STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

For CSM Use Only
Filing Date: RECEIVED December 28, 2022 Commission on State Mandates
TC #: 22-TC-02

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

SB: 483 RESENTENCING TO REMOVE SENTENCING ENHANCEMENTS

Section 2

Local Government (Local Agency/School District) Name:

COUNTY OF SAN DIEGO

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

Tracy Drager, San Diego County Auditor & Controller

Street Address, City, State, and Zip:

1600 Pacific Highway, Room 166, San Diego, CA 92101

Telephone Number: (619) 531-5413

Email Address: tracy.drager@sdcounty.ca.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5).)

Name and Title of Claimant Representative:

Rebecca Andrews, Partner

Organization: Best Best & Krieger

Street Address, City, State, Zip:

655 W. Broadway, 15th Floor, San Diego, CA 92101

Telephone Number: (619) 525-1392

Email Address: rebecca.andrews@bbklaw.com

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and check for amendments to the section or regulations adopted to implement it:

Stats. 2021, ch. 728, Senate Bill No. 483 (2021-2022 Reg. Sess.), Penal Code sections 1171 and 1171.1 (now codified at Penal Code sections 1172.7 and 1172.75), eff. Jan. 1, 2022

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12 / 28 / 2022

☑ A: Which is not later than 12 months (365 days) following [insert effective date] 01 / 01 / 2022, the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] ___/___/_____, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☑ Includes a statement that actual or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☑ Includes all of the following elements for each statute or executive order alleged **pursuant to Government Code section 17553(b)(1)**:

☑ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☑ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☑ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☑ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2023 - 2024 Total Costs: $9,528,162.00

☑ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

☑ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: None

☑ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows:

☑ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☑ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☑ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.

☑ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5:

☑ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages 7-001 to 7-004.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 7-011 to 7-016.

☑ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 7-032 to 7-061.

☑ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5.*) Pages Sec 6 to 7-62-101.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☑ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Tracy Drager
Name of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

San Diego County Auditor & Controller
Print or Type Title

Tracy Drager
Signature of Authorized Local Government Official
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

CSM Test Claim Form 02/2023

Final Audit Report 2023-03-02

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SECTION 5

NARRATIVE STATEMENT

IN SUPPORT OF TEST CLAIM

IN RE

SB 483: RESENTENCING TO REMOVE SENTENCE ENHANCEMENTS

I. INTRODUCTION

The County of San Diego ("Claimant") submits this Test Claim seeking reimbursement of the costs of implementing the requirements imposed on it by certain sections of California Senate Bill ("SB") 483 (2021-22 Reg. Sess.), which added sections 1171 and 1171.1, to the Penal Code (now codified at Penal Code §§ 1172.7 and 1172.75).[1] Specifically, this Test Claim addresses the costs to implement the requirements of SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e).

Prior to 2018, Health & Safety Code section 11370.2 required a one-year sentence enhancement for each prior separate prison term or county jail felony term served by a defendant for certain nonviolent felonies.[2] Prior to 2020, Penal Code section 667.5 required a 3-year sentence enhancement for each prior conviction of specified controlled substance crimes.[3] Senate Bills 180 and 136 repealed both of these sentence enhancements for persons sentenced after 2018 and 2020, respectively. Effective January 1, 2022, SB 483 created a new process to apply the sentence enhancement repeals retroactively by resentencing certain persons currently serving a sentence that is comprised, at least, in part, of a type of sentence enhancement that was repealed in either 2018 or 2020.[4]

Relevant to this Test Claim, certain sections of SB 483 require each county to identify those persons in their custody who are serving a sentence that includes one of these enhancements and provide this information to the sentencing court.[5] After verifying specified information, a court is to recall the sentence and resentence eligible defendants to remove any invalid sentence enhancements.[6] County public defenders must gather evidence relevant to each individual and represent the defendant in the hearing.[7]

During a SB 483 hearing, public defenders must present evidence of "any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing."[8] Public defenders must also present evidence of an inmate's "post-conviction factors," such as their efforts at rehabilitation, diminished physical condition, reduced risk of future violence, and other evidence suggesting a change in circumstances since the original sentencing hearing.[9] Finally, county prosecution must also attend the hearings through the District Attorney's Office to adequately represent the State of California.

SB 483 established four deadlines for the completion of the activities described above. First, by March 1, 2022, Claimant and other counties were required to provide information to

[1] SB 483 (2021-22 Reg. Sess.); Stats. 2021, ch. 728; Penal Code §§ 1172.7, 1172.75.
[2] See SB 180 (2017-18 Reg. Sess.), Stats. 2017, ch. 677; see also SB 483, Leg. Council Digest.
[3] See SB 136 (2019-20 Reg. Sess.); Stats. 2019, ch. 590; see also SB 483, Leg. Council Digest.
[4] SB 483, § 1 (citing SB 180 and SB 136).
[5] SB 483, §§ 2, subd. (b), 3, subd. (b); Penal Code §§ 1172.7, subd. (b), 1172.75, subd. (b).
[6] SB 483, §§ 2, subd. (c), 3, subd. (c); Penal Code §§ 1172.7, subd. (c), 1172.75, subd. (c).
[7] SB 483, §§ 2, subds. (d)(2), (3), (5), 3, subds. (d)(2), (3), (5); Penal Code §§ 1172.7, subds. (d)(2), (3), (5), 1172.75, subds. (d)(2), (3), (5).
[8] SB 483, §§ 2, subd. (d)(2), 3, subd. (d)(2); Penal Code §§ 1172.7, subd. (d)(2), 1172.75, subd. (d)(2).
[9] SB 483, §§ 2, subd. (d)(3), 3, subd. (d)(3); Penal Code §§ 1172.7, subd. (d)(3), 1172.75, subd. (d)(3).

courts about inmates who were potentially eligible for resentencing who were actively serving the sentence enhancements at issue.[10] Second, this information was required to be submitted to courts by July 1, 2022, for all other individuals.[11] Third, SB 483 required resentencing hearings to be completed by October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.[12] Fourth, hearings for all others must be completed by December 31, 2023.[13]

Claimant files this Test Claim to recover the actual costs incurred to comply with SB 483. Specifically, for costs incurred by the Public Defender's Office to identify inmates potentially eligible for resentencing and to gather relevant evidence and by the Public Defender's and District Attorney's Offices to represent individuals and the State during the hearings mandated by SB 483.

II. STATE MANDATE LAW

Section 6 of Article XIII B of the California Constitution ("Section 6") requires the State to provide a subvention of funds to local government agencies any time the Legislature or a state agency requires a local government agency to implement a new program, or provide a higher level of service under an existing program.[14] Section 6 states in relevant part:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service.[15]

The purpose of 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."[16] The section "was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues."[17] In order to implement Section 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.[18] Under this scheme, the Legislature established the parameters regarding what constitutes a state mandated cost, defining "costs mandated by the state" to include:

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[10] SB 483, §§ 2, subd. (b)(1) and 3, subd. (b)(1); Penal Code §§ 1172.7, subd. (b)(1), 1172.75, subd. (b)(1).
[11] SB 483, §§ 2, subd. (b)(2), 3, subd. (b)(2); Penal Code §§ 1172.7, subd. (b)(2), 1172.75, subd. (b)(2).
[12] SB 483, §§ 2, subd. (c)(1), 3, subd. (c)(1); Penal Code §§ 1172.7, subd. (c)(1), 1172.75, subd. (c)(1).
[13] SB 483, §§ 2, subd. (c)(2), 3, subd. (c)(2); Penal Code §§ 1172.7, subd. (c)(2), 1172.75, subd. (c)(2).
[14] Cal. Const., art. XIII B, § 6.
[15] *Ibid*.
[16] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.
[17] *County of Fresno, supra*, 53 Cal.3d at 487; *Redevelopment Agency v. Comm'n on State Mandates* (1997) 55 Cal.App.4th 976, 984-985.
[18] Gov. Code § 17500, *et seq.*; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331, 333 (statute establishes "procedure by which to implement and enforce section 6").

> any increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.[19]

Government Code section 17556 identifies seven exceptions to the rule requiring reimbursement for state mandated costs.[20] The exceptions are as follows:

> (a) The claim is submitted by a local agency . . . that requests . . . legislative authority for that local agency . . . to implement the program specified the statute, and that statute imposes costs upon that local agency . . . requesting the legislative authority. . . .
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts. . . .
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. . . .
>
> (d) The local agency . . . has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. . . .
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies . . . that result in no net costs to the local agencies. . . , or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. . . .
>
> (f) The statute or executive order imposes duties that are necessary to implement, or expressly included in, a ballot measure approved by the voters in a statewide or local election. . . .
>
> (g) 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.

[19] Gov. Code § 17514.
[20] Gov. Code § 17556.

SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e), impose state mandated activities and costs on Claimant, and none of the exceptions in Government Code section 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the above-referenced sections. These therefore represent a state mandate for which Claimant is entitled to reimbursement pursuant to Section 6.

III. STATEMENT OF TIMELINESS

SB 483 became effective on January 1, 2022. Pursuant to Government Code section 17551(c), this Test Claim is timely submitted within 12 months of the effective date of SB 483.

IV. STATEMENT OF ACTUAL COSTS EXCEEDING $1,000

Claimant has incurred actual costs as a result of the mandates in SB 483 set forth herein in excess of $1,000.[21]

V. STATE MANDATED ACTIVITIES AND COSTS

A. Description of Newly Mandated Activities

SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e), the "Mandate," require Claimant to undertake the following, collectively the "Mandated Activities": (1) identify and review incarcerated individuals' records; (2) act as appointed counsel for individuals; and (3) represent individuals and the State of California regarding the validity of sentence enhancements, the applicability of post-conviction changes in law, and all "post-conviction 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 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.[22]

The California Supreme Court has determined that an activity is mandated for purposes of Section 6 when the statute "compels" the activity; conversely, an activity is not mandated when the activity is undertaken at the "discretion" of the local government.[23] In *San Diego Unified*, a school district sought a subvention of funds to pay for the costs of implementing two different student expulsion provisions under Education Code sections 48915 and 48918. One challenged provision was mandatory, and required, in part, "immediate suspension and mandatory recommendation of expulsion for students who possess a firearm[.]"[24] A recommendation of expulsion "in turn trigger[ed] a mandatory expulsion hearing[,]" governed by the procedures codified in Education Code Section 48918. The Court determined the school

[21] Declaration of Miwa Pumpelly at ¶¶ 5-6; Gov. Code, § 17564, subd. (a).
[22] Declaration of Matthew Wechter at ¶ 6.
[23] *San Diego Unified Sch. Dist. v. Comm'n on State Mandates* (2004) 33 Cal.4th 859, 867, 877, 883-890 ("*San Diego Unified*").
[24] *Id.* at p. 878.

district's costs associated with the mandatory hearing on the mandatory expulsion recommendation to be reimbursable under Section 6.[25]

The second challenged provision was discretionary, and provided, in part, that a "principal possesses discretion to recommend that a student be expelled for specified conduct other than firearm possession[.]"[26] The Court reasoned that when a principal exercises discretion to recommend a student be expelled, Section 6 does not require a subvention, because the "procedural hearing costs [were] triggered [] by [the school district's] discretionary decision to seek expulsion."[27]

Here, Claimant does not have discretion over whether to undertake the Mandated Activities. Claimant's district attorneys and public defense counsel are required to represent their clients in a proceeding that gives a defendant an opportunity to make an accurate record of the validity of a sentence enhancement and of post-conviction factors relevant to the availability of a shorter sentence.[28] Unlike the principal's own "discretionary decision to seek expulsion" in *San Diego Unified*, Claimant has no discretion over the occurrence of or participation in a hearing under SB 483. To the contrary, Claimant is obligated to undertake the Mandated Activities unless a defendant actively waives the right to a hearing.[29]

1. The Mandate Requires Claimant to Identify and Review Incarcerated Individuals' Records

The Mandate required the Claimant to identify persons in their custody serving a sentence enhancement under former Health & Safety Code section 11370.2 or Penal Code section 667.5 and provide that information to the sentencing court.[30] It required Claimant to provide this information to the sentencing court by March 1, 2022 for individuals serving out the sentence enhancements at issue and by July 1, 2022 for all other individuals.[31]

Claimant's Public Defender's Office has taken on the bulk of this work by identifying individuals from San Diego County currently serving time and whose sentences contain enhancements under the former Health & Safety Code and Penal Code sections above.[32]

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[25] *Id*. at pp. 881-883.
[26] *Id.* at p. 870.
[27] *Id.* at p. 889.
[28] SB 483, §§ 2, subds. (d)(2), (3), and (5), 3, subds. (d)(2), (3), and (5); Penal Code §§ 1172.7, subds. (d)(2), (3), and (5); Penal Code § 1172.75, subds. (d)(2), (3), and (5)s; see also U.S. Const., 8th and 14th Amends.; Cal. Const., art. V, § 13; Gov. Code, § 27706 (public defender duties); Gov. Code, § 26500 (district attorney duties); *People v. Crayton* (2002) 28 Cal.4th 346, 362; *People v. Dehle* (2008) 166 Cal.App.4th 1380, 1387.
[29] SB 483, §§ 2, subd. (e), 3, subd. (e); Penal Code §§ 1172.7, subd. (e), 1172.75, subd. (e).
[30] SB 483, §§ 2, subd. (b), 3, subd. (b); Penal Code §§ 1172.7, subd. (b), 1172.75, subd. (b).
[31] Declaration of Matthew Wechter at ¶ 6.a; SB 483, §§ 2, subds. (b)(1), (2), and 3, subds. (b)(1), (2); Penal Code §§ 1172.7, subds. (b)(1), (2), and 1172.75 subds. (b)(1), (2).
[32] Declaration of Matthew Wechter at ¶ 8.

2. The Mandate Requires Claimant's Attorneys to Participate in Hearings

The Mandate requires resentencing hearings to be completed by October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.[33] Hearings for all others must be completed by December 31, 2023.[34]

The Mandate requires Claimant's Public Defender's Office to represent any indigent defendant when appointed by the sentencing court.[35] Therefore, in addition to reviewing and submitting the list of individuals eligible for a hearing, Claimant's Public Defender's Office is required to represent defendants on all matters at issue during a resentencing hearing. Because the Legislature has required the appointment of counsel, the burden of these Mandated Activities falls on the Public Defender's office.[36] Thus, the Public Defender's Office must meet with individuals, review individuals' cases, gather evidence, prepare any required briefing, and attend hearings.[37]

3. The Mandate Requires Counsel to Represent Individuals on Matters Exceeding Repealed Sentence Enhancements

The Mandate requires Claimant to gather and present evidence at resentencing hearings on matters extending beyond the question of whether a defendant received a sentence enhancement that was later declared invalid.[38] Any defendant with a sentence enhancement that triggers a resentencing hearing has a right to submit evidence of the statutorily identified "post-conviction factors" including 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 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."[39] Claimants' attorneys must gather and present evidence relevant to sentencing and post-conviction factors.[40]

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[33] Declaration of Matthew Wechter at ¶¶ 6.c, 6.d; SB 483, §§ 2, subd. (c)(1), 3, subd. (c)(1); Penal Code §§ 1172.7, subd. (c)(1), 1172.75, subd. (c)(1).
[34] Declaration of Matthew Wechter at ¶¶ 6.c, 6.d; SB 483, §§ 2, subd. (c)(2), 3, subd. (c)(2); Penal Code §§ 1172.7, subd. (c)(2), 1172.75, subd. (c)(2).
[35] Declaration of Matthew Wechter at ¶ 6.b; SB 483, §§ 2, subds. (d)(5) and (e), 3, subds. (d)(5) and (e); Penal Code §§ 1172.7, subds. (d)(5) and (e), 1172.75, subds. (d)(5) and (e).
[36] Declaration of Matthew Wechter at ¶ 8.
[37] Declaration of Matthew Wechter at ¶ 8.
[38] Declaration of Matthew Wechter at ¶¶ 6.c and 8; SB 483, §§ 2, subd. (d)(3), 3, subd. (d)(3); Penal Code §§ 1172.7, subd. (d)(3), 1172.75, subd. (d)(3).
[39] Declaration of Matthew Wechter at ¶¶ 6.c and 8; SB 483, §§ 2, subd. (d), 3, subd. (d); Penal Code §§ 1172.7, subd. (d), 1172.75, subd. (d); Declaration of Matthew Wechter at ¶ 8.
[40] Declaration of Matthew Wechter at ¶ 8.

B. **Description of Existing Requirements and Costs**

Prior to the Mandate, Claimant was not required to undertake the Mandated Activities. Claimant was not required to proactively identify and represent individuals whose sentence enhancements were imposed in response to certain non-violent felonies and certain crimes involving controlled substances.[41] Further, Claimant was not required to gather and present evidence regarding those individuals' "post-conviction factors."[42] It is only after, and because of, the above-referenced sections that Claimant is obligated to undertake the Mandated Activities.[43]

C. Actual and Estimated Increased Costs Incurred During Fiscal Year 20222023

During July 1 through December 15 of fiscal year 2022-2023, Claimant incurred actual costs associated with administrative staff and attorney time to undertake the Mandated Activities as follows:[44]

July 1, 2022 – December 15, 2022 (Fiscal Year 2022-2023)		
Support Staff Time	833 hours totaling:	$33,812
Attorney Time	1673 hours totaling:	$158,247
	Partial FY22/23 Subtotal:	$192,059

Claimant estimates the costs for the second half of fiscal year 2022-2023 and the full fiscal year 2022-2023 to undertake the Mandated Activities to be as follows:[45]

December 16, 2022 – June 30, 2023 (Fiscal Year 2022-2023)		
Support Staff Time		$68,656
Attorney Time		$238,522
	Partial FY 22/23 Subtotal:	$307,178
	FY 22/23 Total:	**$499,237**

[41] Declaration of Matthew Wechter at ¶¶ 6-8.
[42] Declaration of Matthew Wechter at ¶¶ 6-8.
[43] Declaration of Matthew Wechter at ¶ 8.
[44] Declaration of Miwa Pumpelly at ¶ 5.
[45] Declaration of Miwa Pumpelly at ¶ 6.

