BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 1170.03, as Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[1] Filed on December 16, 2022 County of Los Angeles, Claimant	Case No.: 22-TC-03 *Criminal Procedure: Resentencing* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 26, 2024*) (*Served January 29, 2024*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on January 26, 2024.

Juliana Gmur, Acting Executive Director

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

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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on January 26, 2024. Fernando Lemus appeared as the representative of and Lucia Gonzalez appeared as witness for the County of Los Angeles (claimant). Chris Hill and Kaily Yap 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 Proposed Decision to deny the Test Claim by a vote of 5-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Juan Fernandez, Representative of the State Treasurer, Vice Chairperson	Yes
Jennifer Holman, 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

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

Member	Vote
Renee Nash, School District Board Member	Absent
David Oppenheim, Representative of the State Controller	Yes

Summary of the Findings

Penal Code section 1170.03, as added by the test claim statute, Statutes 2021, chapter 719, establishes a hearing procedure for the recall of an original sentence imposed following the conviction of a crime and the resentencing of a defendant upon receipt of a resentencing recommendation from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General. Upon receipt of a resentencing recommendation, the court is required to provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel for the defendant.[2] The court may not deny a resentencing recommendation or reject a stipulation by the parties to recall and resentence a defendant "without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection."[3] The test claim statute provides a presumption in favor of recalling and resentencing the defendant upon receipt of the recommendation, which may only be overcome if the court finds the defendant is an unreasonable risk of danger to public safety.[4] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not previously been sentenced," and provided the new sentence, if any, is no greater than the initial sentence.[5] In recalling and resentencing the defendant, the court is required to apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion to eliminate disparity of sentences.[6] The court may also reduce a defendant's term of imprisonment by modifying the sentence, or vacating the conviction and impose judgment on lesser included offenses with the concurrence of the parties.[7] The court may consider post-conviction factors that support a finding "that continued incarceration is no longer in the interest of justice;" whether the defendant has experienced psychological, physical, or childhood trauma; or "if the defendant was a youth … at the time of the commission of the crime."[8] In addition, if the defendant's

[2] Penal Code section 1170.03(b)(1).

[3] Penal Code section 1170.03(a)(8).

[4] Penal Code section 1170.03(b)(2).

[5] Penal Code section 1170.03(a)(1).

[6] Penal Code section 1170.03(a)(2).

[7] Penal Code section 1170.03(a)(3).

[8] Penal Code section 1170.03(a)(4).

original sentence is recalled and the defendant is resentenced, "[c]redit shall be given for time served."[9]

Under prior law, there were no procedural requirements for if and how a court would respond to a resentencing recommendation, and many courts issued notices rejecting the resentencing recommendation without a hearing or an opportunity for the defendant to be heard.[10]

The claimant contends that the test claim statute imposes new requirements on county district attorneys and public defenders to participate in the hearing procedures established by the state, and the Senate Appropriations Committee acknowledged that the statute would create "unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests."[11]

The Commission finds that county district attorneys and public defenders are required to participate in the hearings required by the test claim statute. However, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g) and, therefore, does not impose any costs mandated by the state. As a direct result of the test claim statute, all defendants who receive a resentencing recommendation will be appointed counsel and have an opportunity at a hearing to present arguments in favor of the court recalling the original sentence and resentencing the defendant to a new sentence that accounts for time already served and any changes in law that reduce the original sentence. In *County of San Diego v. Commission on State Mandates*, which addressed the Commission's Decision in *Youth Offender Parole Hearings* (YOPH), the court found that the test claim statute changed the penalty for a crime pursuant to Government Code section 17556(g) "by changing the manner in which the original sentences operate and guaranteeing youth offenders the chance to obtain release on parole."[12] The same is true here. By guaranteeing all defendants who receive a recommendation for resentencing a court hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute changes the penalties for the crimes committed by these defendants.[13]

Accordingly, the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and this Test Claim is denied.

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[9] Penal Code section 1170.03(a)(5).

[10] Exhibit E (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

[11] Exhibit E (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

[12] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[13] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

COMMISSION FINDINGS

I. Chronology

01/01/2022 Penal Code section 1170.03 was added by Statutes 2021, Chapter 719, section 3.1 and became effective.

12/16/2022 The claimant filed the Test Claim.[14]

07/18/2023 The Department of Finance (Finance) filed comments on the Test Claim.[15]

11/29/2023 Commission staff issued the Draft Proposed Decision.[16]

12/20/2023 The claimant filed comments on the Draft Proposed Decision.[17]

II. Background

A. The History of Resentencing Recommendations Under Penal Code Section 1170(d)(1).

Since 1968, the state corrections department has had the authority to recommend that the courts "recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced."[18] A resentencing recommendation creates "an exception to the common law rule that the court loses resentencing jurisdiction once execution of sentence has begun."[19] The new sentence may not be greater than the one originally imposed, but the court has discretion to "impose any otherwise permissible new sentence, which may include consideration of facts that arose after [the defendant] was committed to serve the original sentence."[20] When the Legislature moved to a determinate sentencing system, this ability was moved to Penal Code section 1170(c), reading:

> When a defendant subject to this section has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the sentencing court may, at any time upon the recommendation of the Director of Corrections, the Community Release Board, or the court may, within 120 days of the date of commitment, on its own motion recall and resentence the defendant in the same manner as if he had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The

[14] Exhibit A, Test Claim, filed December 16, 2022.

