligible for them as of January 1, 2014, by July 1, 2015.[105]

Penal Code section 3051 reads

> (a)(1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense.
>
> (2) For the purposes of this section, the following definitions shall apply:
>
> (A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.
>
> (B) "Controlling offense" means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.

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[102] This applies to juvenile offenders who are sentenced to a term greater than 25 years to life; for example, a juvenile offender sentenced to 32 years to life would have the right, under section 3051, to receive a YOPH after 25 years of incarceration. (*People v. Garcia* (2017) 7 Cal.App.5th 941, 949-951.)

[103] As provided for in both Penal Code sections 1170.12 and 667, the Three Strikes law provides that a person convicted for the third time of a serious felony, as defined in Penal Code section 1192.7, or a violent felony, as defined in Penal Code section 667.5, shall serve a minimum of 25 years to life in state prison.

[104] As provided for in Penal Code section 667.61, the One Strike Law provides that a person convicted of certain sex offenses under certain circumstances shall receive a 15 years to life, 25 years to life, or LWOP sentence, depending on the specifics of the crime and the circumstances – even if the person has no prior criminal record.

[105] On April 10, 2019, the Court of Appeal for the First District, Division 4, held that Penal Code section 3051 was unconstitutional to the extent that it allowed youthful offenders convicted of murder to be eligible for YOPHs, but denied youthful offenders convicted under the One Strike Law such eligibility – and that this was a violation of the principles of equal protection of the laws as guaranteed by the Fourteenth Amendment to the U. S. Constitution. (*People v. Edwards* (2019) 34 Cal.App.5th 183, 194-199.)

(b)(1) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.

(2) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(3) A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(c) An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.

(d) The board shall conduct a youth offender parole hearing to consider release. At the youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f)(1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.

(3) Nothing in this section is intended to alter the rights of victims at parole hearings.

(g) If parole is not granted, the board shall set the time for a subsequent youth offender parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. In exercising its discretion pursuant to paragraph (4) of subdivision (b) and subdivision (d) of Section 3041.5, the board shall consider the factors in subdivision (c) of Section 4801. No subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(h) This section shall not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61, or in which an individual was sentenced to life in prison without the possibility of parole. This section shall not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 18 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

(i) The board shall complete all youth offender parole hearings for individuals who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of this section by July 1, 2015.[106]

d. Amendments to Penal Code section 4801

Statutes 2013, chapter 312 amended section 4801 to require the BPH, during a prisoner's YOPH, to give great weight to the diminished capacity of juveniles, the hallmark features of youth, and subsequent growth and maturation of the prisoner, consistent with decisional law. The statute amended section 4801, as relevant to this claim, by adding subdivision (c) as follows:

(c) When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, prior to attaining 18 years of age, the board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

2. Statutes 2015, Chapter 471 (SB 261) Expanded YOPH Eligibility to Individuals Who Were under the Age of 23 at the Time of Their Controlling Offense, and Set Deadlines for the BPH To Complete Such Hearings.

Statutes 2015, chapter 471 further amended sections 3051 and 4801of the Penal Code. Penal Code section 3051 was amended to expand YOPH eligibility to prisoners who were under 23 at the time of their controlling offenses. In addition, section 3051 was amended to require the BPH to complete all YOPHs for individuals who were sentenced to *indeterminate life terms* and who are eligible for a YOPH as of January 1, 2016, by July 1, 2017. Section 3051, as amended, also required the BPH to complete all YOPHs for those individuals who were sentenced to

[106] Pursuant to Penal Code section 3051(e), BPH initiated a proposed regulatory package on December 24, 2018, to implement these statutes. The regulatory package remains pending. (https://www.cdcr.ca.gov/BOPH/reg_revisions.html, accessed on June 18, 2019.)

determinate terms and who became entitled to a YOPH as of January 1, 2016, by July 1, 2021, and to complete all consultations of these individuals before July 1, 2017.

Statutes 2015, chapter 471 also made similar changes to Penal Code section 4801 to provide that prisoners who were under 23 at the time of their controlling offenses were eligible for YOPHs, with no changes to the special considerations the BPH was expected to give great weight to at such hearings.

3. Statutes 2017, Chapter 684 (SB 394) Expanded YOPH Eligibility to Individuals Who Were 25 or Younger at the Time of Their Controlling Offense and to Individuals Sentenced to Life Without the Possibility of Parole (LWOP) for a Controlling Offense Committed While under the Age of 18, and Set Deadlines for the BPH to Complete Such Hearings.

Statutes 2017, chapter 684 amended Penal Code sections 3051 and 4801, allowing prisoners with the possibility of parole who committed their controlling offenses at the age of 25 or younger to qualify for YOPHs, and granting those who had been sentenced to LWOP for a controlling offense committed while under the age of 18 to receive a YOPH during their 25th year of incarceration in accordance with the U.S. Supreme Court's 2016 decision in *Montgomery*.[107] This statute set new deadlines for the BPH to complete the YOPHs for persons entitled thereto on the effective date of the statute (January 1, 2018) by January 1, 2020 (for individuals sentenced to indeterminate life terms) and January 1, 2022 (for individuals sentenced to determinate terms), and for completion of YOPHs for qualifying LWOP prisoners by July 1, 2020.

E. <u>California Supreme Court Decisions Issued and Statutes Enacted After the Test Claim Statutes.</u>

On June 17, 2016, the California Supreme Court issued its decision in *People v. Franklin*.[108] This case involved a defendant, Franklin, who committed a murder at the age of 17, where the trial court at sentencing had no discretion other than to impose two consecutive 25 years to life sentences, for a total sentence of 50 years to life.[109] Franklin challenged the sentence as a violation of the Eighth Amendment ban on cruel and unusual punishment based on the holdings in *Graham*, *Miller*, and *Caballero*.[110] Franklin argued the following:

> As noted, Franklin would first become eligible for parole at age 66 under the sentence imposed by the trial court. That sentence was mandatory; the trial court had no discretion to consider Franklin's youth as a mitigating factor. According to Franklin, the 50-year-to-life sentence means he will not experience any substantial period of normal adult life; instead, he will either die in prison or have

[107] Exhibit I, Assembly Committee on Public Safety – Analysis of SB 394, as amended June 26, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), pages 4-5.

[108] *People v. Franklin* (2016) 63 Cal.4th 261.

[109] *People v. Franklin* (2016) 63 Cal.4th 261, 268.

[110] *People v. Franklin* (2016) 63 Cal.4th 261, 268.

> the possibility of geriatric release. He contends that his sentence is the "functional equivalent" of LWOP [citing *Caballero*] and that it was imposed without the protections set forth in *Miller*.[111]

The court agreed that the constitutional protections outlined in *Graham* and *Miller* apply to sentences that are the "functional equivalent of a life without parole sentence," as follows:

> We now hold that just as *Graham* applies to sentences that are the "functional equivalent of a life without parole sentence" (Citation), so too does *Miller* apply to such functionally equivalent sentences. As we noted in *Caballero*, *Miller* "extended *Graham*'s reasoning" to homicide offenses, observing that "'none of what [*Graham*] said about children — about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.'" (Citation.) Because sentences that are the functional equivalent of LWOP implicate *Graham*'s reasoning (Citation), and because "'*Graham*'s reasoning implicates any life-without-parole sentence imposed on a juvenile' " whether for a homicide or nonhomicide offense (citation), a sentence that is the functional equivalent of LWOP under *Caballero* is subject to the strictures of *Miller* just as it is subject to the rule of *Graham*. In short, a juvenile may not be sentenced to the functional equivalent of LWOP for a homicide offense without the protections outlined in *Miller*.[112]

The court cited *Montgomery* in support of its holding that "the law categorically prohibits the imposition of certain penalties, including mandatory LWOP, on juvenile offenders."[113]

While his appeal was pending, the Legislature enacted the test claim statutes, Penal Code sections 3051 and 4801, to provide a parole hearing during the 25th year of incarceration for certain juveniles sentenced as adults.[114] Thus, the court concluded that Franklin's Eighth Amendment constitutional challenge was moot because of the passage of Penal Code sections 3051 and 4801:

> . . . Penal Code sections 3051 and 4801 – recently enacted by the Legislature to bring juvenile sentencing in conformity with *Miller*, *Graham*, and *Caballero* – moot Franklin's constitutional claim. Consistent with constitutional dictates, those statutes provide Franklin with the possibility of release after 25 years of imprisonment (Pen. Code § 3051, subd. (b)(3)) and require the Board of Parole Hearings (Board) to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity." (*id.*, § 4801, subd. (c)). In light of this holding, we need not decide whether a life sentence with parole eligibility after 50 years of

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[111] *People v. Franklin* (2016) 63 Cal.4th 261, 276.

[112] *People v. Franklin* (2016) 63 Cal.4th 261, 276.

[113] *People v. Franklin* (2016) 63 Cal.4th 261, 283.

[114] *People v. Franklin* (2016) 63 Cal.4th 261, 269.

> incarceration is the functional equivalent of an LWOP sentence and, if so, whether it is unconstitutional in Franklin's case.[115]

The court also found that Franklin raised colorable concerns about whether he was given an adequate opportunity at sentencing to make a record of mitigating evidence tied to his youth, since he was sentenced before *Miller* was decided and before the Legislature enacted the test claim statutes. The court explained what happened at the sentencing hearing as follows:

> Franklin was sentenced in 2011, before the high court's decision in *Miller* and before our Legislature's enactment of Senate Bill No. 260 in response to *Miller*, *Graham*, and *Caballero*. When Franklin's attorney did not receive a probation report until the morning of sentencing, the trial court acknowledged that this delay would ordinarily merit a continuance. But the court, recognizing that it lacked discretion in sentencing Franklin, proceeded with sentencing and allowed the defense to submit mitigation information at a later date. At the post sentencing hearing where these materials were submitted, Franklin's attorney raised concerns about the record at his eventual parole hearing. In response, the trial court said, "it sort of doesn't matter because the statute mandates the sentence here. So there's no basis and occasion for any findings to be made on aggravation and mitigation at all." The court eventually admitted a mitigating statement submitted by Franklin and a handwritten note from this mother. But the court expressed "misgiving" that because of the mandatory sentences, "[a]t no point in the process is anyone, other than the district attorney's office, ever able to really consider that this is a juvenile."[116]

The court recognized that following Franklin's sentencing hearing, the Legislature enacted the test claim statutes to declare "that '[t]he youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release (§ 3051, subd. (e)) and that in order to provide such meaningful opportunity, the Board [of Parole Hearings] 'shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity' (§ 4081, subd. (c))," and, referring to *Miller*, *Graham*, *Caballero*, *Roper*, and *Montgomery*, that "[t]hese statutory provisions echo language in constitutional decisions of the high court.[117] The court stated that Penal Code section 3051 "changed the manner in which the juvenile offender's original sentence operates by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole" and that the "Legislature has effected this change by operation of law, with no additional resentencing procedure required."[118] The court further determined that the test claim statutes "contemplate that information regarding the juvenile offender's characteristics and

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[115] *People v. Franklin* (2016) 63 Cal.4th 261, 268; see also pages 277-280.