D. Actual and Estimated Increased Costs To Be Incurred During Upcoming Fiscal Year 2023-2024

Claimant expects to incur additional increased costs in the first half of fiscal year 2023-2024 to continue implementing the Mandated Activities.[46] The estimated cost for complying with SB 483 during July through December of fiscal year 2023-2024 and the full cost of complying with the Mandate to be as follows:[47]

July 1, 2023 – December 31, 2023 (Fiscal Year 2023-2024)	
Support Staff Time	$66,305
Attorney Time	$221,485
FY 23/24 Subtotal:	**$287,790**
FY 22/23 and FY 23/24 Total:	**$787,026**

VI. STATEWIDE COST ESTIMATE

The Public Defense Pilot Program allocated funding to counties in accordance with the county's percentage of the State's total adult population.[48] According to the Board of State and Community Corrections ("BSCC"), San Diego County contains 8.26% of the State's adult population.[49] Based on the actual and estimated costs incurred by San Diego County for the Mandate during fiscal years 22-23 and 23-24, which is a total of $787,026 and the BSCC estimate that this amount represents 8.26% of the likely costs, a reasonable statewide estimate of costs associated with the Mandate is $9,528,162.[50]

VII. COSTS OF MANDATED ACTIVITIES ARE REIMBURSABLE "PROGRAMS OR HIGHER LEVELS OF SERVICE"

The term "program" within the meaning of Section 6 either (a) carries out the governmental function of providing services to the public, or (b) contains laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[51] Only one of these alternatives is required to establish a new program or higher level of service. Both are met here.

[46] Declaration of Miwa Pumpelly at ¶ 6.
[47] Declaration of Miwa Pumpelly at ¶ 5-6.
[48] Declaration of Miwa Pumpelly at ¶ 11.
[49] Declaration of Miwa Pumpelly at ¶ 11.
[50] Declaration of Miwa Pumpelly at ¶ 12.
[51] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *San Diego Unified, supra,* 33 Cal.4th at p. 874.

A. The Mandated Activities Provide a Public Service

The Mandated Activities carry out the governmental function of providing services to the public.[52] In *San Diego Unified*, the California Supreme Court reasoned that the law at issue created a "program" because "public schooling . . . constitutes a governmental function" and the mandatory suspension of students who possess firearms provided "a 'higher level of service' to the public," specifically, safer schools for other students.[53]

In *Carmel Valley*, the Court of Appeal concluded that firefighting is a "peculiarly governmental function" that provides services to the public even though the mandate at issue also applied to private fire fighters.[54] The California Supreme Court later explained the holding in *Carmel Valley* by stating that subvention was required because the "increased safety equipment apparently was designed to result in more effective fire protection" and was thus "intended to produce a higher level of service to the public."[55]

In *Long Beach*, a school district sought subvention under Section 6 for costs associated with an executive order that required school districts to "develop and adopt a reasonably feasible plan for the alleviation and prevention of racial and ethnic segregation of minority students."[56] Although school districts had an existing "constitutional obligation to alleviate racial segregation," the "specific actions" required by the executive order provided a public service because "education in our society is considered to be a peculiarly governmental function."[57]

Like the provision of public education and fire protection, the Mandated Activities are undertaken "on behalf of the people" and are actions that protect constitutional rights held by everyone.[58] The Mandated Activities also carry out the governmental function of providing public safety and ensuring fairness in the criminal legal system. These services benefit the public as a whole.

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[52] See *Gideon v. Wainwright* (1963) 372 U.S. 335, 344-345; see also *Dehle, supra,* 166 Cal.App.4th at pp. 1387-1388; *San Diego Unified, supra,* 33 Cal.4th at p. 874; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521,538; see also *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 165 ("*Long Beach Unified*").
[53] *San Diego Unified, supra,* 33 Cal.4th at pp. 878, 879.
[54] *Carmel Valley, supra,* 190 Cal.App.3d at p. 537.
[55] *San Diego Unified, supra,* 33 Cal.4th at p. 877.
[56] *Long Beach Unified, supra,* 225 Cal.App.3d at p. 165.
[57] *Id*. at p. 172-173.
[58] See *Gideon, supra,* 372 U.S. at pp. 344-345; *Dehle, supra,* 166 Cal.App.4th at pp. 1387-1388; *San Diego Unified, supra,* 33 Cal.4th at p. 874; *Carmel Valley, supra,* 190 Cal.App.3d at pp. 537-538; *Long Beach Unified, supra,* 225 Cal.App.3d at pp. 165, 172-173.

B. The Mandated Activities are Unique to Local Government

The Mandated Activities are also unique obligations imposed on local government that are distinguishable from requirements imposed on the public generally.[59] Here, the Mandate does not apply to any private entities. The Mandated Activities must be performed by counties as increased levels of service already provided as part of the constitutional and statutory duties of public defenders and district attorneys.[60] Private entities do not incur any obligations as a result of the Mandate. As a result, the Mandated Activities are unique to local government and constitute a "program" for purposes of Section 6.[61]

VIII. NO EXCEPTIONS TO SUBVENTION REQUIREMENT APPLY

Through SB 483, the Legislature mandated a new program or higher level of service on Claimant. None of the exceptions in Government Code section 17556 relieve the State from its constitutional obligation to provide reimbursement for the state mandated costs at issue in this test claim.

A. The Mandate is a state, not a federal, mandate

The Mandate does not implement a mandate imposed by federal law, or alternatively, exceeds any federal mandate.[62] When determining whether a mandate is imposed by or exceeds federal law, the relevant inquiry is whether federal law gives the state discretion to impose a particular requirement; if the state "exercises its discretion to impose the requirement by virtue of a 'true choice,' the requirement is not federally mandated.[63]

According to the bill's author, SB 483 was enacted in response to "[a] robust body of research [that] finds long prison and jail sentences have no positive impact on public safety, yet are documentably injurious to families and communities – particularly Black, Latino, and Native Americans in the United States and in California."[64] the Mandate thus arose from an exercise of legislative discretion and does not implement a federal mandate.

Further, there was no pre-existing federal constitutional or statutory scheme requiring California to resentence individuals with sentence enhancements.[65] In *Long Beach Unified School District v. State of California*, a court of appeal considered whether a state executive

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[59] *County of Los Angeles, supra,* 43 Cal.3d at p. 58 (concluding that Labor Code provisions imposed requirements that were "indistinguishable" as applied to public and private employers); *City of Sacramento v. California* (1990) 50 Cal.3d 51, 67 (finding that "[m]ost private employers in the state were already required to provide unemployment protection to their employees"); *City of Richmond v. Comm'n on State Mandates* (1998) 64 Cal.App.4th 1190, 1199 (noting that challenged Labor Code provisions made "workers' compensation death benefit requirements as applicable to local governments as they are to private employers.").

[60] U.S. Const., 8th and 14th Amends.; Cal. Const., art. V, § 13; Gov. Code, §§ 26500, 27706.

[61] *County of Los Angeles, supra,* 43 Cal.3d at p. 58; *Sacramento, supra,* 50 Cal.3d at p. 67; *Richmond, supra,* 64 Cal.App.4th at p. 1199.

[62] Compare Gov. Code, § 17556, subd. (c).

[63] See *Department of Finance v. Comm'n on State Mandates* (2016) 1 Cal.5th 749, 766; see also *San Diego Unified, supra,* 33 Cal.4th at pp. 880-884 (analyzing the federal constitution and federal cases establishing federal due process requirements).

[64] Sen. Com. on Public Safety, Analysis on SB 483 (2021-22 Reg. Sess.), as amended March 3, 2021.

[65] Declaration of Matt Wechter at ¶¶ 14; see also *Long Beach Unified,* 225 Cal.App.3d 155.

order involving desegregation constituted a state mandate.[66] The regulations required, for example, mandatory biennial racial and ethnic surveys, a plan to alleviate and prevent segregation, and taking mandatory steps to involve the community including public hearings.[67] The court held that the executive order required a higher level of service than required by the federal constitution or case law because the state requirements went beyond federal requirements.

Here, the Sixth Amendment guarantees defendants the right to counsel.[68] However, the Sixth Amendment does not require resentencing of defendants with sentence enhancements due to certain non-violent felonies or to certain offenses involving controlled substances.[69] Although federal law establishes a right to counsel, it does not go so far as to require resentencing of defendants with sentence enhancements. Under *Long Beach Unified*, SB 483 does not create an exemption from the State's subvention obligation.

B. Claimant does not have other funding sources or fee authority to offset costs

Claimant lacks fee authority to offset its costs.[70] All costs of implementing the Mandated Activities are funded with Claimant's general funds.[71] Claimant is not aware of any state, federal, or non-local agency funds that are or will be available to fund this new program and these activities.[72] All of the grant funds awarded to the Public Defender's Office are restricted or designated and cannot be used to fund the costs associated with implementing the Mandate.[73] Thus the costs claimed here may not be recovered through any grant.

C. The Mandate does not create, eliminate, or directly relate to enforcement of a crime

Government Code section 17556(g) excepts from subvention, in relevant part, "only ... that portion of the statute relating directly to the enforcement of the crime or infraction."[74] This exception is inapplicable here because the portions of SB 483 imposing the Mandated Activities do not directly penalize a defendant or relate to the "duration or conditions of punishment."[75]

The Commission on State Mandates has previously interpreted the subvention exclusion for mandates that relate directly to the enforcement of a crime by focusing on the portion of the statute that created the mandate at issue. In *Domestic Violence Treatment Services*, the test claim statutes eliminated diversion as an option in domestic violence cases and subjected all

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[66] *Long Beach Unified*, *supra*, 225 Cal.App.3d 155.
[67] *Ibid.*
[68] *Gideon v. Wainwright*, *supra*, 372 U.S. at 345.
[69] Declaration of Matt Wechter at ¶ 14; see also Sen. Com. on Public Safety, Analysis on SB 483 (2021-22 Reg. Sess.), as amended March 3, 2021.
[70] Declaration of Miwa Pumpelly at ¶ 9.
[71] Declaration of Miwa Pumpelly at ¶ 7.
[72] Declaration of Miwa Pumpelly at ¶ 10.
[73] Declaration of Miwa Pumpelly at ¶ 8.
[74] Gov. Code, § 17556, subd. (g).
[75] Gov. Code, § 17556, subd. (g); see also *Domestic Violence Treatment Services – Authorization and Case Management*, Statement of Decision, (April 23, 1998) CSM File No. CSM-9628101 ("*DVTS-ACM*"); see also *State Authorized Risk Assessment Tool for Sex Offenders*, Statement of Decision, (Jan. 24, 2014) 08-TC-03 ("*SARATSO*").

persons arrested for a domestic violence offense to prosecution and conviction.[76] The Commission determined that the portions of the test claim statutes requiring local government to assess a defendant's future probability of committing murder, did not directly relate to enforcement of a crime because they did not *directly penalize the defendant.*[77]

Similarly, in *SARATSO*, the Commission determined that the portions of a test claim statute requiring local government to conduct a risk assessment, prepare a report of the risk assessment, and submit the report to the court and to the Department of Corrections and Rehabilitation ("CDCR") were not "directly related" to the enforcement of a crime.[78] The Commission noted that even though reports submitted to the court and CDCR "may be considered either in aggravation or mitigation of the punishment" and may "impact the duration or conditions of probation" the activities were administrative in nature and did not "directly relate to the duration or conditions of punishment."[79]

As in *DVTS-ACM* and *SARATSO*, the Mandated Activities here are procedural (i.e., administrative) in nature because they involve evidence gathering and presentation.[80] The Mandated Activities are almost identical to the investigation, reporting, and filing activities in *SARATSO*, which did not "directly penalize a defendant" or "relate directly to the enforcement of a crime" for purposes of Section 6, even though they could impact the duration or conditions of post-conviction sentence. Further, unlike the portions of the test claim statutes at issue in those cases, the Mandated Activities do not involve monitoring a defendant who has been released on parole, requesting hearings if parole is violated, or ensuring intensive and specialized supervision for parolees.[81] Thus, even if some portions of SB 483 could be read as changing the penalty for a crime, Section 17556(g) would only exempt from subvention those activities that directly penalize a defendant, which the Mandated Activities do not do.

D. Claimant does not meet the criteria for any other potential exception from state reimbursement

Claimant did not request legislative authority to undertake the Mandated Activities.[82] The Mandate does not affirm court-declared existing law or regulation or impose duties expressly included in a ballot measure approved by voters.[83]

IX. PRIOR RELATED MANDATE DETERMINATIONS

There are no prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

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[76] *DVTS-ACM*, *supra*, at p. 4.
[77] *Id.* at p. 9.
[78] *Id.* at pp. 29-30.
[79] *Id.* at pp. 29-30.
[80] See *People v. Delgado* (2022) 78 Cal.App.5th 95, 98.
[81] See *DVTS-ACM* at pp. 8-9; *SARATSO*, *supra*, at pp. 32-33.
[82] Cf. Gov. Code, § 17556, subd. (a); Declaration of Matt Wechter at ¶ 13.
[83] Cf. Gov. Code, § 17556, subds. (b), (f); Declaration of Matt Wechter at ¶ 15.

X. LEGISLATIVELY DETERMINED MANDATES

There are no legislatively determined mandates that are on, or that may be related to, the same statute or executive order.

XI. CONCLUSION

The Mandate requires Claimant to implement a new program or provide a higher level of service under an existing program relating to evidence gathering and presentation of potential resentencing. These state mandated costs are not subject to any exemption from the subvention requirements of Section 6. Claimant does not have any other funding source to implement this financially burdensome program. Claimant therefore respectfully requests that the Commission find that the mandated program and activities set forth in this Test Claim are state mandates that require a subvention.

SECTION 6

DECLARATIONS

IN SUPPORT OF TEST CLAIM

IN RE

SB 483: RESENTENCING TO REMOVE SENTENCE ENHANCEMENTS

DECLARATION OF MATTHEW JUSTIN WECHTER

I, Matthew Justin Wechter, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am a member of the Bar of the State of California. I have been licensed to practice law in California since 2009.

2. I am employed by the County of San Diego ("County") Office of the Public Defender ("Public Defender's Office") and hold the title of Deputy Public Defender - IV. I have held my current position for approximately 1.5 years.

3. In my current position, I am responsible for the supervision of Special Projects, including implementation of new laws within the Department of the Public Defender, including Senate Bill 483.

4. I have read and am familiar with Senate Bill (SB) 483 (2021-2022 Reg. Sess.) which added Penal Code sections 1172.7 and 1172.75 (formerly Penal Code §§ 1171 and 1171.1).

5. Based on my review and understanding of SB 483, sections 2, subds. (b), (c), (d) and (e), 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e) mandate a new local program, new activities, and a higher level of service on public defenders and district attorneys, that are unique to local government entities.

6. SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e) impose new requirements on the County that it was not required to implement prior to enactment of these sections. Specifically, the above-referenced sections require the County to (collectively, the "Mandated Activities"):

   a. Identify and review incarcerated individuals' records beginning on or about (SB 483 sections 2, subd. (b) and 3, subd. (b) and Penal Code sections 1172.7, subd. (b) and 1172.75, subd. (b)):

      i. March 1, 2022, for individuals who served their base term and any other enhancements and are currently serving a sentence based on the specified

enhancement (SB 483 sections 2, subd. (b)(1) and 3, subd. (b)(1) and Penal Code sections 1172.7, subd. (b)(1) and 1172.75, subd. (b)(1)); and

ii. July 1, 2022, for all other individuals (SB 483 sections 2, subd. (b)(2) and 3, subd. (b)(2) and Penal Code sections 1172.7, subd. (b)(2) and 1172.75, subd. (b)(2)).

b. Act as appointed counsel for individuals, which includes court appearances, as well as out of court communication usually from great distances via phone/video/correspondence (SB 483 sections 2, subd. (c), (e) and 3, subd. (c), (e) and Penal Code sections 1172.7, subd. (c), (e) and 1172.75, subd. (c), (e)).

c. Represent individuals and the State of California regarding validity of sentence enhancements, all changes to law, and all post-conviction factors (SB 483 sections 2, subd. (d)(2), (3) and 3, subd. (d)(2), (3) and Penal Code sections 1172.7, subd. (d)(2), (3) and 1172.75, subd. (d)(2), (3).

d. Complete the activities identified in paragraphs 6.b and 6.c by:

i. October 1, 2022 for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement (SB 483 sections 2, subd. (c)(1) and 3, subd. (c)(1) and Penal Code sections 1172.7, subd. (c)(1) and 1172.75, subd. (c)(1));

ii. December 31, 2023 for all other individuals (SB 483 sections 2, subd. (c)(2) and 3, subd. (c)(2) and Penal Code sections 1172.7, subd. (c)(2) and 1172.75, subd. (c)(2)).

7. Prior to enactment of SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e), the County Public Defender's Office was not required to proactively identify and represent individuals with sentence enhancements, or to present evidence regarding changes to law and all post-conviction factors under urgent deadlines as required by the sections referenced above.