[15] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023.

[16] Exhibit C, Draft Proposed Decision, issued November 29, 2023.

[17] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023.

[18] See Penal Code section 1168, as amended by Statutes 1967, chapter 850, section 1.

[19] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 445.

[20] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 465.

> resentence under this subdivision shall apply the sentencing rules of the Judicial Counsel so as to eliminate disparity of sentences and promote uniformity of sentencing. Credit shall be given for time served.[21]

Later on, the powers of the Director of Corrections and Community Release Board to make resentencing recommendations were transferred to the California Department of Corrections and Rehabilitation (CDCR) Secretary and the Board of Parole Hearings, and moved to Penal Code section 1170(d)(1).[22]

Although the CDCR and Board of Parole Hearings have been able to make resentencing recommendations for any reason they see fit for decades, until fairly recently as explained below, it was a rarely used power.[23] Even if the CDCR or Board of Parole Hearings made a resentencing recommendation, the recommendation only gave the courts the ability to recall a sentence and resentence the defendant. It did not require the courts take any specific actions in response to the recommendation, even though other subdivisions within Penal Code section 1170 did specifically require the appointment of counsel for the defendant and holding hearings.[24] Penal Code section 1170(d)(1) provided no guidance to the courts for how they should handle resentencing recommendations.[25] Case law firmly established that section 1170(d)(1) "merely authorizes the court to recall a prison sentence and commitment and resentence the defendant under certain conditions. It is permissive, not mandatory."[26]

B. Using Resentencing Recommendations as a Method for Reducing Prison Populations.

In 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5 percent of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare.[27] As part of the efforts to address prison overcrowding, funding was allocated for the CDCR to identify people within its custody with a demonstrated history

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[21] See Penal Code section 1170(c), as amended by Statute 1976, chapter 1139, section 273.

[22] See Penal Code section 1170(d), as amended by Statute 2007, chapter 3, section 3, and Penal Code section 1170(d)(1), as amended by Statute 2012, chapter 828, section 2.

[23] Exhibit E (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 7.

[24] *Dix v. Superior Court* (1991) 53 Cal.3d 442, 458 (comparing former section 1170(d) with disparate sentencing review in former section 1170(f)(1)).

[25] Exhibit E (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 7.

[26] *People v. Delson* (1984) 161 Cal.App.3d 56, 62.

[27] Exhibit E (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 4.

of rehabilitation and issue recommendations that the courts reevaluate their sentences. The CDCR established new policies for when it is willing to consider making a resentencing recommendation and began issuing resentencing recommendations more regularly.[28] The Legislature also expanded the list of agencies with authority to recommend a defendant be resentenced to include the district attorney of the county where the defendant was sentenced and the county correctional administrator for defendants that were being held in county jail.[29]

Before the test claim statute went into effect, Penal Code section 1170(d)(1) read:

> When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. The court resentencing under this paragraph may reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. Credit shall be given for time served.

C. Impetus Behind the Removal of the Courts Discretion Regarding Whether to Act On or Respond to Resentencing Recommendations.

As the CDCR and district attorneys began actively utilizing their ability to make resentencing recommendations, problems with the way the system was originally designed became apparent. Most courts had never encountered a resentencing

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[28] See 15 California Code of Regulations section 3076.1.

[29] See Penal Code section 1170(d), as amended by Statutes 2015, chapter 378, section 2 (adding county correctional administrators), and Statutes 2018, chapter 1001, section 1 (adding district attorneys).

recommendation before. With prior case law that held the courts were not obligated to act on the authority granted to them under Penal Code section 1170(d)(1), many courts issued *suo motu* notices rejecting the resentencing recommendation without a hearing or any opportunity for defendants to address whatever concerns the court may have with resentencing them, or simply chose to ignore the recommendation completely, essentially denying resentencing without giving the defendant a decision they could appeal. The CDCR Office of Research found that of the 1,603 resentencing recommendations the CDCR issued in the 2019-2020 year, only 1,133 (71 percent of total cases) received any response from the court, and of those only 475 (30 percent of total cases) resulted in the court choosing to resentence the defendant.[30]

Further issues arose when defendants tried to challenge the courts' decisions not to follow the CDCR's recommendations. Multiple appellate courts reaffirmed that 1170(d)(1) did not require courts to hold hearings, appoint counsel, or resentence a defendant under any specific circumstances.[31] "The Secretary's recommendation letter is but an invitation to the court to exercise its equitable jurisdiction. It furnishes the court with the jurisdiction it would not otherwise possess to recall and resentence; it does not trigger a due process right to a hearing, let alone any right to the recommended relief."[32] One appellate court even incorrectly held that changes in law that would have affected what crimes the defendant was charged with could not be retroactively applied during resentencing because 1170(d)(1) "says nothing about 'reopening' a judgment that has been final for years."[33] At the same time however, it was found to be an abuse of discretion to deny resentencing without giving the defendant a chance to address the reasons for the decision, and that courts should provide notice to the parties of their intent to resentence a defendant that includes the tentative resentencing order and a statement of the reasons for the decision, and give the parties a chance to object to the tentative resentencing and request a hearing at which the defendant would have a right to counsel.[34] If the Legislature intended to use resentencing recommendations as a tool to address unjust sentences and reduce prison sentences, it needed to amend the law to provide courts with clearer guidance on the procedures they must follow when responding to a resentencing recommendation.