[116] *People v. Franklin* (2016) 63 Cal.4th 261, 282-283.

[117] *People v. Franklin* (2016) 63 Cal.4th 261, 283.

[118] *People v. Franklin* (2016) 63 Cal.4th 261, 278-279.

circumstances at the time of the offense will be available at a youth offender parole hearing to facilitate the Board's consideration."[119]

Thus, the court remanded the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity at his sentencing to make a record of the type of information that may describe the diminished culpability of juveniles and the hallmarks of youth, which would be relevant to his future YOPH.[120] The court reasoned that the goal of any proceeding to make such a record

> [I]s to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the [BPH], years later, may properly discharge its obligation to 'give great weight to' youth related factors ([section 4801(c)]) in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime 'while he was a child in the eyes of the law.' (Citation.)[121]

The Court clarified that if Franklin were to be granted such a proceeding, the trial court may receive evidence and testimony from both parties pursuant to existing sentencing procedures as follows:

> [The court may receive submissions and, if appropriate, testimony pursuant to procedures set forth in [Penal Code] section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors.[122]

In August 2016, the Fourth District Court of Appeal decided *People v. Perez*.[123] In *Perez*, the defendant appealed from a judgment after a jury convicted him of three counts of attempted premeditated murder, discharging a firearm with gross negligence, and vandalism, and found firearm enhancements. These crimes were committed when Perez was 20 years old.[124] Perez argued his 86–year–to–life sentence constituted cruel and unusual punishment, relying on *Roper*, *Graham*, *Miller*, and *Caballero*.[125] The court concluded, however, that because Perez was not a juvenile at the time of the offenses (he was 20 years old), *Roper*, *Graham*, *Miller*, and *Caballero*

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[119] *People v. Franklin* (2016) 63 Cal.4th 261, 283.

[120] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[121] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[122] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[123] *People v. Perez* (2016) 3 Cal.App.5th 612.

[124] *People v. Perez* (2016) 3 Cal.App.5th 612, 615, 617.

[125] *People v. Perez* (2016) 3 Cal.App.5th 612, 617.

were not applicable, and that the 86–years–to–life sentence did not constitute cruel and unusual punishment under the U.S. Constitution.[126]

The court noted that effective January 1, 2016, anyone who committed a controlling offense before reaching 23 years of age is entitled to a YOPH pursuant to Penal Code section 3051, as amended by the 2015 test claim statute.[127] Thus, under this statute and pursuant to the court's holding in *Franklin*, the court ordered a limited remand for both parties "to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors . . . in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime."[128]

In 2018, the California Supreme Court decided *People v. Rodriguez* to determine whether defendant's constitutional challenge to a 50-years-to-life sentence was moot because of the test claim statutes, which were enacted after the defendant was sentenced to make him eligible for a YOPH during his 25th year of incarceration.[129] The court of appeal had applied *Franklin*, finding that the Eighth Amendment constitutional challenge was moot because of the enactment of the test claim statutes, but declined to remand the case to the trial court on the ground that Rodriguez had a sufficient opportunity at the original sentencing hearing to make a record.[130] The California Supreme Court disagreed with the court of appeal's failure to remand, and held that Rodriguez was entitled to have his case remanded for the opportunity to supplement the record with information relevant to his eventual YOPH, reasoning that:

> Although a defendant sentenced before the enactment of Senate Bill No. 260 could have introduced such evidence through existing sentencing procedures, he or she would not have had reason to know that the subsequently enacted legislation would make such evidence particularly relevant in the parole process. Without such notice, any opportunity to introduce evidence of youth-related factors is not adequate in light of the purpose of Senate Bill No. 260.[131]

Most recently, on June 3, 2019, the California Supreme Court issued its decision in *In re Cook*.[132] Cook was convicted in 2007 of murder and attempted murder committed when he was 17 years old, and received an LWOP sentence for the attempted murder and five consecutive 25 year terms for the murder, and his conviction was final. The California Supreme Court concluded that the right to a *Franklin* proceeding applies also to Cook and other offenders who

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[126] *People v. Perez* (2016) 3 Cal.App.5th 612, 617.

[127] *People v. Perez* (2016) 3 Cal.App.5th 612, 618.

[128] *People v. Perez* (2016) 3 Cal.App.5th 612, 619.

[129] *People v. Rodriguez* (2018) 4 Cal.5th 1123, 1125.

[130] *People v. Rodriguez* (2018) 4 Cal.5th 1123, 1131.

[131] *People v. Rodriguez* (2018) 4 Cal.5th 1123, 1131.

[132] *In re Cook* (2019) 7 Cal.5th 439.

are entitled to a parole hearing under Penal Code sections 3051 and 4801, and whose judgment and sentence are otherwise final.[133]

The court in *Cook* further held that the offenders who seek to preserve evidence following a final judgment would not have to file a petition for writ of habeas corpus to exercise the right to receive a *Franklin* proceeding, but instead would simply have to file a motion with the superior court under Penal Code section 1203.01, using the original caption and case number and citing the Supreme Court's decision in *Cook*:

> By its terms, the statute addresses the filing of statements with the court "after judgment has been pronounced." (§ 1203.01, subd. (a).) Further, the motion we recognize under section 1203.01 does not impose the rigorous pleading and proof requirements for habeas corpus. . . Nor does it require the court to act as a factfinder. Rather, it simply entails the receipt of evidence for the benefit of the Board. [Citation to *Franklin* omitted.][134]

The court noted that the proceedings it outlines under Penal Code section 1203.01 derive from the test claim statutes, Penal Code sections 3051 and 4801, but the court expressed no view on whether such a remand is constitutionally required in all cases.[135] The court also stated that the Legislature has not enacted any new laws to specify what evidence-gathering procedures should be afforded to youth offenders who will be eligible for a YOPH, and explained that the Legislature remains free to enact statutes governing the procedure as follows:

> While we unquestionably have the power to interpret these laws, the Legislature is in a superior position to consider and implement rules of procedure in the first instance. The Legislature remains free to amend the pertinent statutes to specify what evidence-gathering procedures should be afforded to youth offenders, taking into account the objectives of the youth offender parole hearing and the burden placed on our trial courts to conduct *Franklin* proceedings for the many thousands of offenders who will be eligible for them under today's decision.[136]

The court in *Cook* made it clear that the "opportunity for a *Franklin* hearing is just that: an opportunity." The court noted that "[d]elving into the past is not always beneficial to a defendant" and, thus, some offenders will forgo a *Franklin* proceeding altogether.[137]

Finally, effective January 1, 2019, the Legislature amended Welfare and Institutions Code section 707 to repeal the authority of a district attorney to make a motion to transfer a minor from juvenile court to adult court in a case in which a minor is alleged to have committed a specified serious offense, including murder, when the minor was 14 or 15 years of age, unless the individual was not apprehended prior to the end of juvenile court jurisdiction.[138] As a

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[133] *In re Cook* (2019) 7 Cal.5th 439, 447-452.

[134] *In re Cook* (2019) 7 Cal.5th 439, 457.

[135] *In re Cook* (2019) 7 Cal.5th 439, 458.

[136] *In re Cook* (2019) 7 Cal.5th 439, 459.

[137] *In re Cook* (2019) 7 Cal.5th 439, 459.

[138] Statutes 2018, chapter 1012 (SB 1391.) No test claim has been filed on this statute.

practical matter, this may significantly reduce the number of future offenders eligible for YOPH consideration.

III. Positions of the Parties and Interested Parties

A. County of San Diego

The claimant alleges that the test claim statutes resulted in reimbursable increased costs mandated by the state. The claimant asserts that "as a result" of Statutes 2013, chapter 312; Statutes 2015, chapter 471; and Statutes 2017, chapter 684, and the decisions interpreting and applying that legislation in *Franklin*[139] and *People v. Perez*,[140] defense counsel and prosecutors are now required to provide newly mandated services and incur newly mandated costs as detailed below in preparation of and appearance at a YOPH-eligible individual's sentencing hearing:[141]

> (1) Preparation and presentation of evidence by counsel including evaluations and testimony regarding an individual's cognitive culpability, cognitive maturity, or that bears on the influence of youth related factors at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (2) Retention and utilization of investigators to: (a) locate and gather relevant evidence, including but not limited to, interviews with anyone that can provide mitigating information about the defendant, including family, friends, teachers, and anyone else that knows the defendant; and (b) gather records of the defendant, including school, hospital, employment, juvenile, and other relevant persona [*sic*] records (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (3) Retention and utilization of experts to evaluate the offender and prepare reports for presentation at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c));
>
> (4) Attendance by the district attorney's office and indigent defense counsel at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c)); and
>
> (5) Participation of counsel in training to be able to competently represent their clients at the sentencing hearing (Penal Code §§ 3051(a), (b), (e), and (f); and 4801(c)).[142]

Although the claimant does not appear at YOPHs, it contends that its activities regarding the conduct of sentencing hearings for new offenders who may one day qualify for YOPHs, constitute state-mandated activities that are unique to local government and carry out a state policy.[143] The claimant argues that it is eligible to receive subvention as follows:

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[139] *People v. Franklin* (2016) 63 Cal.4th 261.

[140] *People v. Perez* (2016) 3 Cal.App.5th 612.

[141] Exhibit A, Test Claim, page 13.

[142] Exhibit A, Test Claim, pages 21-22.

[143] Exhibit A, Test Claim, pages 23-24.