8. After enactment of SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e), the County Public Defender's Office has implemented the Mandated Activities by reviewing case files, meeting with individuals, gathering evidence relevant to changed laws and post-conviction factors, preparing required briefing, attending hearings, and other tasks. The Public Defender's Office has taken on the bulk of this work by reviewing the files of incarcerated individuals held or convicted in San Diego County, identifying those serving a term for a judgment that includes a specified enhancement, and representing the individuals during status and resentencing hearings. The Public Defender's Office is responsible for presenting the factors a court may consider or is required to consider under the above-referenced sections, including the original facts of the case as well as obtaining and reviewing a client's post-conviction behavior in records of the California Department of Corrections and Rehabilitation. Under the above-referenced sections public defenders are required to inform the court of changes in law, disparities of sentencing, uniformity of sentencing, and the individual's post-conviction factors, including the individual's disciplinary record, 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 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.

9. I have reviewed and am familiar with the books and records maintained by the County Public Defender's Office in the ordinary course of business.

10. The system we use to track the status of cases, the time spent handling cases, and the costs incurred relating to each case is called Judicial Court Activity Tracking System ("JCATS"), and the system we use to track overall hours spent on the project is called KRONOS.

11. I reviewed the lists provided to us by the Secretary of the California Department of Corrections that identified 758 persons as potentially subject to SB 483, requiring evaluation for eligibility per SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e).

12. During 2022, the County's Public Defender's Office incurred costs to implement the Mandated Activities required by SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e) including:

a. Time spent by attorneys and administrative staff to review the lists of individuals potentially affected by SB 483, gather evidence, and prepare for hearings.

b. Time spent by attorneys communicating with clients, drafting pleadings, and preparing for and attending court hearings.

c. Time spent by attorneys conferring with appellate counsel regarding pending appellate issues specifically related to novel issues of law.

13. I am not aware of any request from the County for legislative authority to implement the Mandated Activities.

14. I am not aware of any pre-existing federal statutory scheme requiring the Mandated Activities.

15. I am not aware of any court-declared law or regulation or a ballot measure approved by voters that requires the Mandated Activities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of February 2023 in San Diego, California.

Matthew Wechter
_____
Matthew Wechter
Deputy Public Defender – IV
County of San Diego, Office of the Public Defender

DECLARATION OF MIWA PUMPELLY

I, Miwa Pumpelly, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of San Diego ("County") Office of the Public Defender ("Public Defender's Office") and hold the title of Chief, Departmental Administrative Services. I have held this position for 10 years and 4 months.

2. In my current position, I am responsible for directing, organizing and coordinating multi-disciplinary professional and non-professional staff in carrying out the fiscal and analytical operations of the Public Defender's Office.

3. I have read and am familiar with Senate Bill (SB) 483 (2021-2022 Reg. Sess.) which added Penal Code sections 1172.7 and 1172.75 (formerly Penal Code §§ 1171 and 1171.1).

4. I have reviewed and am familiar with the budget and accounting records maintained for the County Public Defender's Office in the ordinary course of business. The Public Defender's Office began separately tracking the expenses associated with SB 483 effective July 1, 2022.

5. To implement SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e), the County Public Defender's Office incurred costs during Fiscal Year 2022-2023 as follows:

July 1, 2022 – December 15, 2022 (Fiscal Year 2022-2023)		
Support Staff Time	833.5 hours totaling:	$33,812
Attorney Time	1672.6 hours totaling:	$158,247
	Partial FY22/23 Subtotal:	$192,059

6. Moving forward, the Public Defender's Office will require 2.5 attorneys, one part-time clerical support staff member, and one part-time re-entry specialist. Based on the anticipated staffing

levels and costs, I estimate the costs for December 16, 2022 through June 2023 to be:

December 16, 2022 – June 30, 2023 (Fiscal Year 2022-2023)	
Support Staff Time	$68,656
Attorney Time	$238,522
Partial FY 22/23 Subtotal:	$307,178
FY 22/23 Total:	**$499,237**

Based on the anticipated staffing level and costs, I estimate the costs for July 1, 2023 through December 31, 2023 to be:

July 1, 2023 – December 31, 2023 (Fiscal Year 2023-2024)	
Support Staff Time	$66,305
Attorney Time	$221,485
FY 23/24 Subtotal:	**$287,790**
FY 22/23 and FY 23/24 Total:	**$787,026**

7. The County's costs to implement the requirements of SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e) listed above were funded entirely from the County's General Fund.

8. All of the grant funds awarded to the County are restricted or designated and cannot be used to fund the costs associated with implementing SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e).

9. I am not aware of any authority the County possesses to charge non-tax fees to pay for these costs.

10. I am not aware of any state, federal, or non-tax funds that are or will be available to fund this new program and these activities.

11. To provide a statewide estimate of costs, I refer to the Budget Act of 2021 (Senate Bill 129), which established the Public Defense Pilot Program and allocated funding to counties in accordance with the county's percentage of the State's total adult population. According to the Board of State and Community Corrections ("BSCC"), San Diego County contains 8.26% of the State's adult population.

12. Based on the actual and estimated costs incurred by San Diego County for Fiscal Years 2022-23 and 2023-24 of $787,026 provided herein and the BSCC estimate that this amount represents 8.26% of the likely costs, a reasonable statewide estimate of costs associated with SB 483 sections 2, subds. (b), (c), (d), and (e) and 3, subds. (b), (c), (d), and (e) and Penal Code sections 1172.7, subds. (b), (c), (d), and (e) and 1172.75, subds. (b), (c), (d), and (e) is $9,528,162.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of February 2023 in San Diego, California.

Miwa Pumpelly
Chief, Departmental Administrative Services
Office of the Public Defender
County of San Diego

EXHIBIT A: SUPPORTING DOCUMENTATION FOR FY 2022-2023 and FY 2023-2024 ACTUAL AND ESTIMATED COST

EXHIBIT A

Actual Costs: Jul 1, 2022 - Dec. 15, 2022		
July - November 2022 FY 2022-2023	**Hours**	**Total Cost**
Support Staff Time	834	33,812
Attorney Time	1,673	158,247
Total	**2,506**	**192,059**

Estimated Remaining Costs - December 15, 2022 Through December 21, 2023					
Position	**Estimated Annual Cost**	**Estimated FTE**	**Total**	**Estimates for remainder of FY 22/23**	**Estimated for FY 23/24 (Jul - Dec)**
DPD I	$ 149,781	1.00	$ 149,781	80,651	74,890
DPD III (Retiree)	$ 66,835	1.00	$ 66,835	35,988	33,417
DPD IV (Retiree)	$ 75,884	1.00	$ 75,884	40,860	37,942
DPD IV	$ 300,940	0.50	$ 150,470	81,022	75,235
Attorney Cost			**$ 442,969**	**238,522**	**221,485**
OA	$ 61,118.83	1.00	$ 61,119	2,351	
LSA I	$ 65,871.35	1.00	$ 65,871	32,936	32,936
AAII (Re-Entry Specialist)	$ 133,477	0.50	$ 66,738	33,369	33,369
Support Staff			**$ 61,119**	68,656	66,305
			GRAND TOTAL	**307,178**	**287,790**

Estimated Statewide Costs	
Estimated County Cost	$ 787,026
Estimated % State Costs	8.26%
Estimated Statewide Costs	***$ 9,528,162***

SECTION 7

DOCUMENTATION

IN SUPPORT OF TEST CLAIM

IN RE

SB 483: RESENTENCING TO REMOVE SENTENCE ENHANCEMENTS

SECTION 7

DOCUMENTATION

IN SUPPORT OF TEST CLAIM

IN RE

SB 483: RESENTENCING TO REMOVE SENTENCING ENHANCEMENTS

Senate Bill No. 483

CHAPTER 728

An act to add Sections 1171 and 1171.1 to the Penal Code, relating to resentencing.

[Approved by Governor October 8, 2021. Filed with Secretary of State October 8, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 483, Allen. Sentencing: resentencing to remove sentencing enhancements.

Prior law, in effect until January 1, 2020, required a sentencing court to impose an additional one-year term for each prior separate prison term or county jail felony term served by the defendant for a nonviolent felony, as specified. Prior law, in effect until January 1, 2018, required a sentencing court to impose on a defendant convicted of specified crimes relating to controlled substances, an additional 3-year term for each prior conviction of specified controlled substances crimes, including possession for sale of opiates, opium derivatives, and hallucinogenic substances, as specified. Existing law limits the imposition of these sentencing enhancements to certain specified circumstances.

This bill would declare an enhancement imposed pursuant to one of these prior provisions to be legally invalid. The bill would state the intent of the Legislature to prohibit a prosecutor or court from rescinding a plea agreement based on a change in sentence as a result of this measure. The bill would require the Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county to identify those persons in their custody who are serving a sentence that includes one of these enhancements and provide this information to the sentencing court, as specified. The bill would require this information to be provided by March 1, 2022, for those individuals who are currently serving time for the enhancement and by July 1, 2022, for all others. The bill would require the court, after verifying specified information, to recall the sentence and resentence the individual to remove any invalid sentence enhancements. The bill would require the court to grant this relief to those individuals who have served their base term and any other enhancements and are currently serving the enhancement described above by October 1, 2022, and all other individuals by December 31, 2023. The bill would prescribe specific considerations for the court in resentencing, such as requiring that the resentencing result in a lesser sentence, unless the court finds that a lesser sentence would endanger public safety. The bill would require the court to appoint counsel for an individual subject to resentencing.

By requiring additional duties of county officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply Senate Bill 180 of the 2017–18 Regular Session and Senate Bill 136 of the 2019–20 Regular Session to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. It is the intent of the Legislature that any changes to a sentence as a result of the act that added this section shall not be a basis for a prosecutor or court to rescind a plea agreement.

SEC. 2. Section 1171 is added to the Penal Code, to read:

1171. (a) Any sentence enhancement that was imposed prior to January 1, 2018, pursuant to Section 11370.2 of the Health and Safety Code, except for any enhancement imposed for a prior conviction of violating or conspiring to violate Section 11380 of the Health and Safety Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentence enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d) (1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other 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 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 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.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

SEC. 3. Section 1171.1 is added to the Penal Code, to read:

1171.1. (a) Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on

the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d) (1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other 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 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 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.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No:	SB 483	**Hearing Date:**	April 27, 2021
Author:	Allen		
Version:	March 3, 2021		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Sentencing: resentencing to remove sentencing enhancements***

HISTORY

Source: Ella Baker Center for Human Rights

Prior Legislation: SB 136 (Wiener), Ch. 590, Stats. 2019
SB 1392 (Mitchell), failed passage on Senate Floor, 2018
SB 180 (Mitchell), Ch. 677, Stats. 2017

Support: A New Path; ACLU California Action; Asian Prisoner Support Committee; Bend the Arc: Jewish Action California; California Public Defenders Association; Californians United for a Responsible Budget; Californians for Safety and Justice; Center for Living and Learning; Children's Defense Fund – California; Courage California; Dignity and Power Now; Drug Policy Alliance; Fair Chance Project; Friends Committee on Legislation of California; Harm Reduction Coalition; Human Impact Partners; Immigrant Legal Resource Center; Initiate Justice; John Burton Advocates for Youth; Justice LA; Kehilla Community Synagogue; Legal Services for Prisoners with Children; Prevention At the Intersection; Prison Law Office; Prison Policy Initiative; Prosecutors Alliance of California; Re:store Justice; Root and Rebound; San Francisco Peninsula People Power; San Francisco Public Defender; Secure Justice; Showing Up for Racial Justice (SURJ) – Bay Area; Smart Justice California; Starting Over Inc.; The W. Haywood Burns Institute; Uncommon Law; Women's Foundation California

Opposition: California Narcotic Officers' Association

PURPOSE

The purpose of this bill is to apply retroactively the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances.

Existing prior law, in effect until January 1, 2020, required a sentencing court to impose an additional one-year term of imprisonment for each prior prison or county jail felony term served by the defendant for a non-violent felony. (Former Pen. Code, § 667.5, subd. (b), repealed Jan. 1, 2020.)

Existing prior law, in effect until January 1, 2018, required a sentencing court to impose on a defendant convicted of specified crimes related to controlled substances, an additional three-year term for each prior conviction of specified crimes related to controlled substances. (Health & Saf. § 11370.2, repealed Jan. 1, 2018.)

This bill states that any sentence enhancement that was imposed prior to January 1, 2020 for a prior separate prison or county jail felony term, except if the enhancement was for a prior conviction of a sexually violent offense, is legally invalid.

This bill states that any sentence enhancement imposed prior to January 1, 2018 for a prior conviction for specified crimes related to controlled substances, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance, is legally invalid.

This bill requires, by no later than March 1, 2022, the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term for judgment that includes one of the repealed enhancements and to provide the name of each person, along with the person's date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement.

This bill states that upon receiving the information from the Secretary of CDCR or the county correctional administrator, the court shall, no later than July 1, 2022, review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall administratively amend the abstract of judgement to delete the enhancement.

This bill states that the Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply Senate Bill 180 of the 2017–18 Regular Session and Senate Bill 136 of the 2019–20 Regular Session to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements.

COMMENTS

1. Need for This Bill

According to the author of this bill:

> In recognition of the harms that long periods of incarceration have on community safety and well-being, the California Legislature prospectively eliminated two automatic criminal sentencing enhancements for prior convictions. As recommended by the state's Committee on Revision of the Penal Code, SB 483 will retroactively apply the elimination of those enhancements to people currently held in prisons and jails, ensuring that no one is serving time based on outdated rules.
>
> A robust body of research finds that long prison and jail sentences have no positive impact on public safety, yet are documentably injurious to families and

communities—particularly Black, Latino, and Native Americans in the United States and in California.

People returning from incarceration face significant barriers to finding jobs and housing. Family members of incarcerated people struggle with crushing debt from court costs, visitation and telephone fees, and diminished income. The longer the sentence, the more severe these problems tend to be, and the tougher it is for societal reintegration.

In 2017 and 2019, the Legislature and Governor repealed ineffective sentence enhancements (laws called RISE Acts) that added three years of incarceration for each prior drug offense (SB 180, Mitchell) and one year for each prior prison or felony jail term (SB 136, Wiener). However, the reforms applied only prospectively to cases filed after these important bills became law. People in California jails and prisons who were convicted prior to the RISE Acts are still burdened by mandatory enhancements. These burdens fall particularly hard on communities destabilized by decades of mass incarceration. Of those in prison because of ineffective enhancements, three-fourths are people of color.

Recent studies by the U.S. Sentencing Commission found retroactive application of sentence reductions in the federal system had no measurable impact on recidivism rates; an analysis of the prison populations in Maryland, Michigan, and Florida came to similar conclusions.

In light of this research, and following the guidance of a wide array of stakeholders, the California Committee on Revision of the Penal Code unanimously recommended the retroactive elimination of California's one- and three- year enhancements.

SB 483 applies the law equally by retroactively applying California's elimination of ineffective three-year and one-year sentence enhancements.

Recommended by numerous experts and reform advocates, it will modestly reduce prison and jail populations and advance fairness in our criminal legal system.

2. Sentencing Enhancements

Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person's sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence.

A Public Policy Institute of California (PPIC) publication on enhancements found that, "As of September 2016, 79.9% of prisoners in institutions operated by the California Department of Corrections and Rehabilitation (CDCR) had some kind of sentence enhancement; 25.5% had three or more. Aside from second and third strikes, the most common enhancement adds one

year for each previous prison or jail term." (*Sentence Enhancements: Next Target of Corrections Reform?* PPIC (Sept. 2017) < http://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform/ > [as of Mar. 1, 2021].)

According to the PPIC publication, there are over 100 separate code sections in California law that can be used to enhance a person's sentence and the most common enhancement is for a previous prison or jail sentence. (*Ibid*.)

3. Sentence Increases: Research on Deterrent Effect and Impact on State Prisons

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

> A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences Committee on Causes and Consequences of High Rates of Incarceration*, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

In regard to deterrence, the authors note that in "the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy." (National Research Council, supra, *The Growth of Incarceration in the United States*, p. 132.)

> Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.

(*Id*. at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. "Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation." (*Id*. at p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing: putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom. (http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.)

4. Recent Criminal Justice Reforms: Sentencing Enhancements

As noted above, California has over 100 separate code sections that can be used to enhance a person's sentence. In recent years, California has made significant steps to mitigate the impact of individual enhancements by either repealing certain enhancements or allowing judicial discretion to dismiss specified enhancements. SB 180 (Mitchell) of 2017 repealed the enhancement for prior convictions related to controlled substances, while leaving intact its application to a prior conviction of using a minor in the commission of specified controlled substance offenses. SB 620 (Bradford) of 2017 deleted the prohibition on striking an enhancement for personal use of firearm during the commission of a felony so that the court would have discretion to dismiss the enhancement in the interests of justice. Similarly, SB 1393 (Mitchell) of 2018 deleted the prohibition on striking an enhancement for any prior serious felony conviction thereby giving the court discretion to dismiss the enhancement in the interests of justice. SB 136 (Wiener) of 2019 repealed the enhancement for prior prison or county jail felony terms for nonviolent felonies.

This bill gives retroactive effect to SB 180 (Mitchell) and SB 136 (Wiener) by providing that a person whose sentence includes one of these enhancements imposed prior to their repeal are legally invalid. The bill provides a mechanism for persons currently incarcerated to have their cases brought before the sentencing court so that the court can delete the affected enhancements from the person's sentence.

5. Argument in Support

According to Prison Law Office:

> In 2017 and 2019, the Legislature repealed sentence enhancements that added three years of incarceration for each prior drug offense (SB 180 Mitchell) and one year for each prior prison or felony jail term (SB 136 Wiener). However, these reforms apply only to cases filed after these bills became law. Those who were convicted prior to their enactment continue to be separated from their families and communities. SB 483 would ensure the retroactive repeal of these sentence enhancements, ensuring that no one is serving time based on rulings that California has already deemed unfair and ineffective.
>
> SB 483 continues to undo the decades of harm perpetrated by the sustaining ideology that excessive sentences deter crime. Sentencing enhancements have not made our communities safer. Instead, they put significant financial burdens on taxpayers and families statewide—each additional year in prison costs over $112,600 per person. Retroactively eliminating sentence enhancements would decrease spending currently crippling state and local budgets, and allow for the meaningful reinvestment in desperately needed community services and programs.