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[30] Exhibit E (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66. The Committee on Revision of the Penal Code was created in 2019 and is part of the California Law Revision Commission. (Gov. Code, §§ 8280, et seq., as amended by Statute 2019, Chapter 25, section 2.)

[31] *People v. McCallum* (2020) 55 Cal.App.5th 202, 215-216; *People v. Fraizer* (2020) 55 Cal.App.5th 858, 866; *People v. Williams* (2021) 65 Cal.App.5th 828, 834.

[32] *People v. Fraizer* (2020) 55 Cal.App.5th 858, 866.

[33] *People v. Federico* (2020) 50 Cal.App.5th 318 (depublished by *People v. Federico* (2022) 511 P.3d 191).

[34] *People v. McCallum* (2020) 55 Cal.App.5th 202, 218-219; *People v. Williams* (2021) 65 Cal.App.5th 828, 834.

In 2020, the Committee on Revision of the Penal Code advised changes to Penal Code section 1170(d)(1) to clarify what courts must do when responding to a resentencing recommendation and expand the ability to consider resentencing.

> Despite these expansions to the resentencing statute, current law has failed to protect many important interests at stake. For example, because the Penal Code does not provide any rules, many trial courts provide virtually no process while considering these requests, including denying resentencing requests without providing notice to the parties, appointing counsel, or giving parties an opportunity to be heard. The law does not require a court to give any specific reason for denying a resentencing request.[35]

The Committee recommended changes to Penal Code section 1170(d)(1) that included: (1) establishing judicial procedures that require notice, an initial status conference within 60 days, written reasons for the court's decisions, and in the case of resentencings that are recommended by law enforcement, appointed counsel; (2) establishing a presumption in favor of resentencing when recommended by a law enforcement agency because of an unjust sentence or because of the defendant's "exceptional rehabilitative achievement while incarcerated"; and (3) expanding "second look" resentencing to allow anyone who has served more than 15 years to request reconsideration of their sentence by establishing that their sentence is no longer in the interest of justice.[36]

D. The Test Claim Statute

In 2021, the Legislature enacted the test claim statute, moving the resentencing procedure found in section 1170(d)(1) to its own Penal Code section, 1170.03, effective January 1, 2022.[37] The bill's author noted that:

> Courts are currently left to sift through a statute that does not provide adequate structure for the resentencing process, leaving many requests languishing in limbo, or worse -denied without reason. The changes contained in AB 1540 strengthen common procedural problems to address

[35] Exhibit E (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 66.

[36] Exhibit E (3), Committee on Revision of the Penal Code, *Annual Report and Recommendations* (2020), page 65.

[37] Statutes 2021, chapter 719, § 3.1 (AB 1540). Statutes 2022, chapter 58 (AB 200) later renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754), chapter 446 (AB 600), and chapter 795 (AB 88) made additional substantive changes to section 1172.1, effective January 1, 2024, that will not be discussed here.

equity and due process concerns in how courts should handle second look sentencing requests.[38]

The newly added Penal Code section 1170.03 provides:

> (a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, within 120 days of the date of commitment on its own motion, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence.
>
> (2) The court, in recalling and resentencing under this subdivision, shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.
>
> (3) The resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:
>
> (A) Reduce a defendant's term of imprisonment by modifying the sentence.
>
> (B) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the Department of Justice originally prosecuted the case.
>
> (4) In recalling and resentencing pursuant to this provision, the court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for

[38] Exhibit E (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, pages 3-4.

future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(5) Credit shall be given for time served.

(6) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

(7) Resentencing may be granted without a hearing upon stipulation by the parties.

(8) Resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant.

(2) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.

The California District Attorneys Association opposed the enactment of the test claim statute, stating that section 1170.18(c)'s definition of "unreasonable risk to public safety," which requires an unreasonable risk the defendant will commit a new violent felony, would be too difficult for prosecutors to prove. It asserted that:

> AB 1540 would shift the burden of proof from a standard which allows the court to grant a petition when the evidence shows that the inmate's continued incarceration is no longer in the interest of justice, to an impossible-to-rebut standard that would require the court to grant every petition 'unless there is evidence beyond a reasonable doubt that the

> defendant is likely to commit a future violent crime.' This would not only impose the highest standard of proof in the inverse but would require the impossible – the ability to not only accurately predict the future, but to do so beyond a reasonable doubt. There will never be proof beyond a reasonable doubt of the future conduct of any human being because no human is possessed of such ability.[39]

However, the Assembly Committee on Public Safety noted this was exactly how the statute was intended to work, as it explained:

> This bill would require a court to presume that it is appropriate to recall and resentence a defendant that has been referred by CDCR, BPH, the county sheriff, or the prosecuting agency, unless a court finds an unreasonable risk that the defendant would commit a violent felony, as specified. That is a fairly high bar. However, these are cases which have already been vetted as being appropriate for recall and resentencing by the law enforcement agencies recommending recall and resentencing. Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence).[40]

III. Positions of the Parties

A. County of Los Angeles

The claimant is seeking reimbursement for district attorneys' activities while representing the People when the CDCR makes a resentencing recommendation, and public defenders' activities when representing defendants in both CDCR- and district attorney-recommended resentencings.