> Prior to SB 260, 261, and 394, and the decisions of the courts in *Franklin* and *Perez*,[144] California defense attorneys were not mandated to present evidence, evaluations, or testimony regarding the influence of youth-related factors at sentencing hearings for use at a subsequent Youth Offender Parole Hearing many years in the future. Such information was unlikely to have any impact on the sentence imposed, given the existence of mandatory sentences for many of the crimes and judges' limited discretion with regard to certain enhancements. Because there was no effort to gather and present this information, defense attorneys expended a minimal amount of time to prepare for and to attend the sentencing hearings.
>
> For the same reasons as defense attorneys, California prosecutors presented no information and incurred no costs, other than the cost of attending sentencing hearings.
>
> In contrast to defense attorneys and prosecutors, Probation Departments were responsible for investigating and compiling information to be considered by the sentencing judge and, as a result, did incur costs. Probation officers gathered and provided information concerning the facts surrounding the offense, victim restitution requests and impact statements, the defendant's education, military, and employment history, the defendant's medical, psychiatric and substance abuse history, and the defendant's criminal and delinquent history. (See Pen. Code, § 1203, Cal. Rules of Court, Rules 4.411-4.433.) Such information was typically gathered by interviewing the defendant, without attempting to gather information from other sources. However, this effort to gather information did not include any investigation or reporting on the circumstances of the defendant's youth and is therefore distinguishable from the effort required by the mandate.
>
> As a result of the statutory changes, youth offenders now must be granted an opportunity to present evidence, evaluations, and testimony regarding the influence of youth-related factors at the sentencing hearing. Defense attorneys must perform the activities described . . . above, which will result in costs not previously incurred. In addition, prosecutors will be required to prepare for the hearings, which will also result in costs not previously incurred.[145]

The claimant further argues the "enhanced *Franklin* sentencing hearings" allegedly required by the test claim statute cost, on average, between $5,500 and $12,750 each, and that statewide costs for such hearings "will exceed $2,750,000 per year and may be as high as $6,375,000 per year."[146] The claimant alleges that "total increased costs to comply with SB 260 and 261 in Fiscal Year 2016-17 totaled at least $10,763."[147] The claimant further alleges that for fiscal year

[144] *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Perez* (2016) 3 Cal.App.5th 612.

[145] Exhibit A, Test Claim, pages 24-25.

[146] Exhibit A, Test Claim, page 26.

[147] Exhibit A, Test Claim, page 21.

2017-2018, it "incurred at least $10,705 in increased costs to comply with SB 260 and 261. Claimant also incurred at least $6,344 in increased costs to comply with SB 394."[148]

The Test Claim further notes that *Cook* was pending before the California Supreme Court when the Test Claim was filed in June 2018 to address the issue of whether a *Franklin* hearing was required for youth offenders whose convictions were already final, and that it reserves the right to amend or supplement the Test Claim if a decision in *Cook* is reached:

> The issue before the Court [in *Cook*] is whether "youth offenders" whose convictions are already final and who are currently incarcerated, are entitled to a hearing before the trial court to preserve evidence for use at a future youth offender parole hearing, as ordered in *Franklin*. An affirmative decision would significantly expand the scope of the mandated activities for which reimbursement is sought by this Test Claim. Claimant reserves the right to amend or supplement this Test Claim if the Court reaches a decision during the pendency of this claim, or alternatively, submit an additional Test Claim if a decision is reached after a mandate determination has been made on this claim.[149]

The claimant states, however, that the test claim statutes, as interpreted by the courts, require the sheriff's department to transport, house, and feed youth offenders who have been previously sentenced and incarcerated without having had an opportunity to present the youth-related evidence at the time they were sentenced.[150]

The claimant, in its comments on the Draft Proposed Decision, argues

> The Commission's position ignores the California Supreme Court's **interpretation of the statutes** as articulated in *People v. Franklin*[151], which indicates an offender must be given the opportunity to "make an accurate record of the juvenile offender's characteristics and circumstances **at the time of the offense** so that the [BPH], **years later, may properly discharge its obligation** to give "great weight to" youth-related factors [citation] in determining whether the offender is "fit to rejoin society."[152]

The claimant further argues that the *Franklin* decision clarifies that the BPH cannot discharge its obligations pursuant to the test claim statutes without imposing the "newly mandated activities" on defense counsel and prosecutors, and that state-appointed counsel are only responsible for the

[148] Exhibit A, Test Claim, page 21.

[149] Exhibit A, Test Claim, page 13, footnote 3.

[150] Exhibit A, Test Claim, page 24.

[151] *People v. Franklin* (2016) 63 Cal.4th 261.

[152] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 1 (emphasis in original).

YOPHs, and not for "the presentation of youth-related factors at the hearing in the trial court at or around the time of sentencing."[153]

The claimant continues that Government Code section 17556(b) and (c) are not applicable to the test claim, stating

> The *Franklin* Court's determination that an offender be given an opportunity, in the trial court, to make a record of information that will be relevant to the offender's eventual YOPH, was not the Court's "declaration" of existing law – it was the Court's *interpretation of the statutes* enacted by the Legislature. In other words, the origin of the obligations imposed on the Claimants is the test claim statutes, not some independent judicial declaration of the law.[154]

The claimant lastly contends that the test claim statutes did not merely affirm what the courts, in the *Graham*[155], *Miller*[156], and *Caballero*[157] decisions, had declared to be existing law.[158] The claimant asserts that none of those three cases required the California Legislature to enact the test claim statutes, as the Legislature could have, in the alternative, "developed a new sentencing for juvenile offenders that addressed the constitutional issues articulated by these cases."[159] The claimant adds that none of these cases, or any case cited by Finance or in the Draft Proposed Decision, extends protections to offenders over the age of 18, and the Legislature, in extending the applicability of the YOPH statutes to offenders up to 25, imposes costs that "exceed any obligations that might be argued to arise from the cases pertaining to the sentencing of juveniles."[160]

The claimant, in its comments on the Proposed Decision, argues that the activities are mandated by the state.[161] The claimant argues that the *Franklin* decision did not extend the common law, nor create new rights, but rather explained what the test claim statutes had actually meant, stating "…the Commission errs in finding that *Franklin* hearings are a judicial appendage to the statutes. In reality, such hearings are required by the statutes themselves, and the *Franklin* Court did

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[153] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 2.

[154] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, pages 2-3 (original italics).

[155] *Graham v. Florida* (2010) 560 U.S. 48.

[156] *Miller v. Alabama* (2012) 567 U.S. 460.

[157] *People v. Caballero* (2012) 55 Cal.4th 262.

[158] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 3.

[159] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 3.

[160] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 3.

[161] Exhibit H, Claimant's Comments on the Proposed Decision, page 1.

nothing more than say what the law is" and "…the *Franklin* decision did not create any new mandates. Rather, the Court explained what had been implicit in the statutes all along."[162]

The claimant contends that Government Code section 17514 does not require that statutes must expressly direct or require local agencies to perform activities in order to qualify as costs mandated by the state.[163] The claimant continues that as a result of the test claim statutes, as interpreted by the California Supreme Court, local agencies are forced to incur costs to preserve evidence of juvenile offenders' characteristics and circumstances so that BPH may properly consider youth-related factors years later.[164]

The claimant further argues that the California Legislature, in passing the test claim statutes, went "far beyond" what the United States Constitution and the United States Supreme Court require, and thus, there is no federal mandate.[165] The claimant states that the reasoning in the Proposed Decision only applies to juvenile offenders who received LWOP or LWOP equivalent sentences, and not to the 18-25 year old offenders described in the test claim statutes.[166] The claimant adds that even for such juvenile offenders, the United States Supreme Court left specific procedures and evidentiary considerations to the discretion of the states, and that the California Supreme Court, not the United States Supreme Court, decided that mandatory sentences "the functional equivalent of LWOP" are unconstitutional.[167]

The claimant contends that, to comply with the United States Supreme Court's dictates in *Graham* and *Miller*, states could simply ban "LWOP sentences for all juvenile offenders," and cites statutes passed in Wyoming and other states that purported to do "just that."[168] The claimant also cites Louisiana statute, which provides that an "expert in adolescent brain development" evaluate juvenile offenders at the time of their parole hearings, as opposed to the California practice of preserving evidence at the time of sentencing.[169] The claimant continues that many states have not passed any legislation at all to comply with *Miller*, rather leaving it to their "trial courts to craft constitutional sentences on a case by case basis."[170] The claimant argues that California took a "very different route" in enacting the test claim statutes, an "approach not mandated by the Constitution or by the Supreme Court decisions interpreting it."[171]

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[162] Exhibit H, Claimant's Comments on the Proposed Decision, pages 1-2.

[163] Exhibit H, Claimant's Comments on the Proposed Decision, pages 1-2.

[164] Exhibit H, Claimant's Comments on the Proposed Decision, page 2.

[165] Exhibit H, Claimant's Comments on the Proposed Decision, page 3.

[166] Exhibit H, Claimant's Comments on the Proposed Decision, page 3.

[167] Exhibit H, Claimant's Comments on the Proposed Decision, pages 4-5.

[168] Exhibit H, Claimant's Comments on the Proposed Decision, page 5.

[169] Exhibit H, Claimant's Comments on the Proposed Decision, page 5.

[170] Exhibit H, Claimant's Comments on the Proposed Decision, page 6.

[171] Exhibit H, Claimant's Comments on the Proposed Decision, page 6.

The claimant asserts that *Franklin* proceedings are not required by the Constitution or by federal law, but are the result of

> [T]he California Legislature's discretionary actions in establishing the youth offender parole scheme to begin with. In other words, the only reason there is a need to establish the "record on youth related factors" is because of the manner in which the California Legislature opted to implement the youth offender parole process.[172]

The claimant argues that the "expanded duties of indigent defense counsel" come from the Legislature's discretionary enactment of the test claim statutes, and not from the Constitution, and that this requires county defense counsel to prepare evidence not for sentencing, but for use at a YOPH years in the future, where county defense counsel will not represent the offender.[173] The claimant states that even if the test claim statutes were passed in response to federal requirements, the state exercised "true discretion" and chose to "impose a regime of new procedural requirements that impose costs on localities," which requires subvention.[174] The claimant further argues that the Proposed Decision is not supported by article XIII B, section 9 of the California Constitution, or by Government Code section 17556(c), as the test claim statutes were the product of legislative discretion, and "imposed costs that exceed any mandate under federal law."[175]

Claimant asserts that that *Franklin* proceedings do not change "the penalty for a crime" and are thus not exempt from reimbursement pursuant to Government Code 17556(g).[176] The claimant argues that the test claim statutes do not impact the length of sentences, or the amount of fines or restitution, but rather provide for parole hearings and require new proceedings to preserve evidence at sentencing.[177] The claimant argues that the test claim statutes are "purely procedural" and are akin to Penal Code sections that provide convicted felons a procedure for obtaining DNA testing of biological evidence – a procedure that the Commission found eligible for reimbursement.[178] The claimant further contends that the "mere possibility" of early release does not constitute a change in penalty, as, pursuant to the test claim statutes, juvenile offenders are not eligible for parole, but not necessarily suitable for parole.[179]

The claimant argues that Government Code section 17556(g)'s use of the singular pronouns "a" and "the" demonstrate that the Legislature intended that it would only apply to statutes that "change the sentence for *particular* crimes, not to statutes that indirectly impact criminal

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[172] Exhibit H, Claimant's Comments on the Proposed Decision, page 7.