> Moreover, long prison and jail sentences have been proven injurious to system-impacted people and destabilizing to their families and communities—particularly for Black, Latinx, and Native Americans in the US and California. Sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities. The longer the sentence, the more severe these problems.
>
> The retroactive RISE Act is another step forward in sustaining legislative momentum to eliminate unjust sentence enhancements and end wasteful incarceration spending in favor of community reinvestment.

6. Argument in Opposition

California Narcotic Officers Association opposes this bill stating:

> The California Narcotic Officers Association regrets that they must oppose Senate Bill 483. Senate Bill 483 would undermine the ability to hold career drug traffickers accountable. Career drug dealers are the equivalent of someone who makes a career of poisoning the community with life threatening substances.

-- END –

United States Code Annotated
Constitution of the United States
Annotated
Amendment VIII. Excessive Bail, Fines, Punishments

U.S.C.A. Const. Amend. VIII

Amendment VIII. Excessive Bail, Fines, Punishments

Currentness

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S.C.A. Const. Amend. VIII, USCA CONST Amend. VIII
Current through P.L. 117-228. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, USCA CONST Amend. XIV
Current through P.L. 117-228. Some statute sections may be more current, see credits for details.

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article V. Executive (Refs & Annos)

West's Ann.Cal.Const. Art. 5, § 13

§ 13. Attorney General; law enforcement

Currentness

Sec. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

Credits
(Adopted Nov. 8, 1966. Amended Nov. 5, 1974.)

West's Ann. Cal. Const. Art. 5, § 13, CA CONST Art. 5, § 13
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Annotated California Codes
Constitution of the State of California 1879 (Refs & Annos)
Article Xiiib. Government Spending Limitation (Refs & Annos)

West's Ann.Cal.Const. Art. 13B, § 6

§ 6. New programs or services mandated by Legislature or state agencies; subvention; appropriation of funds or suspension of operation

Effective: June 4, 2014

Currentness

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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

(b)(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2004-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law.

(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.

(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Credits

(Adopted Nov. 6, 1979. Amended by Stats.2004, Res. c. 133 (S.C.A.4) (Prop.1A, approved Nov. 2, 2004, eff. Nov. 3, 2004); Stats.2013, Res. c. 123 (S.C.A.3), § 2 (Prop. 42, approved June 3, 2014, eff. June 4, 2014).)

West's Ann. Cal. Const. Art. 13B, § 6, CA CONST Art. 13B, § 6
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Ann.Cal.Gov.Code § 17500

§ 17500. Legislative findings and declarations

Effective: January 1, 2005

Currentness

The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIIIB of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.

It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIIIB of the California Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 of Article XIIIB of the California Constitution.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.2004, c. 890 (A.B.2856), § 2.)

West's Ann. Cal. Gov. Code § 17500, CA GOVT § 17500
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 2. General Provisions (Refs & Annos)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

Currentness

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

Credits
(Added by Stats.1984, c. 1459, § 1.)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

Currentness

The commission shall not find costs mandated by the state, as defined in 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:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) 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.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

West's Ann.Cal.Gov.Code § 17564

§ 17564. Claims under specified dollar amount; claims for direct and indirect costs

Effective: January 1, 2008

Currentness

(a) No claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars ($1,000). However, a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines or reasonable reimbursement methodology and claiming instructions.

(c) Claims for direct and indirect costs filed pursuant to a legislatively determined mandate pursuant to Section 17573 shall be filed and paid in the manner prescribed in the Budget Act or other bill, or claiming instructions, if applicable.

Credits

(Added by Stats.1986, c. 879, § 9. Amended by Stats.1992, c. 1041 (A.B.1690), § 4; Stats.1999, c. 643 (A.B.1679), § 6; Stats.2002, c. 1124 (A.B.3000), § 30.9, eff. Sept. 30, 2002; Stats.2004, c. 890 (A.B.2856), § 23; Stats.2007, c. 329 (A.B.1222), § 9.)

West's Ann. Cal. Gov. Code § 17564, CA GOVT § 17564
Current with all laws through Ch. 997 of 2022 Reg.Sess.

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West's Annotated California Codes
Government Code (Refs & Annos)
Title 3. Government of Counties (Refs & Annos)
Division 2. Officers (Refs & Annos)
Part 3. Other Officers (Refs & Annos)
Chapter 1. District Attorney (Refs & Annos)
Article 1. Duties as Public Prosecutor (Refs & Annos)

West's Ann.Cal.Gov.Code § 26500

§ 26500. Public prosecutor

Currentness

The district attorney is the public prosecutor, except as otherwise provided by law.

The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.

Credits

(Added by Stats.1947, c. 424, p. 1139, § 1. Amended by Stats.1980, c. 1094, p. 3507, § 1.)

West's Ann. Cal. Gov. Code § 26500, CA GOVT § 26500
Current with all laws through Ch. 997 of 2022 Reg.Sess.

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West's Annotated California Codes
Government Code (Refs & Annos)
Title 3. Government of Counties (Refs & Annos)
Division 2. Officers (Refs & Annos)
Part 3. Other Officers (Refs & Annos)
Chapter 13. Public Defender (Refs & Annos)

West's Ann.Cal.Gov.Code § 27706

§ 27706. Duties

Effective: July 1, 2021
Currentness

The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

(h) This section shall become operative July 1, 2021.

Credits

(Added by Stats.2020, c. 92 (A.B.1869), § 13, eff. Sept. 18, 2020, operative July 1, 2021.)

Notes of Decisions (47)

West's Ann. Cal. Gov. Code § 27706, CA GOVT § 27706
Current with all laws through Ch. 997 of 2022 Reg.Sess.

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West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure
Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment
Chapter 4.5. Trial Court Sentencing (Refs & Annos)
Article 1.5. Recall and Resentencing (Refs & Annos)

West's Ann.Cal.Penal Code § 1172.7
Formerly cited as CA PENAL § 1171

§ 1172.7. Invalidity of sentence enhancements imposed pursuant to Health and Safety Code § 11370.2 prior to January 1, 2018; identification of persons serving enhanced sentences; review and resentencing; waiver of resentencing hearing

Effective: June 30, 2022

Currentness

(a) Any sentence enhancement that was imposed prior to January 1, 2018, pursuant to Section 11370.2 of the Health and Safety Code, except for any enhancement imposed for a prior conviction of violating or conspiring to violate Section 11380 of the Health and Safety Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentence enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d)(1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other 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 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 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.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

Credits

(Formerly § 1171, added by Stats.2021, c. 728 (S.B.483), § 2, eff. Jan. 1, 2022. Renumbered § 1172.7 and amended by Stats.2022, c. 58 (A.B.200), § 11, eff. June 30, 2022.)

West's Ann. Cal. Penal Code § 1172.7, CA PENAL § 1172.7
Current with all laws through Ch. 997 of 2022 Reg.Sess.

West's Ann.Cal.Penal Code § 1172.75
Formerly cited as CA PENAL § 1171.1

§ 1172.75. Invalidity of sentence enhancements imposed pursuant to § 667.5 prior to January 1, 2020; identification of persons serving enhanced sentences; review and resentencing; waiver of resentencing hearing

Effective: June 30, 2022

Currentness

(a) Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving

a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d)(1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other 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 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 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.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

Credits

(Formerly § 1171.1, added by Stats.2021, c. 728 (S.B.483), § 3, eff. Jan. 1, 2022. Renumbered § 1172.75 and amended by Stats.2022, c. 58 (A.B.200), § 12, eff. June 30, 2022.)

West's Ann. Cal. Penal Code § 1172.75, CA PENAL § 1172.75
Current with all laws through Ch. 997 of 2022 Reg.Sess.

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83 S.Ct. 792
Supreme Court of the United States

Clarence Earl GIDEON, Petitioner,
v.
Louie L. WAINWRIGHT, Director, Division of Corrections.

No. 155.
|
Argued Jan. 15, 1963.
|
Decided March 18, 1963.

Synopsis
The petitioner brought habeas corpus proceedings against the Director of the Division of Corrections. The Florida Supreme Court, 135 So.2d 746, denied all relief, and the petitioner brought certiorari. The United States Supreme Court, Mr. Justice Black, held that the Sixth Amendment to the federal Constitution providing that in all criminal prosecutions the accused shall enjoy right to assistance of counsel for his defense is made obligatory on the states by the Fourteenth Amendment, and that an indigent defendant in a criminal prosecution in a state court has the right to have counsel appointed for him.

Judgment reversed and cause remanded to Florida Supreme Court for further action.

Attorneys and Law Firms

****792 *335** Abe Fortas, Washington, D.C., for petitioner.

Bruce R. Jacob, Tallahassee, Fla., for respondent.

J. Lee Rankin, New York City, for American Civil Liberties Union, amicus curiae, by special leave of Court.

George D. Mentz, Montgomery, Ala., for State of Alabama, amicus curiae.

Opinion

***336** Mr. Justice BLACK delivered the opinion of the Court.

Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under ***337** Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:
'The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

'The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel.'

Put to trial before a jury, Gideon conducted his defense about as well as could ****793** be expected from a layman. He made an opening statement to the jury, cross-examined the State's witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument 'emphasizing his innocence to the charge contained in the Information filed in this case.' The jury returned a verdict of guilty, and petitioner was sentenced to serve five years in the state prison. Later, petitioner filed in the Florida Supreme Court this habeas corpus petition attacking his conviction and sentence on the ground that the trial court's refusal to appoint counsel for him denied him rights 'guaranteed by the Constitution and the Bill of Rights by the United States Government.'[1] Treating the petition for habeas corpus as properly before it, the State Supreme Court, 'upon consideration thereof' but without an opinion, denied all relief. Since 1942, when Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595, was decided by a divided ***338** Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts.[2] To give this problem another review here, we granted certiorari. 370 U.S. 908, 82 S.Ct. 1259, 8 L.Ed.2d 403. Since Gideon was proceeding in forma pauperis, we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: 'Should this Court's holding in Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595, be reconsidered?'

[1] Later in the petition for habeas corpus, signed and apparently prepared by petitioner himself, he stated, 'I, Clarence Earl Gideon, claim that I was denied the rights of the 4th, 5th and 14th amendments of the Bill of Rights.'

[2] Of the many such cases to reach this Court, recent examples are Carnley v. Cochran, 369 U.S. 506, 82 S.Ct. 884, 8 L.Ed.2d 70 (1962); Hudson v. North Carolina, 363 U.S. 697, 80 S.Ct. 1314, 4 L.Ed.2d 1500 (1960); Moore v. Michigan, 355 U.S. 155, 78 S.Ct. 191, 2 L.Ed.2d 167 (1957). Illustrative cases in the state courts are Artrip v. State, 41 Ala.App. 492, 136 So.2d 574 (Ct.App.Ala.1962); Shaffer v. Warden, 211 Md. 635, 126 A.2d 573 (1956). For examples of commentary, see Allen, The Supreme Court, Federalism, and State Systems of Criminal Justice, 8 De Paul L.Rev. 213 (1959); Kamisar, The Right to Counsel and the Fourteenth Amendment: A Dialogue on 'The Most Pervasive Right' of an Accused, 30 U. of Chi.L.Rev. 1 (1962); The Right to Counsel, 45 Minn.L.Rev. 693 (1961).

I.

The facts upon which Betts claimed that he had been unconstitutionally denied the right to have counsel appointed to assist him are strikingly like the facts upon which Gideon here bases his federal constitutional claim. Betts was indicted for robbery in a Maryland state court. On arraignment, he told the trial judge of his lack of funds to hire a lawyer and asked the court to appoint one for him. Betts was advised that it was not the practice in that county to appoint counsel for indigent defendants except in murder and rape cases. He then pleaded not guilty, had witnesses summoned, cross-examined the State's witnesses, examined his own, and chose not to testify himself. He was found guilty by the judge, sitting without a jury, and sentenced to eight years in prison. ***339** Like Gideon, Betts sought release by habeas corpus, alleging that he had been denied the right to assistance of counsel in violation of the Fourteenth Amendment. Betts was denied any relief, and on review this Court affirmed. It was held that a refusal to appoint counsel for an indigent defendant charged with a felony did not necessarily violate the Due Process Clause of the Fourteenth Amendment, which for reasons given the Court deemed to be the only applicable federal constitutional provision. The Court said:

'Asserted denial (of due process) is to be tested by an appraisal of ****794** the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial.' 316 U.S., at 462, 62 S.Ct., at 1256, 86 L.Ed. 1595.

Treating due process as 'a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights,' the Court held that refusal to appoint counsel under the particular facts and circumstances in the Betts case was not so 'offensive to the common and fundamental ideas of fairness' as to amount to a denial of due process. Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the Betts v. Brady holding if left standing would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full reconsideration we conclude that Betts v. Brady should be overruled.

II.

The Sixth Amendment provides, 'In all criminal prosecutions, the accused shall enjoy the right * * * to have the Assistance of Counsel for his defence.' We have construed ***340** this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived.[3] Betts argued that this right is extended to indigent defendants in state courts by the Fourteenth Amendment. In response the Court stated that, while the Sixth Amendment laid down 'no rule for the conduct of the states, the question recurs whether the constraint laid by the amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment.' 316 U.S., at 465, 62 S.Ct., at 1257, 86 L.Ed. 1595. In order to decide whether the Sixth Amendment's guarantee of counsel is of this fundamental nature, the Court in Betts set out and considered '(r)elevant data on the subject * * * afforded by constitutional and statutory provisions subsisting in the colonies and the states prior to the inclusion of the Bill of Rights in the national Constitution, and in the constitutional, legislative, and judicial history of the states to the present date.' 316 U.S., at 465, 62 S.Ct., at 1257. On the basis of this historical data the Court concluded that 'appointment of counsel is not a fundamental right,

essential to a fair trial.' 316 U.S. at 471, 62 S.Ct., at 1261. It was for this reason the Betts Court refused to accept the contention that the Sixth Amendment's guarantee of counsel for indigent federal defendants was extended to or, in the words of that Court, 'made obligatory upon the states by the Fourteenth Amendment'. Plainly, had the Court concluded that appointment of counsel for an indigent criminal defendant was 'a fundamental right, essential to a fair trial,' it would have held that the Fourteenth Amendment requires appointment of counsel in a state court, just as the Sixth Amendment requires in a federal court.

[3] Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938).

***341** We think the Court in Betts had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. This same principle was recognized, explained, and applied in Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), a case upholding the right of counsel, where the Court held that despite sweeping language to the contrary in ****795** Hurtado v. California, 110 U.S. 516, 4 S.Ct. 292, 28 L.Ed. 232 (1884), the Fourteenth Amendment 'embraced' those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions," even though they had been 'specifically dealt with in another part of the Federal Constitution.' 287 U.S., at 67, 53 S.Ct., at 63, 77 L.Ed. 158. In many cases other than Powell and Betts, this Court has looked to the fundamental nature of original Bill of Rights guarantees to decide whether the Fourteenth Amendment makes them obligatory on the States. Explicitly recognized to be of this 'fundamental nature' and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances.[4] For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the States the Fifth Amendment's command that ***342** private property shall not be taken for public use without just compensation,[5] the Fourth Amendment's prohibition of unreasonable searches and seizures,[6] and the Eighth's ban on cruel and unusual punishment.[7] On the other hand, this Court in Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288 (1937), refused to hold that the Fourteenth Amendment made the double jeopardy provision of the Fifth Amendment obligatory on the States. In so refusing, however, the Court, speaking through Mr. Justice Cardozo, was careful to emphasize that 'immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states' and that guarantees 'in their origin * * * effective against the federal government alone' had by prior cases 'been taken over from the earlier articles of the Federal Bill of Rights and brought within the Fourteenth Amendment by a process of absorption.' 302 U.S., at 324—325, 326, 58 S.Ct., at 152.

[4] E.g., Gitlow v. New York, 268 U.S. 652, 666, 45 S.Ct. 625, 629, 69 L.Ed. 1138 (1925) (speech and press); Lovell v. City of Griffin, 303 U.S. 444, 450, 58 S.Ct. 666, 668, 82 L.Ed. 949 (1938) (speech and press); Staub v. City of Baxley, 355 U.S. 313, 321, 78 S.Ct. 277, 281, 2 L.Ed.2d 302 (1958) (speech); Grosjean v. American Press Co., 297 U.S. 233, 244, 56 S.Ct. 444, 446, 80 L.Ed. 660 (1936) (press); Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940) (religion); De Jonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 259, 81 L.Ed. 278 (1937) (assembly); Shelton v. Tucker, 364 U.S. 479, 486, 488, 81 S.Ct. 247, 251, 252, 5 L.Ed.2d 231 (1960) (association); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 296, 81 S.Ct. 1333, 1335, 6 L.Ed.2d 301 (1961) (association); Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680 (1963) (speech, assembly, petition for redress of grievances).

[5] E.g., Chicago, B. & Q.R. Co. v. Chicago, 166 U.S. 226, 235—241, 17 S.Ct. 581, 584—586, 41 L.Ed. 979 (1897); Smyth v. Ames, 169 U.S. 466, 522—526, 18 S.Ct. 418, 424—426, 42 L.Ed. 819 (1898).

[6] E.g., Wolf v. Colorado, 338 U.S. 25, 27—28, 69 S.Ct. 1359, 1361, 93 L.Ed. 1782 (1949); Elkins v. United States, 364 U.S. 206, 213, 80 S.Ct. 1437, 1441, 4 L.Ed.2d 1669 (1960); Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961).