The claimant acknowledges that district attorneys already had activities they must perform when making a resentencing recommendation under prior law, and explicitly disclaimed it is not seeking reimbursement for district attorneys' activities when district attorneys make a resentencing recommendation.[41] In contrast, the claimant asserts that the courts were not required under prior law to hold hearings for CDCR-recommended resentencings, and district attorneys were not required to participate in any hearings the courts chose to hold for CDCR-recommended resentencings.[42] Now, when the CDCR makes a resentencing recommendation, the deputy district attorney

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[39] Exhibit E (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, page 7.

[40] Exhibit E (1), Assembly Committee on Public Safety, Analysis of AB 1540 as amended April 22, 2021, page 6.

[41] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[42] Exhibit A, Test Claim, filed December 16, 2022, pages 11-12.

assigned to the case must review the recommendation and any supplemental attachments that were provided by the CDCR, contact any victims of the defendant to inform them of their right to be heard in the proceedings, review the defendant's prison files, prepare a written response either concurring with or objecting to the CDCR's recommendation, and participate in multiple hearings throughout the process.[43]

Regarding public defenders, the claimant asserts that under prior law the courts were not required to appoint counsel or hold hearings for recommended resentencings.[44] Public defenders were therefore not required to represent defendants during resentencing under prior law, although they did voluntarily participate sporadically if they were aware of a resentencing recommendation and the courts permitted them to represent the defendant.[45] The public defenders' Post-Conviction Unit handles district attorney-recommended resentencings, while CDCR-recommended resentencings are handled by public defenders throughout the county.[46] As part of acting as appointed counsel for a defendant, public defenders must contact their client to discuss their case, and must gather prison records, risk assessment scores, prison central files, medical and mental health records, and any records of schooling or programming the defendant participated in while in prison.[47] The public defenders must review the case and prepare a sentencing memorandum they submit to the district attorney and courts.[48]

The claimant states that in fiscal year 2021-2022, the district attorneys' office incurred $343,694 in increased costs and public defenders incurred $101,166 working on resentencings under the test claim statute.[49] The district attorney's office estimates incurring approximately $576,985 during the 2022-2023 fiscal year.[50] The public defender's office estimates $584,000 for fiscal year 2022-2023, of which it noted approximately $475,000 came from district attorney-recommended resentencings, while the remaining $109,000 came from CDCR-recommended resentencings.[51] The estimated statewide costs are $2,136,981 for district attorneys, and $2,160,000 for public defenders.[52] The claimant also identified several one-time grants that in the event this is found to be a reimbursable state-mandated program, would offset costs.[53]

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[43] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[44] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[45] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[46] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[47] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[48] Exhibit A, Test Claim, filed December 16, 2022, page 11.

[49] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[50] Exhibit A, Test Claim, filed December 16, 2022, page 12.

[51] Exhibit A, Test Claim, filed December 16, 2022, page 24 (Declaration of Sung Lee).

[52] Exhibit A, Test Claim, filed December 16, 2022, page 13.

[53] Exhibit A, Test Claim, filed December 16, 2022, page 13.

The claimant did not respond to Finance's comments.

In its response to the Draft Proposed Decision, the claimant pointed out that article XIII B, section 6(a) of the California Constitution states that the Legislature may, but need not, provide a subvention of funds for mandates that define a new crime or change an existing definition of a crime. It asserts that exceptions to the state's subvention obligation must be narrowly construed, and "Since Assembly Bill (AB) 1540 did not define a new crime or change the existing definition of a crime, the exemption as stated in article XIII B, section 6 of the California Constitution does not apply."[54] Regarding the finding that the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g), the claimant responds that it felt that the Draft Proposed Decision's explanation of how the alleged required activities change the penalty for a crime or infraction and relate directly to the enforcement of the crime or infraction was inadequate.