[173] Exhibit H, Claimant's Comments on the Proposed Decision, page 7.

[174] Exhibit H, Claimant's Comments on the Proposed Decision, page 7.

[175] Exhibit H, Claimant's Comments on the Proposed Decision, page 8.

[176] Exhibit H, Claimant's Comments on the Proposed Decision, page 8.

[177] Exhibit H, Claimant's Comments on the Proposed Decision, page 9.

[178] Exhibit H, Claimant's Comments on the Proposed Decision, page 9.

[179] Exhibit H, Claimant's Comments on the Proposed Decision, page 9.

procedure more generally."[180] The claimant lastly contends that *Franklin* hearings do not relate directly to the enforcement of crimes, indicating the Legislature's intent that section 17556(g) would only apply to statutes introducing new crimes, and not "a new criminal procedure generally applicable to a broad swath of crimes."[181]

B. Department of Finance

Finance filed late comments on the Test Claim on March 13, 2019.[182] Finance argues that the claimant's expenses have been incurred as a result of court-made law, and thus the Test Claim should be rejected pursuant to Government Code section 17556(b).[183] Finance contends that the United States Supreme Court's decisions in *Graham v. Florida*[184] and *Miller v. Alabama*[185] led to the California Supreme Court's decision in *People v. Caballero,*[186] which urged the Legislature to establish a mechanism for parole eligibility for juvenile offenders serving de facto life sentences without the possibility of parole, so that they would have the opportunity to be released upon a showing of rehabilitation.[187] Finance asserts that Statutes 2013, chapter 312 was

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[180] Exhibit H, Claimant's Comments on the Proposed Decision, page 10 (emphasis in original).

[181] Exhibit H, Claimant's Comments on the Proposed Decision, page 10.

[182] Exhibit C, Finance's Late Comments on the Test Claim. The late filing of comments in this case resulted in a delay in the issuance of the Draft Proposed Decision in this matter, since the comments came in just two days before the Draft would normally be issued for comment and more than a month after the due date on the approved request for extension, which was limited to February 11, 2019. Pursuant to 1183.6(d) of the Commission's regulations, "[i]t is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period. . . The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence submitted in response to a draft proposed decision after the comment period expires." However, despite this policy, it is indeed best for a fully fleshed out decision to consider all comments, when feasible. In this case however, it resulted in the Draft Proposed Decision being issued prior to the deadline for Claimant's Rebuttal Comments (which are due 30 days after the comments are served) to try to keep the matter on for the May hearing. In addition, it negatively impacted the timely processing of other matters pending before the Commission. Finally, in part due to not being given sufficient time to rebut Finance's Late Comments on the Test Claim, the claimant filed a request for an extension of time to file rebuttal comments, comments on the Draft Proposed Decision, and postponement of hearing, which was granted as of right, which delayed the hearing of this matter to the July 2019 Commission meeting. Though all parties have circumstances from time to time that present good cause for an extension or postponement, deadlines must be honored by all (and extension requests must be filed when necessary) to ensure the smooth functioning and timeliness of the mandates process.

[183] Exhibit C, Finance's Late Comments on the Test Claim, page 1.

[184] *Graham v. Florida* (2010) 560 U.S. 48.

[185] *Miller v. Alabama* (2012) 567 U.S. 460.

[186] *People v. Caballero* (2012) 55 Cal.4th 262.

[187] Exhibit C, Finance's Late Comments on the Test Claim, page 1.

enacted in response to the *Caballero* decision, establishing the YOPH process, but not applicable to persons serving a life sentence without the possibility of parole.[188]

Finance continues that Statutes 2015, chapter 471 and Statutes 2017, chapter 684 extended eligibility for YOPHs, and that as a consequence of the California Supreme Court's decision in *People v. Franklin,*[189] offenders who are eligible for future YOPHs pursuant to the three test claim statutes must now receive "*Franklin* hearings" if their trial courts did not allow them to present evidence of youth-related factors that would eventually be considered by the BPH.[190] Finance notes the amount of the costs allegedly incurred by the claimant in fiscal years 2016-2017 and 2017-2018 for the conduct of five *Franklin* hearings.[191] Finance argues that the language of these cases and statutes clearly indicates that YOPHs were created as a mechanism "to affirm what the courts had declared to be existing law."[192] Finance concludes that since claimant's costs were incurred as a result of court-made law, the Commission should reject the Test Claim in its entirety pursuant to Government Code section 17556(b).[193]

Finance did not file comments on the Draft Proposed Decision.

C. Board of Parole Hearings

No comments have been filed by BPH.

D. County of Los Angeles

The County of Los Angeles, an interested party under the Commission's regulations,[194] filed comments on the Test Claim on January 9, 2019.[195] The County of Los Angeles argues that the California Supreme Court's ruling in *Franklin*, indicating that assembling the type of information about a person who would ultimately appear at a YOPH is more easily done near the time of the offense, rather than decades later.[196] The County of Los Angeles concludes

> Prior to the passage of SB 260, 261, and 394, attorneys were not required to present youth related factors at the time of sentencing. Now, the Legislature has created a new youth offender parole process, mandating a higher level of service by requiring defense counsel to present youth related factors at sentencing hearings. The Legislature seeks to ensure that the California Board of Parole Hearings receives an accurate record of the offender's characteristics and

[188] Exhibit C, Finance's Late Comments on the Test Claim, pages 1-2.

[189] *People v. Franklin* (2016) 63 Cal.4th 261.

[190] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[191] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[192] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[193] Exhibit C, Finance's Late Comments on the Test Claim, page 2.

[194] California Code of Regulations, title 2, section 1181.2(i).

[195] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim.

[196] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim, page 2.

> circumstances at the time of the offense to later afford the offender with a fair parole hearing.
>
> In light of the significant costs associated with this state mandate to ensure that parole hearings provide youth offenders with an opportunity for release, the County of Los Angeles, on behalf of the Los Angeles County Public Defender's Office, hereby collectively request that the Commission adopt the County of San Diego's test claim.[197]

The County of Los Angeles filed late comments on the Draft Proposed Decision on May 16, 2019.[198] The County of Los Angeles argues that the YOPH process is a "new program" that "compels local agencies to provide a higher level of service in order to comply with State statutes."[199] The County of Los Angeles continues that "These test claim statutes requires [*sic*] the [BPH] to 'give great weight' to youth related factors, however, the statutes were silent as to who would investigate and present these youth related factors."[200]

The County of Los Angeles contends that the *Franklin*[201] decision held that Statutes 2013, chapter 312 "contemplates that information regarding a youthful offender's characteristics and circumstances at the time of the offense will be available at the time of the [YOPH] to facilitate consideration by the [BPH]."[202] It is further stated that *Franklin* noted that gathering information from an offender's family and friends is easier at or near the time of the offense, and that psychological evaluations and risk assessments require information to be gathered at such time, for better consideration of the offender's "subsequent growth and maturity."[203] It is further

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[197] Exhibit B, Interested Party's (County of Los Angeles's) Comments on the Test Claim, pages 2-3.

[198] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision. Pursuant to 1183.6(d) of the Commission's regulations, "[i]t is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period. . . The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence submitted in response to a draft proposed decision after the comment period expires." However, despite this policy, it is indeed best for a fully fleshed out decision to consider all comments, when feasible. In this case, the county filed comments approximately one month after they were due and without requesting an extension of time. In the future, such late comments without an approved extension may be simply added to the record but not added to, considered, or discussed in the decision.

[199] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 1.

[200] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 1.

[201] *People v. Franklin* (2016) 63 Cal.4th 261.

[202] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 1.

[203] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, pages 1-2.

argued that *Franklin*'s language to the effect that the trial court "may hold a proceeding" to preserve evidence for a YOPH years later means that "the costs associated with investigating and presenting youth-related factors at the trial court for later consideration at a [YOPH] derives from a reimbursable state mandate."[204]

The County of Los Angeles, citing *County of Los Angeles v. State of California*[205] and *Long Beach Unified School District v. State of California,*[206] states that courts have been willing to "extend and broaden the scope of mandates beyond what is expressly written" and that courts should examine "the increased financial burdens being shifted to local government, not the form in which those burdens appeared."[207] The County of Los Angeles further argues that the test claim statutes do not state who is responsible to gather evidence of youth-related factors for use at YOPHs, and that the Legislature "clearly" contemplated that someone would gather such evidence at or near the time of the offense.[208]

The County of Los Angeles further asserts

> The [Draft] Proposed Decision ignores the practical realities of the parole process. The [BPH]'s duty to "give great weight" to youthful factors is impossible to execute if no one is responsible for investigating and presenting those factors at or near the time of the offense. The Commission's [draft] proposed decision naturally implies that State appointed counsel, not the local agency, would provide youthful factors to the Board. However, it is evident that a State parole attorney is not appointed until a decade or more after the time of the offense and sentencing. If the intent of the Legislature is to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release be established, the Commission's [draft] proposed decision would defeat the stated purpose of the statute.[209]

The County of Los Angeles states that, pursuant to the *Franklin*[210] decision, trial courts may hold proceedings to preserve evidence of youth-related factors for use by the BPH years later, adding

> From a practical standpoint, the State-appointed attorney, who is appointed many years later, would not be in a position to present such information. On page 40 of

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[204] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 2.

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

[206] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155.

[207] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 2 (citing *Long Beach Unified School District. v. State of California,* (1990) 225 Cal. App.3d 155).

[208] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, pages 2-3.

[209] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 3.

[210] *People v. Franklin* (2016) 63 Cal.4th 261.