[7] Robinson v. California, 370 U.S. 660, 666, 82 S.Ct. 1417, 1420, 8 L.Ed.2d 758 (1962).

We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before Betts v. Brady, this Court, after full consideration of all the historical data examined ****796** in Betts, had unequivocally declared that 'the right to the aid of ***343** counsel is of this fundamental character.' Powell v. Alabama, 287 U.S. 45, 68, 53 S.Ct. 55, 63, 77 L.Ed. 158 (1932). While the Court at the close of its Powell opinion did by its language, as this Court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable. Several years later, in 1936, the Court reemphasized what it had said about the fundamental nature of the right to counsel in this language:

'We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.' Grosjean v. American Press Co., 297 U.S. 233, 243—244, 56 S.Ct. 444, 446, 80 L.Ed. 660 (1936).

And again in 1938 this Court said:

'(The assistance of counsel) is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. * * * The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not 'still be done.' Johnson v. Zerbst, 304 U.S. 458, 462, 58 S.Ct. 1019, 1022, 82 L.Ed. 1461 (1938). To the same effect, see Avery v. Alabama, 308 U.S. 444, 60 S.Ct. 321, 84 L.Ed. 377 (1940), and Smith v. O'Grady, 312 U.S. 329, 61 S.Ct. 572, 85 L.Ed. 859 (1941).

In light of these and many other prior decisions of this Court, it is not surprising that the Betts Court, when faced with the contention that 'one charged with crime, who is unable to obtain counsel, must be furnished counsel by the state,' conceded that '(e)xpressions in the opinions of this court lend color to the argument * * *' 316 U.S., at 462—463, 62 S.Ct., at 1256, 86 L.Ed. 1595. The fact is that in deciding as it did—that 'appointment of counsel is not a fundamental right, ***344** essential to a fair trial'—the Court in Betts v. Brady made an abrupt break with its own well-considered precedents. In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide—spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the ****797** poor man charged with crime has to face his accusers without a lawyer to assist him. A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in Powell v. Alabama:

'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be ***345** heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.' 287 U.S., at 68—69, 53 S.Ct., at 64, 77 L.Ed. 158.

The Court in Betts v. Brady departed from the sound

wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should now be overruled. We agree.

The judgment is reversed and the cause is remanded to the Supreme Court of Florida for further action not inconsistent with this opinion.

Reversed.

Mr. Justice DOUGLAS.

While I join the opinion of the Court, a brief historical resume of the relation between the Bill of Rights and the first section of the Fourteenth Amendment seems pertinent. Since the adoption of that Amendment, ten Justices have felt that it protects from infringement by the States the privileges, protections, and safeguards granted by the Bill of Rights.

***346** Justice Field, the first, Justice Harlan, and probably Justice Brewer, took that position in O'Neil v. Vermont, 144 U.S. 323, 362—363, 370—371, 12 S.Ct. 693, 708, 711, 36 L.Ed. 450, as did Justices Black, Douglas, Murphy and Rutledge in Adamson v. California, 332 U.S. 46, 71—72, 124, 67 S.Ct. 1672, 1683, 1686, 91 L.Ed. 1903. And see Poe v. Ullman, 367 U.S. 467, 515—522, 81 S.Ct. 1752, 6 L.Ed.2d 989 (dissenting opinion). That view was also expressed by Justices Bradley and Swayne in the Slaughter-House Cases, 16 Wall. 36, 118—119, 122, 21 L.Ed. 394, and seemingly was accepted by Justice Clifford when he dissented with Justice Field in Walker v. Sauvinet, 92 U.S. 90, 92, 23 L.Ed. 678.[1] Unfortunately it has never commanded a Court. ****798** Yet, happily, all constitutional questions are always open. Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188. And what we do today does not foreclose the matter.

[1] Justices Bradley, Swayne and Field emphasized that the first eight Amendments granted citizens of the United States certain privileges and immunities that were protected from abridgment by the States by the Fourteenth Amendment. See Slaughter-House Cases, supra, 16 Wall. at 118—119, 21 L.Ed. 394; O'Neil v. Vermont, supra, 144 U.S. at 363, 12 S.Ct. 708, 36 L.Ed. 450. Justices Harlan and Brewer accepted the same theory in the O'Neil case (see id., at 370—371, 12 S.Ct. at 711), though Justice Harlan indicated that all 'persons,' not merely 'citizens,' were given this protection. Ibid. In Twining v. New Jersey, 211 U.S. 78, 117, 29 S.Ct. 14, 27, 53 L.Ed. 97, Justice Harlan's position was made clear:
'In my judgment, immunity from self-incrimination is protected against hostile state action, not only by * * * (the Privileges and Immunities Clause), but (also) by * * * (the Due Process Clause).'
Justice Brewer, in joining the opinion of the Court, abandoned the view that the entire Bill of Rights applies to the States in Maxwell v. Dow, 176 U.S. 581, 20 S.Ct. 448, 44 L.Ed. 597.

My Brother HARLAN is of the view that a guarantee of the Bill of Rights that is made applicable to the States by reason of the Fourteenth Amendment is a lesser version of that same guarantee as applied to the Federal Government.[2] Mr. Justice Jackson shared that view.[3]

[2] See Roth v. United States, 354 U.S. 476, 501, 506, 77 S.Ct. 1304, 1317, 1320, 1 L.Ed.2d 1498; Smith v. California, 361 U.S. 147, 169, 80 S.Ct. 215, 227, 4 L.Ed.2d 205.

[3] Beauharnais v. Illinois, 343 U.S. 250, 288, 72 S.Ct. 725, 746, 96 L.Ed. 919. Cf. the opinions of Justices Holmes and Brandeis in Gitlow v. New York, 268 U.S. 652, 672, 45 S.Ct. 625, 632, 69 L.Ed. 1138, and Whitney v. California, 274 U.S. 357, 372, 47 S.Ct. 641, 647, 71 L.Ed. 1095.

***347** But that view has not prevailed[4] and rights protected against state invasion by the Due Process Clause of the Fourteenth Amendment are not watered-down versions of what the Bill of Rights guarantees.

[4] The cases are collected by Mr. Justice Black in Speiser v. Randall, 357 U.S. 513, 530, 78 S.Ct. 1332, 1552, 2 L.Ed.2d 1460. And see, Ohio ex rel. Eaton v. Price, 364 U.S. 263, 274—276, 80 S.Ct. 1463, 1469—1470, 4 L.Ed.2d 1708.

Mr. Justice CLARK, concurring in the result.

In Bute v. Illinois, 333 U.S. 640, 68 S.Ct. 763, 92 L.Ed. 986 (1948) this Court found no special circumstances requiring the appointment of counsel but stated that 'if these charges had been capital charges, the court would have been required, both by the state statute and the decisions of this Court interpreting the Fourteenth Amendment, to take some such steps.' Id., at 674, 68 S.Ct., at 780. Prior to that case I find no language in any cases in this Court indicating that appointment of counsel in all capital cases was required by the Fourteenth Amendment.[1] At the next Term of the Court Mr. Justice Reed revealed that the Court was divided as to noncapital cases but that 'the due process clause * * * requires counsel for all persons charged with serious crimes * * *.' Uveges v. Pennsylvania, 335 U.S. 437, 441, 69 S.Ct. 184, 186, 93 L.Ed. 127 (1948). Finally, in Hamilton v. Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961), we said that '(w)hen one pleads to a capital charge without benefit of counsel, we do not stop to determine whether prejudice resulted.' Id., at 55, 82 S.Ct., at 159.

[1] It might, however, be said that there is such an implication in Avery v. Alabama, 308 U.S. 444, 60 S.Ct. 321, 84 L.Ed. 377 (1940), a capital case in which counsel had been appointed but in which the petitioner claimed a denial of 'effective' assistance. The Court in affirming noted that '(h)ad petitioner been denied any representation of counsel at all, such a clear violation of the Fourteenth Amendment's guarantee of assistance of counsel would have required reversal of his conviction.' Id., at 445, 60 S.Ct. at 322. No 'special circumstances' were recited by the Court, but in citing Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), as authority for its dictum it appears that the Court did not rely solely on the capital nature of the offense.

***348** That the Sixth Amendment requires appointment of counsel in 'all criminal prosecutions' is clear, both from the language of the Amendment and from this Court's interpretation. See ****799** Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). It is equally clear from the above cases, all decided after Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942), that the Fourteenth Amendment requires such appointment in all prosecutions for capital crimes. The Court's decision today, then, does no more than erase a distinction which has no basis in logic and an increasingly eroded basis in authority. In Kinsella v. United States ex rel. Singleton, 361 U.S. 234, 80 S.Ct. 297, 4 L.Ed.2d 268 (1960), we specifically rejected any constitutional distinction between capital and noncapital offenses as regards congressional power to provide for court-martial trials of civilian dependents of armed forces personnel. Having previously held that civilian dependents could not constitutionally be deprived of the protections of Article III and the Fifth and Sixth Amendments in capital cases, Reid v. Covert, 354 U.S. 1, 77 S.Ct. 1222, 1 L.Ed.2d 1148 (1957), we held that the same result must follow in noncapital cases. Indeed, our opinion there foreshadowed the decision today,[2] as we noted that:

[2] Portents of today's decision may be found as well in Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), and Ferguson v. Georgia, 365 U.S. 570, 81 S.Ct. 756, 5 L.Ed.2d 783 (1961). In Griffin, a noncapital case, we held that the petitioner's constitutional rights were violated by the State's procedure, which provided free transcripts for indigent defendants only in capital cases. In Ferguson we struck down a state practice denying the appellant the effective assistance of counsel, cautioning that '(o)ur decision does not turn on the facts that the appellant was tried for a capital offense and was represented by employed counsel. The command of the Fourteenth Amendment also applies in the case of an accused tried for a noncapital offense, or represented by appointed counsel.' 365 U.S., at 596, 81 S.Ct., at 770.

'Obviously Fourteenth Amendment cases dealing with state action have no application here, but if ***349** they did, we believe that to deprive civilian dependents of the safeguards of a jury trial here * * * would be as invalid under those cases as it would be in cases of a capital nature.' 361 U.S., at 246—247, 80 S.Ct., at 304, 4 L.Ed.2d 268.

I must conclude here, as in Kinsella, supra, that the Constitution makes no distinction between capital and noncapital cases. The Fourteenth Amendment requires due process of law for the deprival of 'liberty' just as for deprival of 'life,' and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. How can the Fourteenth Amendment tolerate a procedure which it condemns in capital cases on the ground that deprival of liberty may be less onerous than deprival of life—a value judgment not universally accepted[3]—or that only the latter deprival is irrevocable? I can find no acceptable rationalization for such a result, and I therefore concur in the judgment of the Court.

[3] See, e.g., Barzun, In Favor of Capital Punishment, 31 American Scholar 181, 188—189 (1962).

Mr. Justice HARLAN, concurring.

I agree that Betts v. Brady should be overruled, but consider it entitled to a more respectful burial than has been accorded, at least on the part of those of us who were not on the Court when that case was decided.

I cannot subscribe to the view that Betts v. Brady represented 'an abrupt break with its own well-considered precedents.' Ante, p. 796. In 1932, in Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, a capital case, this Court declared that under the particular facts there presented—'the ignorance and illiteracy of the defendants, their youth, ****800** the circumstances of public hostility * * * and above all that they stood in deadly peril of their lives' (287 U.S., at 71, 53 S.Ct., at 65)—the state court had a duty to assign counsel for ***350** the trial as a necessary requisite of due process of law. It is evident that these limiting facts were not added to the opinion as an after-thought; they were repeatedly emphasized, see 287 U.S., at 52, 57—58, 71, 53 S.Ct., at 58, 59—60, 65 and were clearly regarded as important to the result.

Thus when this Court, a decade later, decided Betts v. Brady, it did no more than to admit of the possible existence of special circumstances in noncapital as well as capital trials, while at the same time insisting that such circumstances be shown in order to establish a denial of due process. The right to appointed counsel had been recognized as being considerably broader in federal prosecutions, see Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, but to have imposed these requirements on the States would indeed have been 'an abrupt break' with the almost immediate past. The declaration that the right to appointed counsel in state prosecutions, as established in Powell v. Alabama, was not limited to capital cases was in truth not a departure from, but an extension of, existing precedent.

The principles declared in Powell and in Betts, however, have had a troubled journey throughout the years that have followed first the one case and then the other. Even by the time of the Betts decision, dictum in at least one of the Court's opinions had indicated that there was an absolute right to the services of counsel in the trial of state capital cases.[1] Such dicta continued to appear in subsequent decisions,[2] and any lingering doubts were finally eliminated by the holding of Hamilton v. Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114.

[1] Avery v. Alabama, 308 U.S. 444, 445, 60 S.Ct. 321, 84 L.Ed. 377.

[2] E.g., Bute v. Illinois, 333 U.S. 640, 674, 68 S.Ct. 763, 780, 92 L.Ed. 986; Uveges v. Pennsylvania, 335 U.S. 437, 441, 69 S.Ct. 184, 185, 93 L.Ed. 127.

In noncapital cases, the 'special circumstances' rule has continued to exist in form while its substance has been substantially and steadily eroded. In the first decade after Betts, there were cases in which the Court ***351** found special circumstances to be lacking, but usually by a sharply divided vote.[3] However, no such decision has been cited to us, and I have found none, after Quicksall v. Michigan, 339 U.S. 660, 70 S.Ct. 910, 94 L.Ed. 1188 decided in 1950. At the same time, there have been not a few cases in which special circumstances were found in little or nothing more than the 'complexity' of the legal questions presented, although those questions were often of only routine difficulty.[4] The Court has come to recognize, in other words, that the mere existence of a serious criminal charge constituted in itself special circumstances requiring the services of counsel at trial. In truth the Betts v. Brady rule is no longer a reality.

[3] E.g., Foster v. Illinois, 332 U.S. 134, 67 S.Ct. 1716, 91 L.Ed. 1955; Bute v. Illinois, 333 U.S. 640, 68 S.Ct. 763, 92 L.Ed. 986; Gryger v. Burke, 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683.

[4] E.g., Williams v. Kaiser, 323 U.S. 471, 65 S.Ct. 363, 89 L.Ed. 398; Hudson v. North Carolina, 363 U.S. 697, 80 S.Ct. 1314, 4 L.Ed.2d 1500; Chewning v. Cunningham, 368 U.S. 443, 82 S.Ct. 498, 7 L.Ed.2d 442.

This evolution, however, appears not to have been fully recognized by many state courts, in this instance charged with the front-line responsibility for the enforcement of constitutional rights.[5] To continue ****801** a rule which is honored by this Court only with lip service is not a

healthy thing and in the long run will do disservice to the federal system.

[5] See, e.g., Commonwealth ex rel. Simon v. Maroney, 405 Pa. 562, 176 A.2d 94 (1961); Shaffer v. Warden, 211 Md. 635, 126 A.2d 573 (1956); Henderson v. Bannan, 256 F.2d 363 (C.A.6th Cir. 1958).

The special circumstances rule has been formally abandoned in capital cases, and the time has now come when it should be similarly abandoned in noncapital cases, at least as to offenses which, as the one involved here, carry the possibility of a substantial prison sentence. (Whether the rule should extend to all criminal cases need not now be decided.) This indeed does no more than to make explicit something that has long since been foreshadowed in our decisions.

***352** In agreeing with the Court that the right to counsel in a case such as this should now be expressly recognized as a fundamental right embraced in the Fourteenth Amendment, I wish to make a further observation. When we hold a right or immunity, valid against the Federal Government, to be 'implicit in the concept of ordered liberty'[6] and thus valid against the States, I do not read our past decisions to suggest that by so holding, we automatically carry over an entire body of federal law and apply it in full sweep to the States. Any such concept would disregard the frequently wide disparity between the legitimate interests of the States and of the Federal Government, the divergent problems that they face, and the significantly different consequences of their actions. Cf. Roth v. United States, 354 U.S. 476, 496—508, 77 S.Ct. 1304, 1315—1321, 1 L.Ed.2d 1498 (separate opinion of this writer). In what is done today I do not understand the Court to depart from the principles laid down in Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, 82 L.Ed. 288, or to embrace the concept that the Fourteenth Amendment 'incorporates' the Sixth Amendment as such.

[6] Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288.

On these premises I join in the judgment of the Court.

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02 Cal. Daily Op. Serv. 6096, 2002 Daily Journal D.A.R. 7615
Supreme Court of California

THE PEOPLE, Plaintiff and Respondent,
v.
TIMOTHY CRAYTON, Defendant and Appellant.
In re TIMOTHY CRAYTON on Habeas Corpus.

No. S085780.
July 8, 2002.

SUMMARY

A jury convicted defendant of forcible oral copulation, kidnapping for the purpose of robbery, first degree robbery, assault with intent to commit a felony, possession of a firearm by a felon, assault with a deadly weapon and by means of force likely to cause great bodily injury, and making terrorist threats. The jury found special allegations to be true, and defendant was found to have suffered several prior convictions. Before the preliminary hearing in municipal court, defendant was advised of his right to the assistance of counsel and he chose to waive that right. When defendant subsequently appeared before the same judge in superior court for felony arraignment, the trial court failed to readvise defendant of his right to counsel and failed to take a new waiver of that right. (Superior Court of Los Angeles County, No. SA030131, Bernard J. Kamins, Judge.) The Court of Appeal, Second Dist., Div. Four, Nos. B125826 and B136548, corrected the sentence and otherwise affirmed the judgment.