> AB 1540 added Penal Code § 1170.03, which requires Claimant to perform non-enforcement related activities, including: (1) preparing for hearings related to sentencing cases submitted by the California Department of Corrections and Rehabilitation (CDCR); (2) acting as appointed counsel in response to a recommendation from the CDCR; and (3) acting as appointed counsel for individuals after a sentence has been invalidated. Therefore the Commission has not met its burden in showing that the activities described in AB 1540 changed the penalty as it relates directly to the enforcement of the crime.[55]

The claimant also asserts that the Fourth District Court of Appeals' decision in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625 (YOPH) is not applicable here, because the test claim statute at issue in that decision explicitly changed when youth offenders became eligible for parole, while "AB 1540 makes no specific penalty change, but rather outlines procedures courts must follow based on recommendations from the CDCR and District Attorney."[56] Finally, the claimant requests that if the Commission still determines that the exemption applies, that the Commission exercise its discretion to reimburse the claimant for its substantial costs incurred by the enactment of the test claim statute.[57]

B. Department of Finance

Finance argues that the Test Claim should be denied because the test claim statute changes the penalty for a crime within the meaning of Government Code section

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[54] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 2.

[55] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, pages 2-3.

[56] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 3.

[57] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 3.

17556(g) and, thus, there are no costs mandated by the state.[58] In the event that 17556(g) does not apply, Finance asserts that the activities required for district attorney-recommended resentencings, including those imposed on public defenders, are not mandated by the state and therefore not reimbursable, because they are the result of local discretionary actions.[59] Finance did not file comments on the Draft Proposed Decision.

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."[60] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[61]

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

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[62]
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.[63]

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[58] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023, page 2.

[59] Exhibit B, Finance's Comments on the Test Claim, filed July 18, 2023, page 2.

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

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

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

[63] *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).

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.[64]

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.[65]

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.[66] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[67] 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."[68]

A. The Test Claim Was Timely Filed.

Government Code section 17551 provides that local government test claims shall be filed "not later than 12 months following the effective date of a statute or executive order or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[69]

The test claim statute became effective on effective January 1, 2022, and the Test Claim was filed on December 16, 2022, within 12 months following the effective date of the test claim statute.[70] Therefore, the Test Claim was timely filed.

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[64] *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.

[65] *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.

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

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

[68] *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].

[69] Government Code section 17551(c) (Stats. 2007, ch. 329); California Code of Regulations, title 2, section 1183.1(c).

[70] Exhibit A, Test Claim, filed December 16, 2022.

B. The Test Claim Statute Does Not Impose a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

1. The Test Claim Statute Requires Activities of the County District Attorneys and Public Defenders.

The test claim statute requires that when a court receives a recommendation for the recall and resentencing of a defendant from the CDCR Secretary, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, the court shall provide notice to the defendant, set a date for a status conference within 30 days of receiving the recommendation, and appoint counsel.[71] A recall and resentencing recommendation creates a presumption in favor of resentencing that may only be overcome if the defendant is an unreasonable risk of danger to public safety, as defined by Penal Code section 1170.18.[72] The court may recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if the defendant had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence.[73] Recalling and resentencing may be granted without a hearing when stipulated by the parties, but the court may not deny resentencing or reject a stipulation without first holding a hearing where the parties will have an opportunity to address the basis for the intended denial or rejection.[74] A court may choose to hold a hearing remotely using remote technology unless counsel requests their physical presence in court.[75] The court must state on the record its reasons for granting or denying resentencing.[76] When recalling and resentencing a defendant, the court shall apply the sentencing rules of the Judicial Counsel and apply any changes in law that reduce sentences or provide judicial discretion so as to eliminate disparity and promote uniformity of sentencing.[77] The court may reduce a defendant's term of imprisonment by modifying the sentence, or may vacate the defendant's conviction and impose judgment on any included lesser offenses or lesser related offenses if it is with the concurrence of both the defendant and the prosecuting attorney.[78] During resentencing, the court may consider postconviction factors including but not limited to: the defendant's disciplinary record and record of rehabilitation; evidence that reflects

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[71] Penal Code section 1170.03(b)(1).

[72] Penal Code section 1170.03(b)(2). Section 1170.18's definition of an unreasonable risk of danger to public safety is an unreasonable risk that they will commit a new violent felony within the meaning of Penal Code section 667(e)(2)(C)(iv).

[73] Penal Code section 1170.03(a)(1).

[74] Penal Code section 1170.03(a)(7), (8).

[75] Penal Code section 1170.03(a)(8).

[76] Penal Code section 1170.03(a)(6).

[77] Penal Code section 1170.03(a)(2).

[78] Penal Code section 1170.03(a)(3).

whether age, time served, or diminished physical capacity have reduced the defendant's risk for future violence; and evidence that reflects circumstances have changed so that continued incarceration is no longer in the interest of justice.[79] The court shall also consider whether the defendant has experienced psychological, physical, or childhood trauma, if the defendant was a victim of intimate partner violence or human trafficking, or if the defendant was a youth at the time of committing their offense, and whether any of those circumstances were a contributing factor in committing the offense.[80] Credit shall be given for time served, and the new sentence can be no greater than the original sentence.[81]

The hearing procedures established by the test claim statute require participation by county public defenders and district attorneys, and the Senate Appropriations Committee acknowledged that the statute would create "unknown, potentially significant workload costs to counties, specifically district attorneys and public defenders, to litigate resentencing requests."[82] The test claim statute requires the court to appoint counsel for a defendant when it receives a resentencing recommendation, and the role of appointed counsel to indigent defendants falls to a public defender.[83] Although the statute does not explicitly state that district attorneys are required to participate in resentencing, it does require that a court's decision to vacate the original conviction and impose judgment on any lesser included or lesser related offenses be with the concurrence of both the defendant and the prosecuting attorney. The presumption in favor of resentencing would also require the district attorney to make a case to the court when the defendant presents an unreasonable risk to public safety. It would be a dereliction of a district attorney's duty if they did not represent the People in a criminal proceeding.[84]

Accordingly, the test claim statute imposes requirements on counties. However, the Commission makes no findings on whether these activities are mandated by the state or are the result of discretionary actions by the county, or whether the test claim statute imposes a new program or higher level of service because, as described below, the test claim statute does not result in costs mandated by the state.