> its Draft Proposed Decision, the Commission conceded that prosecution and defense counsel are now effectively required to make such a record of "factors, including youth-related factors, relevant to the eventual [YOPH] determination." It is evident from the *Franklin* decision that the source of the requirement to provide a thorough and meaningful [YOPH] comes from the statutes themselves which contemplate local agency involvement at the sentencing stage.[211]

The County of Los Angeles concludes

> In order to effectuate the legislative purpose of these [YOPHs], the local agency is required to investigate and present evidence of youthful factors at the trial court. Years later the State appointed attorney will be in a position to utilize the information preserved in the record and provide evidence of growth and maturity for the [BPH]'s consideration. Respectfully, the Commission's analysis results in a quagmire where the State creates a youthful offender parole process to consider factors that must be collected at the time of the offense, but no one is required to collect these factors. In the end, local agencies will be required to comply with the program by assuring that youthful factors are collected at or near the time of sentencing — a task they were not required to do prior to this legislation. This increased financial burden being shifted to local government is exactly that which the Constitution prohibits —State legislation that creates a program that will be administered by local agencies.[212]

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."[213] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[214]

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

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[211] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 3.

[212] Exhibit F, Interested Party's (County of Los Angeles's) Late Comments on the Draft Proposed Decision, page 4.

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

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

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[215]

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.[216]

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.[217]

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[218]

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.[219] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[220] 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."[221]

A. <u>This Test Claim Was Timely Filed.</u>

Government Code section 17551(c) provides that a test claim must be filed "not later than 12 months after the effective date of the statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."

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

[216] *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).

[217] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[218] *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.

[219] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

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

[221] *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].

Section 1183.1(c) of the Commission's regulations, effective April 1, 2018, defines "12 months" as 365 days.[222]

Prior to April 1, 2018, former section 1183.1(c) of the Commission's regulations provided that the "within 12 months" as specified in Government Code section 17551(c) meant "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[223]

The statute with the earliest effective date pled in this Test Claim, became effective on January 1, 2014.[224] The claimant filed this Test Claim on June 29, 2018, and alleges that it first incurred increased costs as a result of the test claim statutes on July 11, 2016.[225]

The regulation in effect when the claimant filed this Test Claim on June 29, 2018, would have barred this Test Claim immediately upon the regulation's April 1, 2018 effective date, since the date 365 days from the date of first incurring costs in this case had already passed nearly nine months earlier. Under the current regulation, the Test Claim would have had to be filed by July 11, 2017 (within 365 days of first incurring increased costs on July 11, 2016) to be timely.

It is established precedent that a plaintiff or party has no vested right in any particular statute of limitations or time for the commencement of an action, and that the Legislature may shorten a statute of limitations.[226] However, "a statute is presumed to be prospective only and will not be applied retroactively unless such intention clearly appears in the language of the statute itself."[227] Furthermore, "a statute shortening period of limitations cannot be applied retroactively to wipe out an accrued cause of action that is not barred by the then applicable statute of limitations."[228] To avoid the unconstitutional effect of retroactive application, the statute of limitations must be applied prospectively to such causes of action. Even when applied prospectively, the claimant must be allowed a reasonable time within which to proceed with his cause of action.[229] "If the time left to file suit is reasonable, no such constitutional violation occurs, and the statute is applied as enacted. If no time is left, or only an unreasonably short time remains, then the statute

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[222] California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

[223] California Code of Regulations, title 2, former section 1183.1(c).

[224] Statutes 2013, chapter 312.

[225] Exhibit A, Test Claim, pages 22; 30-34 (Declaration of John O'Connell summarizing actual costs for fiscal years 2016-2017 and 2017-2018 and stating that costs were first incurred July 11, 2016).

[226] *Krusesky v. Baugh* (1982) 138 Cal.App.3d 562, 566; *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773.

[227] *Krusesky v. Baugh* (1982) 138 Cal.App.3d 562, 566.

[228] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43.

[229] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43; *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 121-125.

cannot be applied at all."[230] Thus, though the courts have upheld the shortening of periods of limitation and making the changed period applicable to pending proceedings, they have required that a reasonable time be made available for an affected party to avail itself of its remedy before the statute (here regulation) takes effect.[231]

In the instant case, the April 1, 2018 amendment to section 1183.1 of the Commission's regulations would have instantly terminated the claimant's ability to file a test claim. Nothing in the language of section 1183.1(c) gives any indication of an intent to apply the amendment's new statute of limitations retroactively. Moreover, "a statute shortening period of limitations cannot be applied retroactively to wipe out an accrued cause of action that is not barred by the then applicable statute of limitations."[232] Thus, the 2018 amendment to section 1183.1 cannot be applied to this Test Claim as this would not allow claimant a reasonable time to avail itself of the remedy provided in the mandate determination process, as required by law.[233] The Commission's prior regulation must therefore apply.

Accordingly, since the deadline to file the Test Claim under the former regulation was by June 30 of the fiscal year following fiscal year 2016-2017, or by June 30, 2018, this Test Claim filed on June 29, 2018 was timely filed pursuant to Government Code section 17551(c) and former section 1183.1 of the Commission's regulations.

B. The Plain Language of the Test Claim Statutes Impose Requirements on the State BPH, but Do Not Impose Any Activities on Local Agencies and, Thus, the Test Claim Statutes Do Not Impose a State-Mandated Program on Local Agencies.

As indicated in the Background, Statutes 2013, chapter 312 (SB 260) requires BPH to conduct a YOPH to consider release of juvenile offenders who were under 18 at the time of their controlling offense.[234] "Controlling offense" is defined as the offense or enhancement for which the longest term of imprisonment was imposed.[235] Juvenile offenders sentenced to a determinate sentence (i.e., a fixed term, such as 20 years) receive a YOPH by the BPH during their 15th year of incarceration, unless previously released. Juvenile offenders sentenced to a life term of less than 25 years to life are required to have a YOPH during their 20th year of incarceration. Juvenile offenders sentenced to 25 years to life are required to have a YOPH during their 25th year of incarceration.[236] Juvenile offenders convicted under the Three Strikes Law, the One Strike Law, and those who have committed very grave offenses after turning 18, are expressly excluded from being given YOPHs.[237]

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[230] *Aronson v. Superior Court* (1987) 191 Cal.App.3d 294, 297.

[231] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

[232] *Niagra Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 42-43.

[233] *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122-125.

[234] Penal Code section 3051(a), (d), as added by Statutes 2013, chapter 312 (SB 260).

[235] Penal Code section 3051(a)(2)(B).

[236] Penal Code section 3051(b).

[237] Penal Code section 3051(h).

The YOPH shall provide for a meaningful opportunity to obtain release.[238] At the YOPH, the BPH is required to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."[239] In this respect, the BPH shall consider the following information:

> (1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.
>
> (2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.[240]

Juvenile offenders "found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 shall be paroled regardless of the manner in which the board set release dates . . . ."[241]

Statutes 2015, chapter 471 (SB 261) and Statutes 2017, chapter 684 (SB 394) expanded YOPH eligibility to offenders who were under 23, and then under 25, at the time of their controlling offenses.[242] Statutes 2017, chapter 684 also extended the remedy to those who had been sentenced to LWOP for a controlling offense committed while under the age of 18, and required that these offenders receive a YOPH during their 25th year of incarceration.[243]

The claimant agrees that the plain language of the test claim statutes do not impose any requirements on local agencies.[244] All responsibilities created by these statutes are assigned to the BPH – a state agency. Nothing in any of these sections expressly directs or requires local agencies to perform any activities. Furthermore, it is the BPH that is required to provide state-

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[238] Penal Code section 3051(e).

[239] Penal Code sections 4801(c).

[240] Penal Code section 3051(f).

[241] Penal Code section 3046(c).

[242] Statutes 2015, chapter 471 (AB 261); Statutes 2017, chapter 684 (SB 394).

[243] Statutes 2017, chapter 684 (SB 394).

[244] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 2; Exhibit H, Claimant's Comments on the Proposed Decision, page 1.

appointed counsel to inmates at YOPHs – not the local agency.[245] The Legislature noted this during its deliberations on Statutes 2015, chapter 471.[246]

The claimant, however, seeks reimbursement for costs associated with presenting evidence regarding the influence of youth-related factors at the sentencing hearings of criminal defendants eligible for eventual YOPH review, in anticipation of YOPHs many years in the future, pursuant to the California Supreme Court's decisions in *People v. Franklin* and *In re Cook,* which the claimant asserts are necessary to implement the test claim statutes and are, therefore, mandated by the state.[247] The claimant states that "*Franklin* makes clear that the BPH could not discharge its obligations under the test claim statutes without imposing the newly mandated activities on the Claimants."[248] The claimant states that "the *Franklin* court did not extend the common law in any manner, nor did it create any new rights. Rather, the *Franklin* court interpreted the statutes, and clarified what they mean," and that "[t]he statutes themselves, not the Constitution, require evidence preservation proceedings."[249] The claimant further asserts that Government Code section 17514, which defines "costs mandated by the state" to mean costs required to be incurred "as a result of any statute," does not mean that the mandated activity has to be expressly directed or required by the statute in order to be reimbursable under article XIII B, section 6 of the California Constitution.[250]

The County of Los Angeles, citing *County of Los Angeles v. State of California* and *Long Beach Unified School District v. State of California*, argues that courts have been willing to "extend and broaden the scope of mandates beyond what is expressly written" and that courts should examine "the increased financial burdens being shifted to local government, not the form in which whose burdens appeared," as follows:

> In determining whether a mandate exists we first must look to Section 6 of Article XIII B of the California Constitution and the plain language of the Test Claim statutes for its purpose and intent. The concern which prompted the inclusion of section 6 of Article XIII B was the perceived attempt by the State to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the State believed should be extended to the public. *County of Los Angeles v. State of California*, (1987) 43 Cal.App.3d 46. Given this

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[245] Penal Code section 3041.7; California Code of Regulations, title 15, section 2256(c).

[246] Exhibit I, Senate Committee on Appropriations – Analysis of SB 261, as amended May 28, 2015, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB261 (accessed on January 16, 2019), page 3.

[247] Exhibit A, Test Claim, pages 13 and 17 (citing to *People v. Franklin* (2016) 63 Cal.4th 261; *In re Cook* (2019) 7 Cal.5th ___ [247 Cal.Rptr.3d 669.].)

[248] Exhibit E, Claimant's Rebuttal Comments and Comments on the Draft Proposed Decision, page 2.

[249] Exhibit H, Claimant's Comments on the Proposed Decision, pages 1-2.

