

STATE *of* CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



**REPORT TO THE LEGISLATURE:  
DENIED MANDATE CLAIMS**

**January 1, 2020 – December 31, 2020**

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## INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.<sup>1</sup>

This report includes a summary of one request for mandate redetermination on remand and two test claims that the Commission denied during the period from January 1, 2020 through December 31, 2020. The complete text of the decisions for the denied claims may be found on the Commission's website at [https://www.csm.ca.gov/denied\\_mandates.php](https://www.csm.ca.gov/denied_mandates.php).

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1187.11.

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<sup>1</sup> Government Code section 17601.

## SUMMARY OF DENIED CLAIMS

### *Sexually Violent Predators (CSM-4509), 12-MR-01-R*

Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608 as added or amended by: Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); and Statutes 1996, Chapter 4 (AB 1496)

*Sexually Violent Predators (CSM-4509)*, As Alleged to be Modified by:  
Proposition 83, General Election, November 7, 2006

Notice of Entry of Judgment and Writ of Mandate  
Remanding the Matter for Reconsideration Served June 5, 2019

Department of Finance, Requester

Request for Mandate Redetermination Filed: January 15, 2013

Decision Adopted: May 22, 2020

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This matter was remanded to the Commission to determine “whether the expanded SVP [sexually violent predator] definition in Proposition 83 transformed the test claim statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on the Counties.”<sup>2</sup> With regard to the State’s argument, first raised on appeal, that “the specified local government duties became necessary to implement the ballot measure, in that the Counties had been under no obligation to perform any duties for this class of offenders until the voters by initiative expanded the definition of an SVP,”<sup>3</sup> the Court found “the current record is insufficient to establish how, if at all, the expanded SVP definition in Proposition 83 affected the number of referrals to local governments.”<sup>4</sup>

The Commission found that the expanded SVP definition and other indicia support the conclusion that voters reasonably intended to prohibit the Legislature from repealing or significantly reducing the civil commitment program for SVPs; however, the voter mandate did not impose *any* new duties or activities on local government, nor did it require the state to impose any duties or activities on local government. Therefore, the duties remain mandated by the state. Specifically, the Commission found:

- The record shows that although the number of SVP referrals has not increased over time, at least some portion of all new referrals since 2006 are based on a single offense and those referrals are therefore triggered by Proposition 83 and not by the test claim statutes or other later changes in law.
- An ongoing program and policy of civil commitment of SVPs is *integral* to accomplishing the electorate’s goals in enacting Proposition 83 and other indicia support the conclusion that voters reasonably intended to prohibit the Legislature from repealing or significantly reducing the civil commitment program and, thus, the voters are the source of an ongoing policy of civil commitment of SVPs.
- Proposition 83 does not constitute a subsequent change in law that modifies the state’s liability for the SVP program because the activities and costs to implement a civil commitment program in accordance with the voter mandate have been shifted to counties

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<sup>2</sup> *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

<sup>3</sup> *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 216.

<sup>4</sup> *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

based on the state's "true choice" and, thus, the activities and costs remain mandated by the state.

Accordingly, the Commission denied the Request for a New Test Claim Decision.

***SANDAG: Independent Performance Auditor, 19-TC-03***

Public Utilities Code Section 132354.1  
Statutes 2017, Chapter 658 (AB 805)

San Diego Association of Governments, Claimant

Test Claim Filed: March 19, 2020

Decision Adopted: September 25, 2020

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This Test Claim alleged state-mandated activities arising from Statutes 2017, chapter 658 (AB 805), which amended Public Utilities Code section 132354.1 to require the San Diego Association of Governments (SANDAG) to appoint an independent performance auditor charged with specified powers and responsibilities, including the power to appoint and employ its staff.

The Commission found that SANDAG is not eligible to seek reimbursement pursuant to article XIII B, section 6, because it is not subject to the taxing and spending limitations of article XIII A and B of the California Constitution. SANDAG has authority to charge fees, but no authority to levy taxes. Moreover, the authority of the San Diego County Regional Transportation Commission to levy a transactions and use tax does not apply to SANDAG, a separate legal entity. Furthermore, SANDAG's authority to create a Mello-Roos community facilities district does not make SANDAG subject to the appropriations limit of the community facilities district. Alternatively, even if SANDAG were found to be an eligible test claimant, SANDAG has not incurred "costs mandated by the state" and is therefore not entitled to reimbursement because SANDAG has fee authority sufficient to pay the costs associated with the new activities required by the test claim statute pursuant to Government Code section 17556(d).