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[79] Penal Code section 1170.03(a)(4).

[80] Penal Code section 1170.03(a)(4).

[81] Penal Code section 1170.03(a)(1), (5).

[82] Exhibit E (2), Senate Committee on Appropriations, Analysis of AB 1540 as amended July 12, 2021, page 1.

[83] Counties have always had the duty to provide indigent defense counsel in criminal cases and the right to counsel "applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake," including at sentencing hearings. (Pen. Code, § 987.2; Gov. Code, § 27706; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 815 citing *Gideon v. Wainwright* (1963) 372 U.S. 335; *People v. Bauer* (2012) 212 Cal.App.4th 150, 155.)

[84] *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1388.

2. The Test Claim Statute Does Not Result in Costs Mandated by the State Because the Test Claim Statute Changes the Penalty for a Crime Under Government Code Section 17556(g).

Government Code section 17556 provides that "[t]he commission shall not find costs mandated by the state, as defined by Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following… the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."[85] This exception to the reimbursement requirement is intended to allow the state to address public safety issues involving crimes, without having to consider whether reimbursement to local government would be required under article XIII B, section 6, as a result of its actions. Although the claimant asserts that the change in penalty for a crime or infraction language in Government Code section 17556(g) may not be consistent with article XIII B, section 6 in its comments on the Draft Proposed Decision, section 17556(g) is presumed to be constitutional, and the Commission is required by law to follow it.[86]

The Fourth District Court of Appeal considered the application of the change in penalty for a crime or infraction language in Government Code section 17556(g) in *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625 (YOPH). In that case, the Commission denied a Test Claim seeking reimbursement for *Franklin* proceedings related to youth offender parole hearings. The test claim statute required the Board of Parole Hearings to hold parole hearings at statutory periods for youthful offenders serving lengthy prison sentences who were under 26 years old when they committed their crimes, and to consider certain youth-related factors that may have contributed to them committing their offense.[87] The purpose of the statutes was to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when the person shows he or she has been rehabilitated and gained maturity.[88] The statutes

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[85] Government Code Section 17556(g).

[86] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 2 (where the claimant states that article XIII B, section 6, simply provides that the "Legislature may, but need not, provide a subvention of funds for legislative mandates that define a new crime or change an existing definition of a crime" and that the test claim statute did not define a new crime or change the definition of a crime); California Constitution article III, section 3.5(a) prohibits an administrative agency from declaring a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.

[87] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 635.

[88] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 633.

effectively reformed the parole eligibility date of a youth offender's original sentence, at times amounting to "de facto" life sentences, so that the longest possible term of incarceration before parole eligibility is 25 years.[89] To accomplish this purpose, the courts created a procedure called a *Franklin* proceeding for preserving evidence of those youth-related factors in the court record for future parole hearings, and county public defenders and district attorneys sought reimbursement for their costs in participating in these *Franklin* proceedings. The Commission denied the Test Claim on two counts: the state did not require the counties to hold *Franklin* proceedings, and even if it did, the requirement to hold youth offender parole hearings for youthful defendants changed the penalties for those defendants' crimes pursuant to Government Code section 17556(g) by capping the number of years the offender may be imprisoned before becoming eligible for release on parole and, therefore, there were no costs mandated by the state.[90]

The County of San Diego raised several arguments in support of its writ, including that Government Code section 17556(g) did not apply since the test claim statutes do not vacate the original sentence or require resentencing proceedings and, thus, the penalties for the crimes were not changed.[91] The court disagreed with the County, finding that the test claim statutes changed the penalty for a crime within the meaning of Government Code section 17556(g) as follows:

> It is true the Test Claim Statutes do not vacate youth offenders' sentences, nor do they require resentencing proceedings. (*Franklin, supra*, 63 Cal.4th at p. 278, 202 Cal.Rptr.3d 496, 370 P.3d 1053; *People v. White* (2022) 86 Cal.App.5th 1229, 1238–1239, 302 Cal.Rptr.3d 863.) But these facts do not mean the Test Claim Statutes effect no change on the penalties suffered by youth offenders. The Test Claim Statutes "change[ ] the manner in which the juvenile offender's original sentence *operates* by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole. The Legislature has effected this change *by operation of law*, with no additional resentencing procedure required." (*Franklin*, at pp. 278–279, 202 Cal.Rptr.3d 496, 370 P.3d 1053, italics added; *id.* at p. 281, 202 Cal.Rptr.3d 496, 370 P.3d 1053 ["by operation of law, [the defendant] is entitled to a parole hearing and possible release after 25 years of incarceration"].) In short, by changing the manner in which the original sentences operate, and guaranteeing youth offenders the chance to obtain release on parole, the Test Claim Statutes—by operation of law—

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[89] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[90] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 638.