[250] Exhibit H, Claimant's Comments on the Proposed Decision, pages 1-2.

> stated purpose, courts have been willing to extend and broaden the scope of mandates beyond what is expressly written. In *Long Beach Unified School District. v. State of Californi*a, the court expanded mandates to include executive orders. The court examined the increased financial burdens being shifted to local government, not the form in which those burdens appeared. *Long Beach Unified School District. v. State of California*, (1990) 225 Cal.App.3d 155.[251]

The Commission finds, however, that the plain language of the test claim statutes impose requirements on the state BPH, but do not impose any activities on local agencies and, thus, the test claim statutes do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6.

The juvenile offenders identified in the test claim statutes have a constitutional right to assistance of counsel for their defense.[252] The right to counsel "applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake," which would include a right to counsel at a *Franklin* proceeding.[253] In California, indigent defendants in criminal proceedings are represented by the county public defender's office and the state is represented by the county district attorney's office. At *Franklin* proceedings, the juvenile offender "may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors."[254]

Therefore, based on these cases, county prosecutors and indigent defense counsel are required to represent their clients in a *Franklin* proceeding that gives the offender eligible for a YOPH an opportunity to make an accurate record of his or her characteristics and circumstances at the time of the offense so that the BPH may discharge its obligation under the test claim statutes to give great weight to youth-related factors in determining whether the offender is fit to rejoin society.

However, article XIII B, section 6 requires reimbursement only for mandates imposed by the Legislature or any state agency. The plain language of article XIII B, section 6(a) states that "[w]henever 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 . . . ." The Government Code provides that a "test claim" seeking reimbursement under article XIII B, section 6 may only be filed "alleging a particular statute or executive order imposes costs mandated by the state . . . .[255] Moreover, the courts, when interpreting article XIII B, section 6,

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[251] Exhibit F, Interested Party's (County of Los Angeles's) Comments on the Draft Proposed Decision, page 2.

[252] *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 815 (citing *Gideon v. Wainwright* (1963) 372 U.S. 335)

[253] *Mempa v. Rhay* (1967) 389 U.S. 128, 134; and Government Code, section 27706.

[254] *People v. Franklin* (2016) 63 Cal.4th 261, 284.

[255] Government Code section 17521; see also, Government Code section 17556(b) and *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595.

have held that reimbursement is required only when the "Legislature" or a state agency imposes a mandate.[256]

In this case, the court in *Cook* noted that the Legislature has *not* enacted any laws to specify what evidence-gathering procedures should be afforded to youth offenders who will be eligible for a YOPH, and explained that the Legislature still remains free to enact statutes governing the procedure as follows:

> While we unquestionably have the power to interpret these laws, the Legislature is in a superior position to consider and implement rules of procedure in the first instance. The Legislature remains free to amend the pertinent statutes to specify what evidence-gathering procedures should be afforded to youth offenders, taking into account the objectives of the youth offender parole hearing and the burden placed on our trial courts to conduct *Franklin* proceedings for the many thousands of offenders who will be eligible for them under today's decision.[257]

And, to date, the courts have never found activities, which are not explicitly required by a test claim statute or executive order, to be mandated by the state. Nor have they found such activities to be necessary to implement a state mandate, or part and parcel of a state mandate, where, as here, there are no explicit requirements in the test claim statutes that local governments are required to implement. Thus, although the *courts* have identified procedures to implement the test claim statutes in this case, the costs imposed by the courts are not eligible for reimbursement.[258] The Legislature "remains free to amend the pertinent statutes to specify what evidence-gathering procedures should be afforded to youth offenders."[259]

Accordingly, the Commission finds that the test claim statutes do not impose any activities on local agencies and, thus, do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6.

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[256] *County of Los Angeles v. State of California* (1987) 43 Cal.46, 56 ("The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to *enact legislation or adopt administrative orders* creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public."); *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174 ("We understand the use of 'mandates' in the ordinary sense of 'orders' or 'commands' . . . ."); *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595 (If the costs are imposed by the federal government or the courts, then the costs are not included in the local government's taxing and spending limitations. If the costs are imposed by the state then the state must provide a subvention to reimburse the local agency."); *CSBA v. State of California* (2009) 171 Cal.App.4th 1183, 1207 ("Article XIII B, section 6 requires reimbursement for mandated imposed by the 'Legislature' and not by ballot measures.").

[257] *In re Cook* (2019) 7 Cal.5th 439, 459; see also, *People v. Franklin* (2016) 63 Cal.4th 261, 286, where the court noted that BPH had not yet adopted regulations applicable to a YOPH.

[258] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595.

[259] *In re Cook* (2019) 7 Cal.5th 439, 459.

C. The Test Claim Statutes "Change the Penalty for a Crime" by Capping the Number of Years an Offender May Be Imprisoned Before Becoming Eligible for Parole, and Thus, to the Extent that the Test Claim Statutes Are Found to Impose any Mandated Activities with Regard to *Franklin* Proceedings for *Any* Offender Eligible for a YOPH, They Do Not Impose Costs Mandated by the State Pursuant to Article XIII B, Section 6 and Government Code Section 17556(g).

Even if a court were to agree with the claimant that the test claim statutes mandated activities with regard to the *Franklin* proceedings, the test claim statutes changed the penalty for crimes committed by all YOPH eligible offenders and, thus, the test claim statutes, including the resultant *Franklin* proceedings, do not impose "costs mandated by the state" pursuant to Government Code section 17556(g).

Article XIII B, section 6 is not intended to provide reimbursement for the enforcement of a crime.[260] Thus, Government Code section 17556(g), which implements article XIII B, section 6 and must be presumed constitutional by the Commission,[261] provides that the Commission "shall not find costs mandated by the state when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction." This exception to reimbursement is intended to allow the State to exercise its discretion when addressing public safety issues involving crimes, without having to consider whether reimbursement to local government would be required under article XIII B, section 6 as a result of its actions.

As explained in the Background, the test claim statutes were, in part, enacted to comply with the United States and California Supreme Court cases in *Roper*, *Graham*, *Miller*, *Montgomery*, and *Caballero*, which ruled that the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishment, is violated when a juvenile offender commits a crime before reaching the age of 18 and receives a sentence of death, mandatory LWOP, or a mandatory LWOP equivalent. A state must instead provide these juvenile offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[262] The court in *Graham* explained that,

> A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham *some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.* It is for the State, in the first instance, to explore the means and mechanisms for compliance. . . . Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus

[260] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1191 (recognizing the three exceptions to reimbursement, as stated in article XIII B, section 6(a), as "(1) mandates requested by the local government, (2) legislation concerning crimes, and (3) mandates implemented prior to January 1, 1975.")

[261] California Constitution, article III, section 3.5.

[262] *Miller v. Alabama* (2012) 567 U.S. 460, 479; *People v. Caballero* (2012) 55 Cal.4th 262, 268-269.

> deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of . . . crimes committed before adulthood will remain behind bars for life. *It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society.*[263]

These decisions further held that the *sentencing authority* must have the ability to consider mitigating qualities of youth, including immaturity, irresponsibility, impetuousness, recklessness, and susceptibility to influence and psychological damage.[264] For example, in *Graham*, the court held that the Eighth Amendment "prohibits States from making the judgment at the outset that those offenders never will be fit to reenter society.[265] In *Miller*, the court held that the *sentencing authority* must have individualized discretion to impose the sentence, taking into account how children are different.[266] The court further stated that "*Graham*, *Roper*, and our individualized sentencing decisions make clear that *a judge or jury* must have the opportunity to consider mitigating circumstances *before* imposing the harshest possible penalty for juveniles."[267] In 2014, the California Supreme Court in *People v. Gutierrez* interpreted *Miller* and *Graham*, holding that "*Miller* requires a trial court, in exercising its sentencing discretion, to consider the 'distinctive attributes of youth' and how those attributes 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders' *before* imposing life without the possibility of parole on a juvenile offender;"[268] and that "*Graham* spoke of providing juvenile offenders with 'meaningful opportunity to obtain release' as a constitutionally required alternative to – not as an after-the-fact corrective for – 'making the judgment at the outset that those offenders never will be fit to reenter society.'"[269] And in *Caballero*, the California Supreme Court stated that "the state may not deprive [these juvenile offenders] *at sentencing* of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future," and that "the sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life."[270]

The court in *Caballero* further held that incarcerated offenders whose convictions were already final and who wished to modify their LWOP or equivalent sentences in accordance with these cases, could file a petition for writ of habeas corpus in the trial court to allow the court to weigh

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[263] *Graham v. Florida* (2010) 560 U.S. 48, 75 (emphasis added).

[264] *Miller v. Alabama* (2012) 567 U.S. 460, 476.

[265] *Graham v. Florida* (2010) 560 U.S. 48, 75 (emphasis added).

[266] *Miller v. Alabama* (2012) 567 U.S. 460, 478-479 (emphasis added).

[267] *Miller v. Alabama* (2012) 567 U.S. 460, 489 (emphasis added).

[268] *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1361 (emphasis added); see also page 1387 ("Consistent with *Graham*, *Miller* repeatedly made clear that the sentencing authority must address this risk of error by considering how children are different and how those differences counsel against a sentence of life without parole '*before* imposing a particular penalty.' [Citing *Miller v. Alabama* (2012) 567 U.S. 460, 483.]").

[269] *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1386.

[270] *People v. Caballero* (2012) 55 Cal.4th 262, 268-269 (emphasis added).

the mitigating evidence of youth, and reiterated that *the sentence* must provide the offender with "a 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' under *Graham*'s mandate."[271]

As noted in *Montgomery*, the United States Supreme Court held that a state is not required to re-litigate the juvenile offender's sentence, but may remedy the Eighth Amendment violation by permitting the offender to be considered for parole.[272] And, as the claimant explains, some states complied with these Eighth Amendment cases by simply banning LWOP sentences for all juvenile offenders, or leaving the decision to the trial courts to "craft constitutional sentences on a case by case basis."[273]

California was already in compliance with the Eighth Amendment with respect to the death penalty for juvenile offenders under the age of 18 at the time these cases were issued. A 1978 initiative adopted by the voters added section 190.5 to the Penal Code to state that "[n]otwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime."[274]

However, with the respect to mandatory LWOP or LWOP equivalent sentences for an offender who commits a crime before reaching the age of 18, the court in *Caballero* urged the Legislature to comply with federal law and to prevent a cruel and unusual punishment violation by "enact[ing] legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity."[275] The Legislature took the advice of the court, and established a parole eligibility mechanism to comply with federal law. Penal Code section 3051(b)(3), as added by Statutes 2013, chapter 312, provides that "[a] person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of 25 years to life [which includes life with the possibility of parole where the parole eligibility date falls outside the juvenile offender's natural life expectancy] shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing." Section 3051(b)(3) was amended in 2017 to extend the remedy to those who had been sentenced to LWOP for a controlling offense committed while under the age of 18 to receive a YOPH during their 25th year of incarceration.[276] The Legislature cited to *Graham*, *Miller*, and *Caballero* in Statutes 2013, chapter 312, section 1 (SB 260), to declare the intent of the Legislature to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.[277] And the legislative history to

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[271] *People v. Caballero* (2012) 55 Cal.4th 262, 269 (emphasis added).