The Supreme Court affirmed. The court held that although the trial court erred in failing to readvise defendant of his right to counsel at arraignment in superior court and to obtain a new waiver of that right, the error was not of federal constitutional magnitude, and the prejudicial error standard applicable to federal constitutional error did not apply. While the U.S. Const., 6th Amend., right to counsel applies at all critical stages of the prosecution, once the assistance of counsel in court has been competently waived, a new waiver need not be obtained at every subsequent court appearance by the defendant. Defendant in this case was clearly and fully admonished of the risks involved in representing himself at both the preliminary hearing and trial stages, and he nonetheless elected to represent himself throughout the proceedings; the only error that occurred was the superior court's failure to readvise defendant of such risks prior to the commencement of trial. The court further held that although the trial court failed to comply with Pen. Code, § 987, subd. (a), when it failed to inform defendant of his right to ***347** appointed counsel and to obtain a waiver of that right at the time defendant was arraigned in superior court, the harmless error standard applied to the trial court's error. The error was not prejudicial, since there was no reasonable probability that defendant was unaware of his right to be represented by appointed counsel at trial or that he would have accepted the appointment of counsel had the court made the statutorily required inquiry at arraignment. (Opinion by George, C. J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

([1a], [1b])
Criminal Law § 93--Rights of Accused--Aid of Counsel--Failure to Obtain Defendant's Waiver in Superior Court--After Earlier Waiver in Municipal Court Before Same Judge--Federal Constitutional Error.
In a criminal prosecution for kidnapping and other offenses, the trial court's error in failing to readvise defendant of his right to counsel at arraignment in superior court and to obtain a new waiver of that right, after the same judge had advised him of his right to counsel and had taken his waiver before the preliminary hearing in municipal court, was not of federal constitutional magnitude, and the prejudicial error standard applicable to federal constitutional error did not apply. Federal authority holds that once a defendant gives a valid waiver, it continues through the duration of the proceedings unless it is withdrawn or is limited to a particular phase of the case. While the U.S. Const., 6th Amend., right to counsel applies at all critical stages of the prosecution, once the assistance of counsel in court has been competently waived, a new waiver need not be obtained at every subsequent court appearance by the defendant. Defendant in this case was clearly and fully admonished of the risks involved in representing himself at both the preliminary hearing and trial stages, and he nonetheless elected to represent himself throughout the proceedings; the only error that occurred was the superior court's failure to readvise defendant of such risks prior to the commencement of trial.

[See 5 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Trial, § 247 et seq.; West's Key Number Digest, Criminal Law 1166.10(2).]

([2])
Criminal Law § 77.2--Rights of Accused--Aid of Counsel--Advisement of Right--At Arraignment.
Under Pen. Code, § 987, the superior court is required to advise a defendant of his or her right to ***348** counsel in superior court whenever the defendant appears without counsel at the arraignment, even when the defendant previously has been advised of the right to counsel and has expressed an intention to waive counsel throughout the proceedings. Because the language of § 987 sets forth no exceptions, this rule applies even when the same judge presides in the municipal court and at trial in the superior court.

([3])
Criminal Law § 77--Rights of Accused--Aid of Counsel--Distinct Constitutional and Statutory Rights.
Regarding the right to counsel, criminal defendants enjoy two distinct rights: (1) a constitutional right to the assistance of counsel under U.S. Const., 6th Amend., which may be waived, and (2) a statutory right under Pen. Code, § 987, subd. (a), to be informed at arraignment in superior court of the right to counsel and to have counsel appointed. Although both provisions protect the right to counsel, they derive from different sources and are not coterminous.

([4])
Criminal Law § 93--Rights of Accused--Aid of Counsel--Waiver.
The U.S. Const., 6th Amend., right to the assistance of counsel applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake. The right to counsel may be waived by a defendant who wishes to proceed in propria persona. By such a waiver, a defendant surrenders many of the traditional benefits associated with the right to counsel. In view of these consequences, a knowing and intelligent waiver of the right to counsel is required before a criminal defendant is permitted to proceed in propria persona.

([5a], [5b])
Criminal Law § 93--Rights of Accused--Aid of Counsel--Failure to Obtain Defendant's Waiver in Superior Court--As Violation of State Statute-- Harmless Error Standard of Review.
In a criminal prosecution for kidnapping and other offenses, in which the trial court erred in failing to inform defendant of his right to appointed counsel and to obtain a waiver of that right at the time defendant was arraigned in superior court, pursuant to Pen. Code, § 987, subd. (a), after the same judge had advised him of his right to counsel and had taken his waiver before the preliminary hearing in municipal court, the harmless error standard applied to the trial court's error. When a defendant has been fully informed of the right to counsel at all stages of the proceedings (including trial), and voluntarily and knowingly has invoked the right to represent himself or herself throughout all the proceedings, the trial court's failure to provide a new advisement and obtain a renewed waiver at the arraignment, as required by ***349** Pen. Code, § 987, does not operate to terminate or revoke the defendant's validly invoked constitutional right to represent himself or herself at trial. In this case, the error was not prejudicial, since there was no reasonable probability that defendant was unaware of his right to be represented by appointed counsel at trial or that he would have accepted the appointment of counsel had the court made the statutorily required inquiry at arraignment. The trial court advised defendant at the outset of the proceedings of his right to counsel at all stages of the proceedings, including trial, but defendant's desire to represent himself was unwavering throughout the proceedings. (Disapproving, to the extent contrary, *People v. Sohrab* (1997) 59 Cal.App.4th 89 [68 Cal.Rptr.2d 749].)

([6])
Criminal Law § 644--Appellate Review--Miscarriage of Justice Standard-- Requirement of Prejudice.
Under the miscarriage of justice standard of Cal. Const., art. VI, § 13, a trial court's error generally is not reversible unless there is a reasonable probability that the defendant was prejudiced as a result of the error.

COUNSEL
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Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, Kenneth C. Byrne and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

GEORGE C. J.

In *People v. Sohrab* (1997) 59 Cal.App.4th 89, 95-102

[68 Cal.Rptr.2d 749], the Court of Appeal held that in a felony proceeding a defendant's waiver of the right to counsel in the municipal court did not encompass waiver of that right in proceedings subsequently conducted in the superior court, and that a trial court's error in failing to readvise the defendant and obtain a new waiver in the superior court was reversible per se. In the present case, by contrast, another Court of Appeal held under somewhat similar circumstances that a trial court's error in failing to readvise a defendant of his right to counsel and to obtain a new waiver at his ***350** superior court arraignment was not reversible per se, but instead required that its prejudicial effect be analyzed under the harmless error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 [299 P.2d 243] (*Watson*), that applies to most state law errors. (Cal. Const., art. VI, § 13.)

We granted review to resolve the conflict in the decisions of the Courts of Appeal.

As we shall explain more fully below, we agree with the holding of the Court of Appeal in the present case that when a defendant charged with a felony has been fully and adequately advised at the municipal court stage of the proceeding (or now at the equivalent stage in a unified superior court) of his or her right to counsel throughout the proceedings (including trial) and the defendant has waived counsel under circumstances that demonstrate an intention to represent himself or herself both at the preliminary hearing and at trial, a superior court's failure to readvise the defendant and obtain a new waiver of counsel at the defendant's arraignment on the information in superior court, although erroneous under the governing California statute, does not automatically require reversal of the ensuing judgment of conviction. We also agree with the Court of Appeal that the prejudicial effect of such error must be evaluated under the harmless error standard set forth in *Watson, supra*, 46 Cal.2d 818, 836, and further agree that, under the *Watson* standard, the superior court's error in the present case was nonprejudicial.[1] Accordingly, we conclude that the judgment of the Court of Appeal, upholding defendant's conviction, should be affirmed.

1 The relevant trial court proceedings in this case occurred prior to the unification of the municipal and superior courts. Since unification, the proceedings that formerly were held in municipal court now are held in superior court, but the relevant procedural steps in a felony proceeding—the filing of a complaint before a magistrate, followed by a preliminary examination and, if the defendant is held to answer, the filing of an information and arraignment of the defendant on the information before a superior court judge—remain the same. (See generally Recommendation: Trial Court Unification: Revision of Codes (July 1998) 28 Cal. Law Revision Com. Rep. (1998) pp. 66-68.) Because the relevant proceedings in this case preceded unification, our opinion discusses and analyzes the issue here with reference to the events that occurred in the municipal and superior courts. Our holding, however, applies as well to felony proceedings in a unified superior court—i.e., a superior court's failure, at the arraignment on the felony information, to readvise an unrepresented defendant of his or her right to counsel, as required by statute, is subject to the *Watson* prejudicial error standard.

I

A. *The Crimes*

A detailed description of the facts supporting the conviction of defendant Timothy Crayton is not essential to the resolution of the issues before us. ***351** Instead, we recite the brief factual summary set forth in the opinion rendered by the Court of Appeal: "[D]efendant accosted Ms. H. on the early morning of August 21, 1997, as she entered her car after purchasing rock cocaine in Venice. Ms. H. remained in his custody or under his control until the next day. Defendant ordered Ms. H. to drive as he directed, twice ordered her to withdraw money from automatic teller machines, beat her, and forced her to orally copulate him while he smoked the drugs that she had purchased. Defendant moved Ms. H. to several locations, the last of which was a house in Santa Monica where Irwin Campbell and Chanta Payne were present. They too became victims of defendant. After sharing rock cocaine with them and Ms. H., defendant became enraged at the three individuals. He accused all of them of stealing Ms. H.'s bank card and claimed that they all owed him money. Defendant pointed a shotgun at them, beat them, and threatened to kill all of them. Finally, he ordered the three to disrobe and lie in a pile, covered them with a blanket and chair, poured a liquid on them, and flicked a lighter. Defendant then sat down and fell asleep. Police were summoned and arrested defendant."

A jury convicted defendant of forcible oral copulation

(Pen. Code, § 288a, subd. (c)),[2] kidnapping for the purpose of robbery (§ 209, subd. (b)), two counts of first degree robbery (§ 211), assault with intent to commit a felony (§ 220), possession of a firearm by a felon (§ 12021, subd. (a)(1)), three counts of assault with a deadly weapon and by means of force likely to cause great bodily injury (§ 245, subd. (a)(1)), and three counts of making terrorist threats. (§ 422.)[3] Additionally, the jury found true the allegations that defendant was armed with a firearm on one robbery count (§ 12022, subd. (a)(1)) and personally used a firearm on the three assault-with-a-firearm counts (§ 12022.5, subds. (a) and (d)).

2 Subsequent statutory references are to the Penal Code, unless otherwise indicated.

3 The jury acquitted defendant of certain other charges not pertinent here.

The jury also found that defendant had suffered three prior convictions of the serious felony of robbery (§ 667, subd. (a)(1)), and found true the special allegations that defendant had suffered six prior serious and violent felony convictions of robbery and one of assault with a deadly weapon, within the meaning of sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i).

The trial court imposed a sentence pursuant to the "Three Strikes" law, added prison time for the special allegations and prior convictions, and ordered that the sentences be served consecutively. As a result, defendant's state prison sentence amounted to a total term of 510 years to life. The trial court also ordered that defendant pay a restitution fine in the amount of $10,000. ***352**

B. *Defendant's Self-representation*

Defendant represented himself at his preliminary hearing and at trial. He contends that the trial court committed reversible error in failing to readvise him of his right to counsel and in not obtaining a new waiver of that right at his arraignment in superior court. The pertinent circumstances relating to defendant's claim are as follows.

1. *The September 4, 1997, arraignment in municipal court*

On September 4, 1997, defendant was arraigned in the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, before the Honorable Hiroshi Fujisaki, a superior court judge sitting as magistrate. Defendant informed the court that he desired to represent himself. The court responded that "you're risking a lot if you don't have guidance of counsel." The court thereafter asked defendant whether he would permit the public defender's office to represent him. Defendant declined the court's offer, commenting: "I will stand on my *Faretta* [*v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed.2d 562]] rights and represent myself. I don't need the services of the public defender's office." The court informed defendant: "[Y]ou're entitled to have a lawyer represent you at *all stages* of the proceedings. If you don't have the money for a lawyer, the Court will appoint a lawyer to represent you at no charge to you." (Italics added.) Defendant replied: "I've elected to represent myself in pro per, your Honor." The court asked: "Do you wish to be your own attorney?" Defendant responded affirmatively.

The court thereafter inquired: "Do you understand if you choose to represent yourself, you are required to do everything that a lawyer would be required to do in representing you[?] That would include preparation of your defense, the cross examination of witnesses who would be called to testify against you. [¶] It would require the preparation of all the motions that you may need to make in writing, those that must be made in writing. You're going to be required to prepare subpoenas and to subpoena witnesses to appear in court on your behalf if you wish to offer any evidence. [¶] You will have to—be responsible for the *selection of a jury, selection of the jury instructions that will be presented to the jury*. You'd be responsible for the examination of witnesses, cross-examination of witnesses[,] making opening and closing statements. [¶] And if you should be convicted, [self-representation] would require you to prepare your own requests such as they may be ***353** with regard to your sentencing." (Italics added.) Defendant stated that he understood the court's admonitions.[4]

4 The trial court had observed that defendant was sitting in a wheelchair and that "you appear to be suffering from tremors." Defendant informed the court that his medical condition stemmed from "[t]oo many bullets. I have bullets in my spine. I've been shot up.... They're old gunshot wounds." He affirmed that he was not taking any medications.

The court reiterated: "You understand that you're not required to be your own attorney, that the Court will appoint a lawyer to represent you at public expense. That will be made available to you immediately if you wish to have the services of a lawyer. Do you understand that, sir?"

Defendant responded: "Yes, and I thank you for it, but I elect to stand on my [*Faretta*] rights at this time. I don't see any competent public defenders, you know, that I've met. Just don't strike me as, you know, able to go the whole road. So I can go to the penitentiary on my own. I don't need any help to go to prison."

The court observed: "Mr. Crayton, you seem to be knowledgeable about the law. You know something about the law?"

Defendant replied: "I know that justice requires truth, your Honor, and *I intend to lay the truth out before the jury and before the trier of fact in case we don't get to a jury*." (Italics added.) Defendant reiterated his familiarity with *Faretta v. California*, *supra*, 422 U.S. 806.

The court asked the prosecutor to recite the list of constitutional rights that defendant intended to waive. The following colloquy ensued:

Prosecutor: "Mr. Crayton, again, you have a right to have an attorney at all stages of the proceeding. Do you understand that?"

Defendant: "Yes, I do."

Prosecutor: "Do you give up the right to have a counsel, and you wish to assert your [*Faretta*] rights and represent yourself?"

Defendant: "That is correct."

Prosecutor: "You have a right to confront and cross-examine all the witnesses that would testify against you in this matter. Do you understand that?"

Defendant: "Yes, I do." ***354**

[¶] ... [¶]

Prosecutor: "If you don't have the money for an attorney, the Court will appoint you one. You understand that?"

Defendant: "Yes, I do."

Prosecutor: "And you still don't want an attorney?"

Defendant: "I have one."

Prosecutor: "Yourself."

Defendant: "Yes. Timothy Crayton is my attorney."

Prosecutor: "I'll just go through all the *Miranda* rights if he's going to make statements. Is that all right?"

The Court: "Yes."

Prosecutor: "Okay. You have the right to confront and cross-examine all the witnesses who would testify against you in any of these matters, be it at the preliminary hearing or at the trial. You understand that?"

Defendant: "Yes."

Prosecutor: "And you have the right to remain silent and the privilege against self-incrimination. Do you understand that?"

Defendant: "Yes."

The court thereafter gave defendant the following additional admonitions.

"You have the right to a trial by jury on this matter. At this stage, you are being arraigned, and you will be given a preliminary hearing, at which time, at the preliminary hearing, you have the right to be confronted by the witnesses, either directly or through the police officers testifying according to the Penal Code provisions allowing their testimony in lieu of the appearance of certain witnesses.

"At that preliminary hearing, you have the right to ask questions of the witnesses who are called, and you have the right to require that the prosecutor prove to the judge at the preliminary hearing that there is sufficient evidence to believe that you committed any of these offenses before you could be held to answer to stand trial in the superior court. ***355**

"If they cannot prove that you are the person who is charged in these offenses and that these offenses did occur, then the complaint must be dismissed. If the prosecutor proves these things, then you would be held to answer. Then you would be bought to the superior court within two weeks, 14 days, for arraignment again in the superior court, and then when you are arraigned in the superior court, you would be entitled to be brought to trial within 60 days from that arraignment date.

"If you're not brought to trial within that time, you have the right to have the case dismissed, unless you agree or you request a postponement that carries the case beyond that time.

"At the trial—as I said before, you have the right to trial by jury, if you wish it. The jury consists of 12 citizens selected by you and the prosecutor and the judge in a process called voir dire examination.

"*The jury will listen to the evidence presented to it by the prosecutor and any evidence that you may wish to offer, if you wish to offer any evidence.*

"*During that trial process*, you're going to have the obligation to protect yourself with regard to [r]ules of [e]vidence and the competency of witnesses. Since you're not a lawyer, I caution you that those rules are technical, and if you don't raise the objections, you may have given up the rights you may have under the [r]ules of [e]vidence, and evidence may come out *at the trial* that ordinarily a lawyer could keep out, but you would not have kept out because you may not have understood the [r]ules of [e]vidence.

"And you would not be able to later complain that you were ... inadequately represented by yourself because you chose to represent yourself. That's the problem with the *Faretta* right, you understand. If you choose to represent yourself and you do a bad job or an inadequate job, *you can't ask for a new trial because you did an inadequate job*.

"I'm not saying that you're going to do an inadequate job. I'm just saying that you're going to be stuck with what you do or don't do. Do you understand that, sir?" (Italics added.)

Defendant: "Yes I do. I understand. I might have a fool for a client, but in this case, I'd like to do that.... I don't need no help to go to prison. I can go to prison by myself.... I don't need assistance to go to prison."

The court thereafter provided further admonitions, as follows. ***356**

"Now, after we get to that point of *the trial* where you're presenting evidence if you want to and the prosecutor has presented the evidence, at the end of the case, you have the right to submit *jury instructions*.