[91] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

alter the penalties for the crimes perpetrated by eligible youth offenders.[92]

The court also found that although the test claim statutes did not guarantee the defendant would be granted parole, it did guarantee the chance to obtain release on parole. "As a direct result of the Test Claim Statutes, most youth offenders are statutorily *eligible for parole* at a youth offender parole hearing conducted during the 15th, 20th, or 25th year of incarceration, depending on the term of incarceration included within the youth offender's original sentence."[93] Thus, by operation of law, the statutes at issue in that case "alter[ed] the penalties for the crimes perpetrated by eligible youth offenders."[94]

The same is true here. As a direct result of the test claim statute, defendants receiving a resentencing recommendation are guaranteed the chance to have their original criminal sentences recalled or vacated and to be resentenced and, thus, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g). Like the *County of San Diego* case, the test claim statute does not guarantee a recall and resentencing in every case and may not necessarily result in a reduced sentence. Courts are required to apply current laws and sentencing rules that *may* reduce the sentence or allow for greater judicial discretion when receiving a resentencing recommendation, and a new sentence can be no greater than the sentence that was originally imposed, but the Legislature was clear that it did not intend to impede on the court's ability to determine an appropriate sentence.[95] However, to paraphrase the Court of Appeal in the *County of San Diego* YOPH case, by guaranteeing all defendants who receive a recommendation for resentencing a hearing and the chance to have their original sentence recalled and a new, reduced sentence imposed, the test claim statute alters the penalties for the crimes committed by the

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[92] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[93] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 640 (Emphasis added).

[94] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[95] Exhibit E (1), Assembly Committee on Public Safety, Analysis of AB 1540, as amended April 22, 2021, page 6, ("Even if a court grants the petition for recall and resentence, the court still has discretion in imposing a new sentence. The new sentence cannot be more than the original sentence, but a court would not necessarily impose a lower sentence if the court did not otherwise feel that one was appropriate (unless a change in law from the time of the original sentence mandated a lower sentence)."). See also, *People v. Braggs* (2022) 85 Cal.App.5th 809, 820, finding that the presumption in favor of recall and resentencing refers to the decision whether to grant resentencing at all, and does not apply to determining the appropriate new sentence.

defendants.[96] As stated above, the test claim statute provides a presumption in favor of resentencing when a recommendation is received, which makes it significantly more likely a court will grant resentencing, which did not exist under prior law.[97] If the court grants the resentencing, the original sentence and commitment previously ordered is recalled and the defendant is resentenced "in the same manner as if they had not previously been sentenced."[98] In recalling and resentencing the defendant, the court may reduce a defendant's term of imprisonment by modifying the sentence, or vacate the conviction and impose judgment on lesser included offenses with the concurrence of the parties.[99] The court may also consider post-conviction factors that support a finding "that continued incarceration is no longer in the interest of justice" or "if the defendant was a youth … at the time of the commission of the crime."[100] In addition, "[c]redit shall be given for time served."[101] Thus, the test claim statute changes the penalties for the crimes committed by the defendants.

The claimant argues, however, that the findings in *County of San Diego (YOPH)* are inapplicable because the test claim statute in YOPH explicitly changed youth offender parole eligibility dates, while the test claim statute here outlines the procedure that courts must follow.[102] This argument raises a distinction without a difference and is without merit. The test claim statutes in *County of San Diego* (YOPH) did cap the number of years a youthful offender may be imprisoned before becoming *eligible* for release on parole, and the statutes imposed a procedure on the State Board of Parole Hearings to determine the issue once the offender was eligible for release on parole. No requirements were imposed on the counties.[103] The County sought reimbursement, however, for the *Franklin* proceedings created by the court for preserving evidence of youth-related factors of the defendant that may be relevant for future parole hearings held by the State Board of Parole Hearings.[104] In other words, like the claimant here,

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[96] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 641.

[97] Penal Code section 1170.03(b)(2), which states: "There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18."

[98] Penal Code section 1170.03(a)(1).

[99] Penal Code section 1170.03(a)(3).

[100] Penal Code section 1170.03(a)(4).

[101] Penal Code section 1170.03(a)(5).

[102] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 3.

[103] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 634-635.