[272] *Montgomery v. Louisiana* (2016) 577 U.S. __ [136 S.Ct. 718, 736] (emphasis added).

[273] Exhibit H, Claimant's Comments on the Proposed Decision, page 6.

[274] Penal Code section 190.5, added by section 12 of Initiative Measure (Prop. 7) approved November 7, 1978, effective Nov. 8, 1978.

[275] *People v. Caballero* (2012) 55 Cal.4th 262, 269, fn. 5.

[276] Statutes 2017, chapter 684 (SB 394).

[277] Statutes 2013, chapter 312, section 1 (SB 260).

Statutes 2017, chapter 684 (SB 394) explains that the amendment to extend the YOPH to juveniles sentenced to a LWOP would be in accordance with the United States Supreme Court's decision in *Montgomery*.[278]

The test claim statutes (Statutes 2015, chapter 471 (SB 261) and Statutes 2017, chapter 684 (SB 394)) also extended YOPH eligibility to offenders who were under 23, and then under 25, at the time of their controlling offenses. In this respect, the claimant is correct that the courts have not found an Eighth Amendment violation for offenders who are 18 and over when the crime is committed. For example, in *People v. Perez*, the court concluded that because Perez was not a juvenile at the time of the offenses (he was 20 years old), *Roper*, *Graham*, *Miller*, and *Caballero* are not applicable, and that the 86–years–to–life sentence did not constitute cruel and unusual punishment under the United States Constitution.[279] However, the court held that Perez was entitled to a YOPH pursuant to Penal Code section 3051, as amended by the Statutes 2015, Chapter 471 (SB 261).[280] Thus, under this statute and pursuant to the court's holding in *Franklin*, the court in *Perez* ordered a limited remand for both parties "to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime."[281] As the courts have explained, "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood" (*ibid*.), and that is the line the high court has drawn in its Eighth Amendment Jurisprudence.[282] In addition, the courts have not found an Eighth Amendment violation for youthful offenders who receive a sentence of less than an LWOP equivalent, but the test claim statutes extended YOPH eligibility to those offenders who have received such sentences.

Although the test claim statutes may exceed the minimum constitutional requirements to prevent a cruel and unusual punishment charge, reimbursement is still not required in this case. Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or *changed the penalty for a crime or infraction*, but only for that portion of the statute directly relating to the enforcement of the crime or infraction." (Emphasis added.) In this case, the test claim statutes, including the *Franklin* proceedings that arose as a result of them, changed the penalty for a crime within the meaning of Government Code section 17556(g).

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[278] Exhibit I, Assembly Committee on Public Safety – Analysis of SB 394, as amended June 26, 2017, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB394 (accessed on January 16, 2019), pages 4-5.

[279] *People v. Perez* (2016) 3 Cal.App.5th 612, 617.

[280] *People v. Perez* (2016) 3 Cal.App.5th 612, 618.

[281] *People v. Perez* (2016) 3 Cal.App.5th 612, 619.

[282] *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1380.

As stated in *Franklin*, the test claim statutes, by operation of law, "superseded the statutorily mandated sentences"[283] by capping the number of years the offender may be imprisoned before becoming eligible for release on parole:

> [S]ection 3051 has changed the manner in which the juvenile offender's original sentence operates by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole. The Legislature has effected this change by operation of law, with no additional resentencing procedure required.[284]

This reasoning is further confirmed by subsequent appellate court decisions interpreting *Franklin*, one of which holds:

> Section 3051 specifically and sufficiently addresses these concerns regarding cruel and unusual punishment. *This is because section 3051 has in effect abolished de facto life sentences in California.* Section 3051 universally provides each juvenile offender convicted as an adult with a mandatory parole eligibility hearing on a legislatively specified schedule, and after no more than 25 years in prison. When the Legislature enacted section 3051, it followed precisely the urging of the *Caballero* court to provide this parole eligibility mechanism.[285]

The claimant asserts, however, that the test claim statutes and *Franklin* proceedings do not change the penalty for a crime or infraction, but are purely procedural and, thus, are not exempt from reimbursement pursuant to Government Code section 17556(g).[286] The claimant states in relevant part the following:

> As in initial matter, the statutes do not "change the penalty for a crime or infraction." They have no impact on the length of a sentence, or on the amount of any fines or restitution. Rather, they provide for parole hearings, and mandate a new proceeding at the time of sentencing to preserve evidence for any future parole hearings. That does not effectuate a substantive "change" to any existing criminal penalty. Rather, the statutes are purely procedural – the only changes they effectuate are to the purpose and timing of hearings. *Consider Franklin*, 63 Cal.4th at 278 (noting "the continued operation of the original sentence"; "The Legislature did not envision that the original sentences would be vacated and that new sentences would be imposed").
>
> Because the statutes are procedural, they are akin to California Penal Code section 1405, which provides a post-conviction procedure for convicted felons to obtain DNA testing of biological evidence. This Commission unanimously found that the statutes mandating such hearings imposed a reimbursable state-mandated program on local agencies. Specifically, localities are entitled to reimbursement for defense counsel's investigation and representation of the convicted person in

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[283] *People v. Franklin* (2016) 63 Cal.4th 261, 278.

[284] *People v. Franklin* (2016) 63 Cal.4th 261, 279.

[285] *People v. Garcia* (2017) 7 Cal.App.5th 941, 950 (emphasis added).

[286] Exhibit H, Claimant's Comments on the Proposed Decision, pages 8-9.

> conjunction with the mandated hearings, as well as for certain additional work required of district attorneys. [Citation omitted to the Commission's decision in *Post-Conviction, DNA Proceedings* (00-TC-21/01-TC-08).)
>
> To be sure, some offenders might be released following a parole hearing. But the mere possibility of early release does not constitute an actual "change [in] the penalty for a crime" – under the test claim statutes, juvenile offenders are now *eligible* for parole hearings, but this does not make them *suitable* for parole. Indeed, in practice, early release is the rare exception, not the rule. . . .[287]

The claimant, relying on the language in section 17556(g) that refers to the singular phrases of "a crime" and "the crime," also argues that Government Code section 17556(g) applies to only laws that create new crimes or change penalties for particular existing crimes, but not to laws that generally change criminal procedures.[288]

Finally, the claimant asserts that a statutory provision, like the one here, which "mandates a new criminal procedure generally applicable to a broad swath of crimes, however, does not 'relate directly' to the 'enforcement of the crime,' as follows:

> The plain language "relating ***directly*** to the enforcement of the crime" further confirms the Legislature intended there could be no mandate for that portion of a statute [creating a new crime or infraction, eliminating a crime or infraction, or changing the penalty for a crime or infraction] that relates directly to the enforcement of the crime. For example, if a statute introduces a new crime, local entities cannot recover costs incurred in directly enforcing the new crime (e.g. Sheriff costs). A statutory provision, like the one here, that mandates a new criminal procedure generally applicable to a broad swath of crimes, however, does not 'relate directly" to the "enforcement of the crime."[289]

Thus, the claimant contends that Government Code section 17556(g) does not apply to new criminal procedures required to be carried out by local government that broadly apply to crime or offenders. The claimant's interpretation is not supported by the plain language of Government Code section 17556(g), or with past decisions of the Commission.

First, the claimant's assertion that the test claim statutes do not change the penalty for a crime under section 17556(g) since they have no impact on the length of sentence, is incorrect and not supported by the law. The test claim statutes fall under Part 3 of the Penal Code ("Of Imprisonment and the Death Penalty"), and not under Part 2 ("Of Criminal Procedure"), indicating that the test claim statutes are intended to relate to criminal penalties. Under the test claim statutes, youthful offenders (defined in state law as under 25) sentenced to a determinate sentence (i.e., a fixed term, such as 20 years) are now eligible to receive a YOPH by the BPH during their 15th year of incarceration, unless previously released. Youthful offenders sentenced to a term of less than 25 years to life are eligible to receive a YOPH during their 20th year of incarceration. And youthful offenders sentenced to 25 or more years to life are eligible to

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[287] Exhibit H, Claimant's Comments on the Proposed Decision, page 9 (emphasis in original).

[288] Exhibit H, Claimant's Comments on the Proposed Decision, page 10.

[289] Exhibit H, Claimant's Comments on the Proposed Decision, page 10 (emphasis in original).

receive a YOPH during their 25th year of incarceration.[290] Thus, some youthful offenders have received a reduction (sometimes by decades) in the minimum number of years of incarceration they must serve before becoming eligible for parole, and other such offenders who were ineligible for parole are now eligible as a result of the test claim statutes.

California law provides that a sentence (other than death or LWOP) that results in imprisonment in the state prison must include a term of parole.[291] And the courts have explained that although parole is distinct from the underlying prison sentence, parole is part of the penalty for the underlying crime.[292]

> Although parole constitutes a distinct phase from the underlying prison sentence, a period of parole following a prison term has generally been acknowledged as a form of punishment. "[P]arolees are on the 'continuum' of state-imposed punishments." (*Samson v. California* (2006) 547 U.S. 843, 850, 126 S.Ct. 2193, 165 L.Ed.2d 250 (*Samson*).) Further, parole is a form of punishment accruing directly from the underlying conviction. As the Attorney General observes, parole is a mandatory component of any prison sentence. "A sentence resulting in imprisonment in the state prison ... shall include a period of parole supervision or postrelease community supervision, unless waived ...." (§ 3000, subd. (a)(1).) Thus, a prison sentence "contemplates a period of parole, which in that respect is related to the sentence." (*Roberts, supra,* 36 Cal.4th at p. 590, 31 Cal.Rptr.3d 458, 115 P.3d 1121.) Being placed on parole is a direct consequence of a felony conviction and prison term.[293]

Thus, as recognized by the courts, the test claim statutes have changed the penalty for a crime by "in effect abolish[ing] de facto life sentences in California," for crimes committed before age 25, by now allowing parole eligibility, and by capping the number of years the offender may be imprisoned before becoming eligible for release on parole.[294]

Moreover, the claimant's argument that Government Code 17556(g)'s use of the singular articles "a" and "the" indicates that section 17556(g) applies only to statutes that change the penalties for particular crimes, and not to statutes that change the penalties for a "broad swath" of crimes, also fails. The general laws of statutory construction in California provide that "[t]he singular number includes the plural, and the plural the singular."[295] Moreover, Penal Code section 7

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[290] Penal Code section 3051(b).