"*Jury instructions are basically rules of law that you're asking the judge to present to the jury to use in deciding your case*. You would have the obligation on your side to prepare the instructions you want and to object to any of the instructions the prosecutor submits if you don't feel that they are proper instructions. Okay. And if you don't object, you've given up the right to appeal that.

"*When the verdict comes down, if it's adverse to you and you are convicted*, you have the right to be sentenced within 21 days. You also have the right to the preparation of a probation report in the sentencing.

"If—after a probation report is ordered, you have the right to present to the probation department any information that would be helpful with regard to your sentencing, whatever they're going to recommend. You ... have the right to input into the probation report." (Italics added.)

Defendant: "Yes, sir."

2. *The October 7, 1997, hearing*

At a hearing conducted on October 7, 1997, before the Honorable Bernard J. Kamins (a superior court judge who served as the magistrate presiding over defendant's preliminary hearing and as the judge who presided over defendant's trial in superior court), defendant raised a number of issues unrelated to the subject of the present appeal.[5] During this hearing, the court again offered to provide defendant with legal representation, as follows: "Mr. Crayton, you have chosen to represent yourself. [¶] ... [¶] If you wish to have a lawyer appointed, ... let me appoint a lawyer for you. And you have denied that request to me to assist you. [¶] ... If you have the chance to have an excellent lawyer represent you, and you're denying that request, or at least throwing it aside and now complaining it's too hard for you to represent yourself, that's really patently absurd, when you have the ability to ***357** have a lawyer helping you. [¶] So, you don't want that. [¶] I would even consider a court advisory lawyer for you, someone to assist you, and you [have] turned that down." In response, defendant reiterated his request for the "tools that I need" (i.e., a voice-activated computer or paralegal services); "when I get the tools, I'm fine."

5 These issues involved defendant's contentions that (1) he improperly had been denied access to a voice-activated computer or paralegal services that he claimed to need in view of his pro se status and his alleged physical disabilities, (2) the charges against him were subject to demurrer, and (3) he was entitled to a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 [84 Cal.Rptr.

156, 465 P.2d 44]. With regard to the latter issue, the court aptly characterized defendant's request for a *Marsden* hearing as "absurd": "That's for somebody who wants to fire their own lawyer .... Do you want to fire your lawyer? Your lawyer is you."

3. *The October 14-15, 1997, felony preliminary hearing*

The preliminary hearing in this case was conducted on October 14-15, 1997, before Judge Kamins, sitting in the capacity of a magistrate. At the conclusion of the People's presentation at the preliminary hearing, the court informed defendant: "The court has offered to have a lawyer represent you; if not, an advisory counsel; if not that, then legal runners. And you have not availed yourself of those items. [¶] Also if you would like an investigator, I would be glad to appoint an investigator for you at the court's expense. [¶] So right now, do you have any defense you wish to put on at this time?" Defendant responded: "My defense to the court's comments is too little too late."

4. *The October 29, 1997, arraignment in superior court*

At defendant's arraignment on October 29, 1997, held before Judge Kamins acting in his capacity as a superior court judge, the court invited defendant to enter a plea, to which defendant responded with a challenge to the proceedings, on the ground that "the court doesn't have jurisdiction." The court thereafter entered a plea of not guilty on defendant's behalf, set a trial date, and observed: "I would state that even though you are representing yourself and represent that you have handicaps that slow you up, you're one of the ... most naturally bright defendants that's been in front of me in many, many years. [¶] So, in spite of whatever handicaps you feel you have, your ability to address the court, write papers, argue your own motions, say the right things is good. [¶] And I would say that nothing is slowing you up from your ability to handle your own case. In fact, you're probably better than a lot of lawyers I've seen." The court did not provide any further advisement to defendant at that time regarding his right to counsel, nor did the court seek to obtain a new waiver of that right.

5. *The December 16, 1997, scheduled commencement of trial*

Defendant's trial was scheduled to commence on December 16, 1997. On that date, he sought and obtained a continuance. As to defendant's self-representation, the trial court observed: "The court ... asked you if you wanted any advisory counsel, and you turned that down." Defendant replied: "Advisory counsel can't help me, your honor." ***358**

6. *The April 20, 1998, actual commencement of trial*

On April 20, 1998, the trial court informed defendant that, based on the court's concern that defendant would not participate meaningfully at trial, it had appointed standby counsel, William Windon. Defendant objected, stating: "It won't be necessary. I've got a real good lawyer representing me, Timothy Crayton. [¶] ... [¶] I object to any standby counsel, because you're trying to take my pro per status. And that, that's not right, that's unfair. [¶] ... [¶] I'm defending Timothy Crayton the best way I can. And I think I'm doing a good job. And so I don't see where standby counsel would come in."

Although the trial court agreed as to defendant's competency to represent himself, it was not persuaded to withdraw its appointment of standby counsel to assist defendant should the need arise: "I know that you're a bright fellow. I've seen your legal work. And I do agree that you've done more than most lawyers would do, and phrased your legal motions in appropriate form, and been very competent. [¶] ... And I want you to have the best representation."

Defendant reaffirmed his desire and willingness to represent himself: "*Your Honor, I represented myself at four jury trials. I have never lost a jury trial. I've won all four jury trials.* [¶] ... *I know how to conduct myself at a trial.* I have a duty to my client to represent him to the best of my ability." (Italics added.) Defendant then moved to dismiss the charges "based on the grounds [among other reasons] that I've been denied the right of self-representation and effective meaningful self-representation ...." Defendant added: "I'm speaking under duress, under the threat of having my pro per status taken."

The trial court disagreed with defendant's characterization: "Mr. Crayton, I've not threatened to take

away your pro per status, only to have an attorney come in to take over the case if you don't represent your client to the best of your ability. [¶] If you're going to tune out, then I want a lawyer to step in. If you wish, and it's your conscious choice not to participate, and to just sit there, you know you may be right, and maybe I wouldn't bring in standby counsel at that point. But I'll ask you if you want me to bring in counsel." Defendant replied: "No I do not."[6] ***359**

6 The record indicates that on April 20, 1998, defendant also filed a motion to disqualify the trial court judge that included, among other assertions, an allegation that "[a]s a result of a direct telephone call from Chief Justice George of the California Supreme Court to Hon. Bernard J. Kamins the trial court has alternated from refusal to provide 'reasonable accommodations' to falsely posturing on the record appearing to issue (meaningless bad faith) orders for 'reasonable accommodations'...." At the April 20 proceeding, the trial court denied the motion and responded on the record in part: "I have not received a call from Justice George on this case, nor any case, nor for any reason at any time has Judge George [seen] fit to give me a buzz either at home or at court." Defendant has not questioned the accuracy of the trial court's statement in this regard, and has not raised any issue on appeal relating to this allegation.

C. *Defendant's Trial*

At trial, defendant represented himself capably, repeatedly drawing praise from the trial court regarding the quality of his self-representation. Throughout the trial, defendant refrained from relinquishing his defense to standby counsel, even after being reminded by the trial court that if, for some reason, defendant was unable to represent himself, standby counsel was available to take over the defense. After the jury returned its verdicts finding defendant guilty of most of the charged offenses, defendant stated that he desired to retain his propria persona status. As noted, the trial court entered judgment against defendant, sentencing him to a total term of 510 years to life in state prison.

D. *Defendant's Appeal*

Defendant filed a timely appeal, and the Court of Appeal corrected the sentence to reduce its length by 50 years, made other modifications not relevant here, and otherwise affirmed the judgment for reasons more fully set forth in the discussion below.[7]

7 At the same time, the Court of Appeal also denied defendant's petition for writ of habeas corpus.

Defendant thereafter filed a petition for review, which we granted, directing the parties to limit their briefing and argument to the issue "whether the trial court erred in failing to obtain an express waiver of the right to counsel in superior court when defendant expressly waived the right to counsel in municipal court and, if so, what prejudicial standard applies."

II

A. *The Governing Statutory Procedure*

([1a]) In the present case, the trial court proceedings occurred prior to the unification of the municipal and superior courts. After unification, the proceedings in the early stages of a felony prosecution that formerly were held in municipal court now are held in superior court, but the basic procedural steps—the filing of a complaint before a magistrate, the holding ***360** of a preliminary examination before a magistrate, and the filing of an information and arraignment on the information before a superior court judge—remain the same. Because the relevant proceedings in this case preceded unification, we discuss the statutory provisions with reference to the functional division between the municipal and superior courts that existed at that time. (See also Stats. 1998, ch. 931, §§ 359, 360 [amending Pen. Code, §§ 806, 808, to conform to unification of trial courts].)

Prior to unification, unless the prosecution elected to seek an indictment before a grand jury, felony proceedings were commenced with the filing of a complaint in municipal court before a magistrate. (§ 806.) Although the complaint was filed in municipal court, the magistrate could be either a municipal court or superior court judge. (§ 808.)[8] When a complaint was filed, section 859 directed that the defendant be taken before a magistrate without unnecessary delay, and that the magistrate inform the defendant of his or her right to counsel. The

magistrate then was required to set a date for the preliminary examination. (§ 859b.) At the conclusion of the preliminary examination, the magistrate determined whether there was sufficient cause to hold the defendant to answer on a felony charge. (§ 872.) If the defendant was held to answer on a felony charge following the preliminary examination, the prosecution filed an accusatory pleading—an information—in superior court, charging the defendant with the felony offense. When the information was filed, the defendant was arraigned on the charges in superior court. (§ 976.) Section 987 provides that if a defendant appears for arraignment without counsel, the court shall inform the defendant of his or her right to counsel and shall ask the defendant whether he or she desires the assistance of counsel.[9]

8 Under section 808, a judge of any court of record, including justices of the Courts of Appeal and the Supreme Court, also may serve as magistrate.

9 Section 987, subdivision (a), currently provides: "In a noncapital case, if the defendant appears for arraignment without counsel, he or she shall be informed by the court that it is his or her right to have counsel before being arraigned, and shall be asked if he or she desires the assistance of counsel. If he or she desires and is unable to employ counsel the court shall assign counsel to defend him or her." (See also § 859 [setting forth similar requirements that apply after the filing of the complaint].) Although the version of section 987 in effect at the time of trial was repealed and replaced in 1998 (Stats. 1998, ch. 587, §§ 3, 4), the provisions relevant to the issue in this case are identical in both versions of the statute.

In sum, the governing statutes provided (and continue to provide) that a defendant in felony proceedings shall be advised of the right to counsel on at least two distinct occasions prior to trial: first, when the defendant is brought before a magistrate and advised of the filing of the complaint (§ 859), and second, after the preliminary examination, when the defendant is arraigned in superior court on the information (§ 987). Because, however, the same ***361** superior court judge sometimes served both as magistrate during the municipal court proceedings and also as the trial judge in superior court, the duty under section 987 to readvise the defendant of the right to counsel occasionally has been overlooked. Thus, when a superior court judge, sitting as a magistrate, already had conducted a lengthy exchange with the defendant in which the judge had explained to the defendant the defendant's right to counsel and had cautioned the defendant about the pitfalls of self-representation both at the preliminary hearing and at trial, and the defendant had expressed an understanding of the risks and a desire nonetheless to proceed without counsel throughout the proceedings, the judge inadvertently might fail to readvise the defendant when the defendant appeared before the same judge for arraignment on the felony information. That appears to be what occurred here.

([2]) Prior decisions of this court have held that under section 987, the superior court is required to advise a defendant of his or her right to counsel in superior court whenever the defendant appears without counsel at the arraignment, even when the defendant previously has been advised of the right to counsel and has expressed an intention to waive counsel throughout the proceedings. (*People v. Crandell* (1988) 46 Cal.3d 833, 858, fn. 5 [251 Cal.Rptr. 227, 760 P.2d 423]; see also *People v. McKenzie* (1983) 34 Cal.3d 616, 635 [194 Cal.Rptr. 462, 668 P.2d 769] [observing that "[t]he People *concede* that defendant's waiver of the right to counsel in municipal court did not continue in effect in superior court" (italics added)].) Because the language of section 987 sets forth no exceptions, this rule applies even when, as in the case at bar, the same judge presides in the municipal court and at trial in the superior court.

Despite some equivocation at oral argument, and a belated reference to *In re Connor* (1940) 15 Cal.2d 161 [99 P.2d 248], the People concede in their briefing that in view of our decisions in *People v. Crandell* and *People v. McKenzie*, the superior court in the present case erred in failing to readvise defendant of his right to counsel and in failing to obtain a new waiver of that right when defendant was arraigned on the felony information in superior court. The question presented here is whether the superior court's error was prejudicial under either federal or state law. To answer this question, we employ the analytical framework relied upon by the Court of Appeal. ([3])As that court explained: "Defendants enjoy two distinct rights: (1) a *constitutional* right to the assistance of counsel under the Sixth Amendment, which may be waived, and (2) a *statutory* right under section 987, subdivision (a), to be informed at arraignment in superior court of the right to counsel and to have counsel appointed. Although both provisions protect the right to counsel, they derive from different sources and are not coterminous." ***362**

B. *Whether, Under the Federal Constitution, the*

Superior Court's Failure to Readvise Defendant of His Right to Counsel Was Error

Turning first to the question whether the Sixth Amendment right to the assistance of counsel requires that the superior court readvise a defendant of his or her right to counsel and obtain a waiver, we observe that the weight of federal authority concludes that it does not.

([4]) The Sixth Amendment right to the assistance of counsel applies at all critical stages of a criminal proceeding in which the substantial rights of a defendant are at stake. (*Mempa v. Rhay* (1967) 389 U.S. 128, 134 [88 S.Ct. 254, 256-257, 19 L.Ed.2d 336].) The right to counsel may be waived by a defendant who wishes to proceed in propria persona. (*Faretta v. California, supra,* 422 U.S. 806, 807 [95 S.Ct. 2525, 2527].) By such waiver, a defendant surrenders "many of the traditional benefits associated with the right to counsel." (*Id.*, at p. 835 [95 S.Ct. at p. 2541].) In view of these consequences, a knowing and intelligent waiver of the right to counsel is required before a criminal defendant is permitted to proceed in propria persona. (*Ibid.*)

([1b]) Federal authority holds that once a defendant gives a valid waiver, it continues through the duration of the proceedings unless it is withdrawn or is limited to a particular phase of the case. "While it is true that the Sixth Amendment right to counsel applies at all critical stages of the prosecution, including the sentencing stage, it does not follow that once the assistance of counsel in court has been competently waived, a new waiver must be obtained at every subsequent court appearance by the defendant. A competent election by the defendant to represent himself and to decline the assistance of counsel once made before the court carries forward through all further proceedings in that case unless appointment of counsel for subsequent proceedings is expressly requested by the defendant or there are circumstances which suggest that the waiver was limited to a particular stage of the proceedings." (*Arnold v. United States* (9th Cir. 1969) 414 F.2d 1056, 1059.)

In federal practice, a waiver of counsel has been held to remain in effect despite various breaks in the proceedings. In *U.S. v. Springer* (9th Cir. 1995) 51 F.3d 861, for example, the court held that a defendant's waiver of the right to counsel carried over from a first trial, which ended in a mistrial, to a retrial of the same matter. (*Id.*, at pp. 864-865.) "The retrial was obviously a continuation of the criminal prosecution, and the waiver was obviously intended to stand absent an attempt to withdraw it. The matter of representation was in [the defendant's] hands alone. After his earnest and insistent ***363** request, he had been granted the right to represent himself. If he found himself wavering in his resolve so to do, he or his advisory counsel could have so informed the court." (*Id.*, at p. 865.) *White v. United States* (9th Cir. 1965) 354 F.2d 22 similarly held that a waiver remained effective when a defendant continued to represent himself at resentencing following the issuance of a writ of habeas corpus. Although the court at the resentencing did not ask defendant whether he wished to continue representing himself, the reviewing court concluded that the trial court had no sua sponte obligation to readvise the defendant of his right to counsel. (*Id.*, at pp. 22-23; see also *U.S. v. Unger* (1st Cir. 1990) 915 F.2d 759, 761-762 [waiver at arraignment in state juvenile court continued through two subsequent dispositional and sentencing hearings]; *U.S. v. Fazzini* (7th Cir. 1989) 871 F.2d 635, 641-644 [waiver before trial extended through sentencing, and court had no duty to re-inquire absent "substantial change in circumstances"].)

Defendant contends that the present case does not resemble the federal decisions, cited above, in which substantial breaks in the proceedings were deemed insufficient to eliminate the continuing validity of a defendant's waiver, but is more akin to those decisions in which a court completely fails to advise a defendant of the risks of self-representation. The court in *Sohrab* drew a similar distinction. (See *People v. Sohrab, supra,* 59 Cal.App.4th 89, 100-102, citing and relying upon *People v. Hall* (1990) 218 Cal.App.3d 1102, 1108-1109 [267 Cal.Rptr. 494].)

We find defendant's contention unpersuasive. Unlike the cases relied upon by defendant, the instant matter involves a defendant who *was* clearly and fully admonished of the risks involved in representing himself at both the preliminary hearing and trial stages and who nonetheless elected to represent himself throughout the proceedings; the only error that occurred was the superior court's failure to *readvise* defendant of such risks prior to the commencement of trial. Under these circumstances we conclude that the trial court's error was not of federal constitutional magnitude, and that the prejudicial error standard applicable to federal constitutional error does not apply.

C. *Whether, Under California Law, the Superior Court's Failure to Readvise Defendant of His Right to Counsel Was Prejudicial*

([5a]) As noted above, the People concede that under section 987, subdivision (a), the superior court was obligated to inform defendant of his right to appointed counsel and to obtain a waiver of that right at the time defendant was

arraigned on the felony information, notwithstanding the admonitions given to—and waivers taken from—defendant under section ***364** 859 during the municipal court proceedings, and that the court erred in failing to do so. The question is what prejudicial error standard applies.