The Commission further found that the claimant received a fair hearing under due process. The claimant did not present facts showing that Commission staff, in granting Finance's request for an extension of time to file comments on the Test Claim or in issuing the Draft Proposed Decision and Proposed Decision, resulted in the Commission members acting with "an unacceptable probability of actual bias" in reaching their decision on the Test Claim. The issues presented in the Test Claim are pure issues of law, subject to the Commission's de novo review, and the claimant was given a full opportunity to file written comments and provide testimony in support of the Test Claim.

Accordingly, the Commission denied this Test Claim.

## ***Accomplice Liability for Felony Murder, 19-TC-02***

Penal Code Sections 188, 189, and 1170.95 as added or amended by  
Statutes 2018, Chapter 1015 (SB 1437)

County of Los Angeles, Claimant

Test Claim Filed: December 31, 2019

Decision Adopted: December 4, 2020

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This Test Claim addresses Statutes 2018, chapter 1015, which amended Penal Code sections 188 and 189 and added Penal Code section 1170.95, with respect to accomplice liability for felony murder.

Generally, to prove the crime of murder, the prosecution must show that the defendant performed an act that took a human life and that the defendant had the necessary state of mind or “malice aforethought” to commit that act.<sup>5</sup> However, under prior law, if a killing occurred during the commission of another crime, then malice and the intent to kill could be presumed or implied to support a conviction of murder. For example, under the felony-murder rule, if a person is killed, even accidentally or by an accomplice while the defendant committed certain other felonies, the defendant could be convicted of murder without the prosecutor having to prove that the defendant intended or had the state of mind to kill.<sup>6</sup> Similarly, the natural and probable consequences doctrine allows for a conviction of murder without the need to prove the defendant’s state of mind, if the killing was a natural and probable consequence of the “targeted” crime committed by the defendant.<sup>7</sup>

The test claim statute amended Penal Code sections 188 and 189, and added section 1170.95, to limit the definition of murder to be applicable only to those who have either an intent to kill or who were major participants in the underlying crime and acted with reckless indifference to human life. Thus, the law no longer allows a person to be convicted of murder simply based on implied or presumed intent. To apply these standards retroactively, Penal Code section 1170.95 sets forth a petition process allowing petitioners who were convicted of first- or second-degree murder under the felony-murder rule or the natural and probable consequences doctrine, to request the court to vacate the murder conviction and to resentence the petitioner on the remaining counts. The statute requires county district attorneys and public defenders, when appointed to defend the petitioner, to participate in the process and the hearing on the petition. The court shall vacate the murder conviction and recall the sentence when:

- The parties stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing.
- The court or jury at the original trial made specific findings that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony.
- The district attorney fails to sustain its burden of proof, beyond a reasonable doubt, that the petitioner is ineligible to have the murder conviction vacated and for resentencing; in

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<sup>5</sup> Penal Code sections 187, 188.

<sup>6</sup> *People v. Dillon* (1983) 34 Cal.3d 441, 467-468; Penal Code section 189, as last amended by Statutes 2010, chapter 178.

<sup>7</sup> *People v. Chiu* (2014) 59 Cal.4th 155, 158.

other words, the district attorney fails to prove that the petitioner intended to kill or was a major participant in the crime and acted with reckless indifference to human life.<sup>8</sup>

The Commission found that this Test Claim was timely filed within 12 months of the effective date of the test claim statute.

The Commission found that sections 188 and 189 of the Penal Code, as amended by the test claim statute, do not impose any requirements on local government and, thus, do not impose a state-mandated program. Penal Code sections 188 and 189 define “malice” and “murder” and, as amended, limit the definition of murder to the actual killer, someone with the intent to kill who assisted the killer, or a major participant in the crime who acted with reckless indifference to human life.

The Commission further found that Penal Code section 1170.95 imposes new requirements on county district attorneys and public defenders to participate in the petition process, however those requirements do not impose costs mandated by the state. Government Code section 17556(g), which implements article XIII B, section 6, 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.” The test claim statute changed the elements of the crime of murder and, in so doing, “vacated” or eliminated the crime of murder under the felony-murder rule and the natural and probable consequences doctrine unless it is proven beyond a reasonable doubt, that the defendant had the intent to kill or was a major participant acting with reckless indifference to human life and, thus, there are no costs mandated by the state within the meaning of Government Code section 17556(g).

Accordingly, the Commission denied this Test Claim.

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<sup>8</sup> Penal Code section 1170.95(d).