[291] Penal Code section 3000(a)(1); see also *People v. London* (1988), 206 Cal.App.3d 896, 910 ("[A] 'sentence' includes both a prison term and any parole term.").

[292] *People v. Nuckles* (2013) 56 Cal.4th 601, 608 ("These competing arguments focus on the nature of parole and whether it constitutes part of the punishment for the underlying crime. It does."), and 610 ("The restraints on liberty and constructive custody status further demonstrate that service of parole is part of the punishment imposed following a defendant's conviction.")

[293] *People v. Nuckles* (2013) 56 Cal.4th 601, 609.

[294] *People v. Franklin* (2016) 63 Cal.4th 261, 278-279; *People v. Garcia* (2017) 7 Cal.App.5th 941, 950.

[295] Government Code section 13.

similarly provides that in the interpretation of the Penal Code: "Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; *the singular number includes the plural, and the plural the singular*…." (Emphasis added.)

Finally, the claimant's argument that a statutory provision, like the one here, which "mandates a new criminal procedure generally applicable to a broad number of crimes does not "relate directly" to the "enforcement of the crime" within the meaning of section 17556(g), is not supported by the plain language of the statute, or with past decisions of the Commission. Section 17556(g) provides there are no costs mandated by the state when the statute "*changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction*." As indicated above, the test claim statutes changed the penalty for a crime, and the exception to reimbursement applies only to that portion of the statute directly relating to the enforcement of the crime. Although the "but only" language limits the applicability of the exception to reimbursement in section 17556(g), all of the activities alleged in this case to comply with the test claim statutes and *Franklin* proceedings are directly relating to the enforcement of the offender's underlying crime.

The first step in the proper interpretation of this statutory language is to give the words their plain and ordinary meaning. Where these words are unambiguous, they must be applied as written and may not be altered in any way. In addition, statutes must be given a reasonable and common sense construction designed to avoid absurd results.[296] The dictionary definition of "enforce" is "to compel observance of or compliance with (a law, rule, or obligation)."[297] Black's Law Dictionary defines "enforcement" as "[t]he act of putting something such as a law into effect; the execution of a law."[298] Black's defines "execution," in turn, as "[c]arrying out some act or course of conduct to its completion."[299] Thus, when a youthful offender commits a crime, the "enforcement" of that crime includes all activities required of local government by law to carry out to completion the penalty or punishment imposed by the underlying criminal statute of which the offender was convicted. As indicated above, parole is required in every criminal case that results in imprisonment in the state prison and is part of the offender's penalty.[300] And, under the test claim statutes, the offender now has the right to establish a record of the mitigating factors of youth for an eventual YOPH.

Accordingly, the test claim statutes changed the penalty for crimes committed by youthful offenders by capping the number of years the offender may be imprisoned before becoming eligible for release on parole,[301] and all of the activities alleged in this case to comply with the test claim statutes, including the resultant *Franklin* proceedings, relate directly to the

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[296] *Burden v. Snowden* (1992) 2 Cal.4th 556, 562; *People v. King* (1993) 5 Cal.4th 59, 69.

[297] The New Oxford American Dict. (2001) page 563, column 2.

[298] Black's Law Dict. (6th ed. 1990) page 528, column 2.

[299] Black's Law Dict. (6th ed. 1990) page 568, column 1.

[300] Penal Code section 3000(a)(1); *People v. Nuckles* (2013) 56 Cal.4th 601, 608-609.

[301] *People v. Franklin* (2016) 63 Cal.4th 261, 278-279; *People v. Garcia* (2017) 7 Cal.App.5th 941, 950.

enforcement of the youthful offender's underlying crime. Thus, there are no costs mandated by the state pursuant to Government Code section 17556(g).

Nevertheless, the claimant cites to a previous Commission decision, *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, asserting that the test claim statutes in the instant matter are procedural, and therefore, should be found to be reimbursable, as some of the activities relating to local agencies handling post-conviction procedures for deoxyribonucleic acid (DNA) testing requested by prisoners, were.[302] However, that decision did not address Government Code section 17556(g) at all. The parties did not raise the issue, and the Commission found that the DNA-testing motion was a separate *civil* action and, thus, under that interpretation, Government Code section 17556(g) would not have been triggered.[303]

In addition, although the Commission does not designate its past decisions as precedential pursuant to Government Code section 11426.60, and old test claims do not have precedential value,[304] the Commission's findings in this matter are consistent with several of its prior decisions. In *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, the claimant sought reimbursement for additional research of the defendant's criminal history, increased trial rates and third strike appeals for both the district attorney and public defender's office, and increased workload for its sheriff and probation departments.[305] The Commission found that Penal Code section 667 changed the penalty for a crime and was exempt from reimbursement pursuant to Government Code section 17556(g), and that section 17556(g) encompassed those activities that directly related to the enforcement of the Three Strikes statute, which had changed the penalty for a crime from arrest through conviction and sentencing.[306] The Commission reasoned that the Three Strikes law "changed the sentencing scheme by subjecting a double strike defendant to a penalty of double the term of imprisonment previously required under the Penal Code for the current crime committed" and that this constituted a change in the penalty for a crime pursuant to section 17556(g).[307] The Commission further found in *Three Strikes* that the plain meaning of the language of section 17556(g) ("enforcement of the crime or infraction") meant to carry out to completion the penalty or punishment imposed by the criminal statute, and

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[302] Exhibit H, Claimant's Comments on the Proposed Decision, page 9; Statement of Decision, *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, July 28, 2006, https://www.csm.ca.gov/decisions/00tc21,01tc08sod.pdf (accessed on August 16, 2019).

[303] Statement of Decision, *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, July 28, 2006, https://csm.ca.gov/decisions/00tc21,01tc08sod.pdf (accessed on August 16, 2019), page 2.

[304] 72 Ops.Cal.Atty.Gen. 173, 178 fn.2 (1989).

[305] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://csm.ca.gov/decisions/4503sod.pdf (accessed on August 16, 2019), page 6.

[306] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on August 16, 2019).

[307] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on August 16, 2019), pages 6-7.

thus "encompasses those activities that directly relate to the enforcement of the statute that changes the penalty for the crime from arrest through conviction and sentencing."[308] The Commission's finding in the current case are wholly consistent with this conclusion.

In *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01 the Commission interpreted the language of section 17556(g) with an analysis of the "but only" clause of that statute, and interpreted the meaning of "enforcement of the crime or infraction" consistent with the analysis here.[309] In *Domestic Violence Treatment Services*, the Commission found that changes to Penal Code section 1203.097, which required counties to perform several activities to assess convicted domestic violence offenders who were ordered to complete a batterer's program as part of the terms and conditions of probation, were not reimbursable due to section 17556(g).[310] The Commission found that probation was part of the changed penalty and punishment for a domestic violence conviction, and thus, the activities regarding the batterer's program were not reimbursable, as they were directly related to the enforcement of the crime.[311] However, the Commission *approved* the activities required by the test claim statutes to generally administer the batterer treatment program, provide services to victims of domestic violence, and to assess the future probability of the defendant committing murder, on the ground that these activities were *not* directly related to the enforcement of the offender's domestic violence crime within the meaning of Government Code section 17556(g).[312]

Lastly, in *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, the Commission found that modification to Penal Code sections 273a, 273d, and 273.1, which made changes to the criteria for treatment programs required by the terms and conditions of probation for convicted child abusers, did not impose costs mandated by the state pursuant to Government Code section 17556(g) to place, refer, and assess the convicted abusers into the treatment

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[308] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on August 16, 2019), pages 8-9.

[309] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on August 16, 2019), pages 5-6.

[310] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on August 16, 2019), page 1.

[311] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on August 16, 2019), pages 6-8.

[312] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on August 16, 2019), pages 9-11.

programs.[313] Using a similar analysis to the one in *Domestic Violence Treatment Services*, the Commission found that

> [S]ubdivision (g) applies to activities relating to the capture, detention, prosecution, sentencing (including probation and parole) of a defendant. Based on the foregoing, the Commission found that a defendant's probation and the completion of a child abuser's treatment counseling program, as a condition of probation, is a penalty assessed against the defendant for the conviction of child abuse and is subject to Government Code section 17556, subdivision (g).[314]

The Commission, however, approved reimbursement for the activities required to develop or approve a child abuser's treatment counseling program, as activities not directly related to the enforcement of the underlying crime within the meaning of section 17556(g).[315]

Unlike the statutes at issue in *Domestic Violence Treatment Services* and *Child Abuse Treatment Services*, all of the activities and costs alleged by the claimant to comply with the test claim statutes, and the resultant *Franklin* proceedings, relate directly to the enforcement of the youthful offender's underlying crime.

Accordingly, the test claim statutes, and the resultant *Franklin* proceedings, do not impose costs mandated by the state pursuant to article XIII B, section 6 and Government Code section 17556(g).

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim and finds that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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[313] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on August 16, 2019), page 9.

[314] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on August 16, 2019), pages 6-9.

[315] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on August 16, 2019), page 9.

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

RE: **Decision**

Youth Offender Parole Hearings, 17-TC-29
Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); and Statutes 2017, Chapters 675 and 684 (AB 1308 and SB 394)
County of San Diego, Claimant

On September 27, 2019, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

Dated: September 30, 2019

Heather Halsey, Executive Director

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 30, 2019, I served the:

- **Decision adopted September 27, 2019**

  Youth Offender Parole Hearings, 17-TC-29
  Penal Code Sections 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (SB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)
  County of San Diego, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 30, 2019 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/17/19

Claim Number: 17-TC-29

Matter: Youth Offender Parole Hearings

Claimant: County of San Diego

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