[104] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 627 (". . . the County of San Diego filed a test claim with the Commission on State

the County sought reimbursement for the procedures established that guaranteed the defendant a chance to have the previous penalty for a crime or infraction set aside and changed. The County of San Diego argued that Government Code section 17556(g) did not apply because the *Franklin* activities were merely procedural or administrative, rather than changes to the punishment for a crime.[105] The court disagreed and held that parole is part of the penalty for a crime, and in light of the effect that the test claim statute had on the penalties as a whole, the court explained that "By guaranteeing parole eligibility for all qualified youth offenders, the Test Claim Statutes altered the substantive punishments, i.e., the penalties, for the offenses perpetrated by those offenders."[106]

The same is true here. As indicated above, defendants receiving a resentencing recommendation are guaranteed the chance to have their original criminal sentences recalled or vacated and to be resentenced with a new penalty for the underlying crime as a direct result of the test claim statute. In many cases, the new penalty results in a reduced sentence. The court may reduce a defendant's term of imprisonment by modifying the sentence, vacating the conviction and imposing judgment on lesser included offenses, and may consider other factors to reduce the sentence originally ordered.[107] Therefore, the test claim statute changes the penalty for a crime within the meaning of Government Code section 17556(g).

The claimant also argues that the "burden has not been met" showing that the activities required by the test claim statute "changed the penalty as it relates directly to the enforcement of the crime" since the test claim statute requires the claimant to perform "non-enforcement related activities" to prepare for resentencing hearings and act as appointed counsel.[108] As indicated above, Government Code section 17556(g) requires the Commission to not find costs mandated by the state when the statute "changed the penalty for a crime or infraction, *but only for that portion of the statute relating directly to the enforcement of the crime or infraction*." The claimant's argument is similar to one made in *County of San Diego (YOPH),* which was rejected by the court. In that case, the County of San Diego argued that one of the test claim statutes did not relate directly to the enforcement of the crime since the statute simply dictated the evidence and information the Board of Parole Hearings had to assess when determining a candidate's

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Mandates seeking reimbursement from the State for costs the County incurs to prepare for, and attend, criminal proceedings known as *Franklin* proceedings.").

[105] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 642.

[106] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 642.

[107] Penal Code section 1170.03(a)(3); see also Penal Code section 1179.03(a)(4) and (a)(5).

[108] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, pages 2-3.

parole suitability.[109] The court disagreed and found that an activity directedly related to enforcing a crime or infraction if "it plays an indispensable role" in the Legislature's scheme that changes the penalty for a crime.[110]

> Because it dictates the evidence and information the Board may, or must, assess when determining a candidate's parole suitability, it plays an indispensable role in the youth offender parole hearing scheme. Indeed, in practice, it very well may be determinative as to whether a given youth offender will be released on parole. Further, there can be no dispute that parole flows directly from the parolee's underlying crime. (Citations omitted.) Because Penal Code section 3051, subdivision (f), plays a pivotal role in the Board's parole determination, and parole is a direct consequence of a criminal conviction, we conclude section 3051, subdivision (f)—like the other statutory components that make up the Test Claim Statutes—directly relates to the enforcement of the crimes perpetrated by eligible youth offenders.

Similarly, the procedures and hearing process to recall and resentence a defendant as required by the test claim statute play an indispensable role in the change of the penalty for a crime. Prompted in part by the Legislature's desire to reduce the prison population, this test claim statute changes the penalty for a crime by guaranteeing defendants who qualify for resentencing under Penal Code section 1170.03 or its predecessor section 1170(d)(1) through a resentencing recommendation are appointed counsel and go through a statutory hearing procedure with a strong presumption in favor of resentencing, which in many cases results in a reduced sentence.[111] The Legislature's intent in making this change was to ensure that judges "recognize the scrutiny that has already been brought to these referrals by the referring entity, and to ensure that each referral be granted the court's consideration by setting an initial status conference, recalling the sentence, and providing the opportunity for resentencing for every felony conviction referred by one of these entities."[112] Thus, the hearing procedure to recall and resentence a defendant and the claimed activities to participate in the hearing process play an indispensable role in the Legislature's scheme that changes the penalty for a crime. Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(g).

Finally, the claimant requests that in the event the Commission finds an exception to the subvention requirement applies, that "the Commission exercise its discretion to

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[109] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

[110] *County of San Diego v. Commission on State Mandates* (2023) 91 Cal.App.5th 625, 643.

[111] Exhibit E (1), Assembly Committee on Public Safety, Analysis on AB 1540 as amended April 22, 2021, page 4; Penal Code section 1170.03(a)(3-5), (b)(2) (Stats. 2021, ch. 719).

[112] Statutes 2021, chapter 719, section 1(a) (AB 1540).

reimburse the Claimant for the substantial costs incurred to Claimant by the enactment AB 1540."[113] The Commission, however, has no authority to exercise discretion when determining whether a test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. That determination is a question of law.[114] Article XIII B, section 6, must be strictly construed and not applied as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[115]

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim.

[113] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed December 20, 2023, page 3.

[114] *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 206; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[115] *County of Sonoma v. Commission on State Mandate*s (2000) 84 Cal.App.4th 1264, 1281*; City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 985.

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 January 29, 2024, I served the:

- **Current Mailing List dated January 19, 2024**
- **Decision and Parameters and Guidelines adopted January 26, 2024**

  Criminal Procedure: Resentencing, 22-TC-03
  Penal Code Section 1170.03 As Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)[1]
  County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 29, 2024 at Sacramento, California.

Jill Magee
_____

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

[1] Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754) amended section 1172.1 to remove a comma.

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/24

Claim Number: 22-TC-03

Matter: Criminal Procedure: Resentencing

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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