Relying upon familiar authority, the Court of Appeal reiterated that all trial court error under California law is governed by article VI, section 13 of the California Constitution: "No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, ... or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (See *People v. Flood* (1998) 18 Cal.4th 470, 483, fn. 10 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Cahill* (1993) 5 Cal.4th 478, 500, 503 [20 Cal.Rptr.2d 582, 853 P.2d 1037].) ([6]) As this court long has held, under the "miscarriage of justice" standard of article VI, section 13, a trial court error generally is not reversible unless there is a reasonable probability that the defendant was prejudiced as a result of the error. (*People v. Flood, supra*, 18 Cal.4th at p. 483; *Watson, supra*, 46 Cal.2d 818, 836.)

([5b]) Although a reversible per se rule may apply under California Constitution, article VI, section 13, when a defendant erroneously is denied the right to counsel or never has knowingly or voluntarily waived that right (see *People v. Cahill, supra*, 5 Cal.4th 478, 501 [recognizing that "in some instances an error may result in a 'miscarriage of justice' within the meaning of the California provision" without a showing of actual prejudice]), we agree with the Court of Appeal that the *Watson* standard applies to the superior court's error in failing to follow the *statutory* command that the court, at the arraignment in superior court, *readvise* a defendant of his or her right to counsel and obtain a renewed waiver of that right. As discussed above, and as interpreted in *People v. Crandell, supra*, 46 Cal.3d 833, 858, footnote 5, and *People v. McKenzie, supra*, 34 Cal.3d 616, 635, section 987 requires that a defendant who appears at the arraignment in superior court without counsel be advised of his or her right to counsel, even when the defendant in the municipal court knowingly waived counsel and expressed a desire to represent himself or herself. Although section 987 requires this additional advice and inquiry at the arraignment on the felony information as a prophylactic safeguard, nothing in the language of the statute provides that when a defendant previously has been informed of his or her right to counsel at trial and has been adequately warned of the pitfalls of representing oneself at trial, the defendant's prior waiver of counsel and exercise of the constitutional right to represent himself or herself shall not "carry over" or be legally "effective" in the absence of a renewed warning and waiver.

To the extent that language in our prior decisions conveys such an impression (see, e.g., *People v. Crandell, supra*, 46 Cal.3d 833, 858, fn. 5 ***365** ["neither an appointment ... nor a waiver of counsel in municipal court *carries over* into superior court" (italics added)]; *People v. McKenzie, supra*, 34 Cal.3d 616, 635 ["[t]he People concede that defendant's waiver of the right to counsel in municipal court *did not continue in effect* in superior court" (italics added)]), we conclude that such language misleadingly overstates the effect of section 987. When a defendant has been fully informed of his or her right to counsel at all stages of the proceedings (including trial), and voluntarily and knowingly has invoked the right to represent himself or herself throughout all the proceedings, the trial court's failure to provide a new advisement and obtain a renewed waiver at the arraignment (as required by section 987) does not operate to terminate or revoke the defendant's validly invoked constitutional right to represent himself or herself at trial.

Furthermore, contrary to defendant's claim, we believe that a trial court's error in failing to comply with section 987 clearly is susceptible to harmless error analysis. The complete record of the trial court proceedings often will shed light upon whether a defendant, despite the absence of an explicit readvisement by the superior court at arraignment, nonetheless was aware that he or she had the right to appointed counsel at the subsequent proceedings and whether an explicit advisement at the arraignment would have been likely to lead the defendant to reconsider the decision to represent himself or herself and request that counsel be appointed. (Accord, *United States v. Vonn* (2002) 535 U.S. 55, 74-76 [122 S.Ct. 1043, 1054-1055, 152 L.Ed.2d 90, 109-110].)

In some cases, the exchange between the magistrate and the defendant during the initial advisement and waiver may raise questions as to whether the defendant voluntarily and knowingly intended to waive his or her right to counsel throughout the entire proceedings or only at the preliminary hearing. In *People v. Sohrab, supra*, 59 Cal.App.4th 89, for example, the defendant, unlike defendant here, expressed equivocation in the municipal court proceedings as to whether he desired to represent himself and, if so, at what stages of the proceedings. (*Id.*, at pp. 92-95.) Under such circumstances, a superior court's failure to obtain a new and clear indication that the

defendant desired to represent himself or herself at trial might well be prejudicial under the *Watson* standard.

Because of the circumstances attending the present case, however, we agree with the Court of Appeal's conclusion that the error was not prejudicial under the *Watson* standard, there being no reasonable probability that defendant was unaware of his right to be represented by appointed counsel at trial or that he would have accepted the appointment of counsel had the court made the statutorily required inquiry at arraignment. As we have seen, the ***366** advisements that defendant received at the outset of the proceedings explicitly informed defendant of his right to counsel at all stages of the proceedings, including trial, and warned him of the risks of representing himself at trial. Although the court apprised defendant repeatedly of the risks of self-representation, defendant's desire to represent himself was unwavering throughout the proceedings. In light of the entire record (see *People v. Howard* (1992) 1 Cal.4th 1132, 1178 [5 Cal.Rptr.2d 268, 824 P.2d 1315]), there can be no doubt that defendant was aware of his right to appointed counsel at all stages of the proceedings and knowingly and voluntarily waived that right, insisting upon exercising his constitutional right to represent himself. Thus, we conclude that the Court of Appeal properly determined that there is no reasonable probability that the superior court's error in failing to readvise defendant of his right to counsel at the arraignment affected defendant's decision to represent himself throughout the course of the proceedings. (*Watson*, *supra*, 46 Cal.2d 818, 836.)[10]

10 To the extent it is contrary to the views expressed herein, *People v. Sohrab*, *supra*, 59 Cal.App.4th 89, is disapproved.

III

The judgment of the Court of Appeal is affirmed.

Kennard, J., Baxter, J., Werdegar, J., Chin, J., Brown, J., and Moreno, J., concurred.

Appellant's petition for a rehearing was denied September 18, 2002. George, C. J., and Baxter, J., did not participate therein. ***367**

78 Cal.App.5th 95
Court of Appeal, Fourth District, Division 3, California.

The PEOPLE, Plaintiff and Respondent,
v.
Miguel DELGADO, Defendant and Appellant.

G059650
|
Filed 4/29/2022

Synopsis

Background: Youthful offender, who was ineligible for early parole because he was sentenced under Three Strikes Law, requested *Franklin* proceeding, 370 P.3d 1053, to preserve evidence for his eventual parole hearing. The Superior Court, Orange County, No. 94NF2484, Cheri Pham, J., denied the request. Offender appealed.

Holdings: The Court of Appeal, Bedsworth, Acting P.J., held that:

youthful offender was not similarly situated, for equal protection purposes, with youthful offenders who had not suffered any prior strike, but

as a matter of first impression, youthful offenders who are statutorily ineligible for early parole consideration are nevertheless entitled to a *Franklin* proceeding.

Reversed and remanded with directions.

Procedural Posture(s): Appellate Review; Sentencing or Penalty Phase Motion or Objection.

****289** Appeal from a postjudgment order of the Superior Court of Orange County, Cheri T. Pham, Judge. Reversed and remanded with directions. (Super. Ct. No. 94NF2484)

Attorneys and Law Firms

Benjamin Kington, San Diego, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

BEDSWORTH, ACTING P. J.

***98** We find ourselves in the unfamiliar position of choosing to publish an opinion regarding an issue the parties are in agreement on. Having no prior experience with this scenario, we feel the need to explain that we publish because the issue implicates evolving precedent that has greatly altered our perception of past legislation, and we hope by writing on this change to be able to head off a multitude of briefs before they reach the trial courts.

Following a series of United States Supreme Court decisions affording juvenile offenders greater sentencing protections under the Eighth Amendment, the California Legislature enacted a statutory scheme granting early parole consideration for most youthful offenders. The California Supreme Court has since ruled those offenders are entitled to make a record related to their future parole consideration in a special type of hearing that has come to be known as a *Franklin* proceeding. (See *People v. Franklin* (2016) 63 Cal.4th 261, 202 Cal.Rptr.3d 496, 370 P.3d 1053 (*Franklin*).)[1] ***99** The issue in our case is whether youthful offenders who are statutorily ineligible for early parole consideration are nevertheless entitled to a *Franklin* proceeding to preserve evidence for their eventual parole hearing. With all parties here in agreement, we answer that question in the affirmative, we reverse the trial court's order denying appellant's request for a *Franklin* proceeding, and remand the matter for such a proceeding.

[1] "*Franklin* processes are more properly called 'proceedings' rather than 'hearings.' A hearing generally involves definitive issues of law or fact to be determined with a decision rendered based on that determination. [Citations.] A proceeding is a broader term describing the form or manner of conducting judicial business before a court. [Citations.] While a judicial officer presides over a *Franklin* proceeding and regulates its conduct, the officer is not called upon to make findings of fact or render any final determination at the proceeding's conclusion." (*In re Cook* (2019) 7

Cal.5th 439, 449, fn. 3, 247 Cal.Rptr.3d 669, 441 P.3d 912.)

****290** FACTUAL AND PROCEDURAL BACKGROUND

During his early 20's, appellant was involved in three separate criminal incidents. The first occurred in 1994, when the police found a loaded handgun in the trunk of his car during a traffic stop. The second and third incidents involved armed home-invasion robberies appellant and his cohorts committed four months apart in 1995. During the robberies, appellant and his confederates kidnapped, assaulted, and threatened to kill several of their victims.

As a result of those incidents, appellant was convicted of kidnapping for robbery and multiple counts of robbery, burglary, false imprisonment and illegal gun possession. He was also found to have personally used a firearm during the offenses and suffered a prior strike conviction. The trial court sentenced him to 59 years to life in prison under the "Three Strikes" law. (See Pen. Code, §§ 667, subds. (b)-(j), 1170.12.)[2]

[2] All further statutory references are to the Penal Code.

In 2020, appellant requested a *Franklin* proceeding to present mitigation evidence in anticipation of his youth offender parole hearing (YOPH). However, the trial court correctly determined appellant was not eligible for a YOPH because he was sentenced under the Three Strikes law. Therefore, it denied his request for a *Franklin* proceeding. This appeal followed.

DISCUSSION

Appellant admits he is statutorily ineligible for a YOPH because he was sentenced under the Three Strikes law. However, he contends he is entitled to a YOPH – and a concomitant *Franklin* proceeding – as a matter of equal protection. Although we reject appellant's equal protection argument, both parties now conclude he is entitled to a *Franklin* proceeding under the standard rules applicable to all parole hearings. We agree.

Legal Framework

Over the past two decades, the United States Supreme Court has redefined the parameters of juvenile sentencing. In ***100** *Roper v. Simmons* (2005) 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, the court held the Eighth Amendment proscribes capital punishment for minors. Then, in *Graham v. Florida* (2010) 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825, the court found it cruel and unusual to sentence juvenile nonhomicide offenders to life in prison without parole (LWOP). The high court followed that decision with *Miller v. Alabama* (2012) 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407, which prohibits mandatory LWOP for juvenile homicide offenders. (See also *People v. Caballero* (2012) 55 Cal.4th 262, 145 Cal.Rptr.3d 286, 282 P.3d 291 [barring de facto LWOP sentences for juvenile nonhomicide offenders].)

The underlying rationale of these decisions is that "[b]ecause juveniles have diminished culpability and greater prospects for reform," as compared to adult offenders, " 'they are less deserving of the most severe punishments.' [Citation.]" (*Miller v. Alabama*, *supra*, 567 U.S. at p. 471, 132 S.Ct. 2455.) Consequently, except in the rarest of circumstances – not presented here – juvenile offenders facing life-long prison terms must be given a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society at some point in the future. (*People v. Caballero*, *supra*, 55 Cal.4th at p. 268, 145 Cal.Rptr.3d 286, 282 P.3d 291.)

To that end, the Legislature enacted section 3051, which authorizes a YOPH for defendants who were 25 years of age or younger at the time of their controlling ****291** offense, i.e., the crime for which they received the longest term of imprisonment. (§ 3051, subd. (a).) For youthful offenders such as appellant, who were sentenced to an indeterminate term of 25 years to life or greater, the statute calls for a YOPH during the 25th year of their incarceration. (*Id.*, subd. (b)(3).) However, per its terms, section 3051 does not apply if the defendant was convicted under the Three Strikes law (pertaining to repeat offenders) or the "One Strike" law (pertaining to certain sexual offenders), or if he was sentenced to LWOP for an offense committed after he reached the age of 18. (*Id.*, subd. (h).)

In *Franklin*, the California Supreme Court discussed the import of section 3051 when it applies. As the court pointed out, the statute contemplates the parole board will consider "youth-related factors, such as [the juvenile

offender's] cognitive ability, character, and social and family background at the time of [his] offense," in determining his suitability for parole. (*Franklin, supra*, 63 Cal.4th at p. 269, 202 Cal.Rptr.3d 496, 370 P.3d 1053.) Therefore, "section 3051, subdivision (f)(2) provides that '[f]amily members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime ... may submit statements for review by the board.' " (*Id.* at p. 283, 202 Cal.Rptr.3d 496, 370 P.3d 1053.)

Franklin further stated, "Assembling such statements 'about the individual before the crime' is typically a task more easily done at or near the time of ***101** the juvenile's offense rather than decades later when memories have faded, records may have been lost or destroyed, or family or community members may have relocated or passed away." (*Franklin, supra*, 63 Cal.4th at pp. 283-284, 202 Cal.Rptr.3d 496, 370 P.3d 1053.) In addition, the parole board must consider any " 'psychological evaluations and risk assessment instruments' " that may be relevant to show " 'any subsequent growth and increased maturity of the individual.' " (*Id.* at p. 284, 202 Cal.Rptr.3d 496, 370 P.3d 1053, quoting § 3051, subd. (f)(1).) Our Supreme Court found this "implies the availability of information about the offender *when he was a juvenile*." (*Ibid.*, italics added.)

The record in *Franklin* was unclear whether the juvenile in that case had been given a sufficient opportunity at sentencing to make a record that included this sort of information. (*Franklin, supra*, 63 Cal.4th at p. 284, 202 Cal.Rptr.3d 496, 370 P.3d 1053.) Accordingly, the Supreme Court remanded the case to allow the trial court to make this determination. (*Ibid.*) In so doing, the court also instructed that if the trial court determined the juvenile had not been afforded a sufficient opportunity to make a record, he should be allowed to present "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." (*Ibid.*) Writing separately, Justice Werdegar described this as a " 'baseline hearing' " relevant to the juvenile's future parole prospects. (*Id.* at p. 287, 202 Cal.Rptr.3d 496, 370 P.3d 1053 conc. & dis. opn. of Werdegar, J.).)

Since *Franklin*, the California Supreme Court has decided its holding applies retroactively to all eligible youthful offenders regardless of when they suffered their conviction. (*In re Cook, supra*, 7 Cal.5th at p. 450, 247 Cal.Rptr.3d 669, 441 P.3d 912.) Therefore, the fact appellant did not request a *Franklin* proceeding until after ****292** the judgment against him was already final has no bearing on his entitlement to relief. (*Id.* at p. 452, 247 Cal.Rptr.3d 669, 441 P.3d 912.)

Equal Protection Claim

Appellant's equal protection argument is grounded in the fact he was 23 and 24 years old at the time he committed his offenses. As we have explained, when a defendant is sentenced for crimes he committed when he was under the age of 25, he is typically entitled to early parole consideration in the form of a YOPH no later than the 25th year of his incarceration. (§ 3051, subds. (a)-(b).) But youthful offenders like appellant, who were sentenced under the Three Strikes law, are not eligible for such a hearing. (*Id.*, subd. (h).)

To succeed on his claim this statutory framework violates equal protection, appellant must first show he is similarly situated to other ***102** defendants who receive more favorable treatment under section 3051. (*People v. Morales* (2016) 63 Cal.4th 399, 408, 203 Cal.Rptr.3d 130, 371 P.3d 592.) In other words, appellant must show he is similar to youthful offenders who have not suffered any prior strike convictions. However, the law is well established that defendants with prior strikes are not comparable to such offenders for equal protection purposes. (*People v. Wilkes* (2020) 46 Cal.App.5th 1159, 1165-1166, 260 Cal.Rptr.3d 475.) This dooms appellant's claim from the outset. (*Ibid.*)

But even if we assumed youthful offenders with prior strikes were similarly situated to youthful offenders without prior strikes, "the Legislature could rationally determine that the former – 'a recidivist who has engaged in significant antisocial behavior and who has not benefited from the intervention of the criminal justice system' [citation] – presents too great a risk of recidivism to allow the possibility of early parole." (*People v. Wilkes, supra*, 46 Cal.App.5th at p. 1166, 260 Cal.Rptr.3d 475.) Therefore, "the differential treatment of youth offenders sentenced pursuant to the Three Strikes Law for purposes of youth offender parole hearings does not violate equal protection." (*Id.* at p. 1167, 260 Cal.Rptr.3d 475; accord, *People v. Moore* (2021) 68 Cal.App.5th 856, 283 Cal.Rptr.3d 754 [excluding Three Strike defendants from youth offender parole consideration is a rational approach to addressing the problem of recidivism].)

In arguing otherwise, appellant points out that some youthful offenders who are excluded from early parole consideration under section 3051 have successfully challenged their exclusion on equal protection grounds. For example, in *People v. Edwards* (2019) 34 Cal.App.5th 183, 246 Cal.Rptr.3d 40 (*Edwards*), the court ruled section 3051's exclusion of youthful sex offenders who are convicted under the One Strike law was irrational for equal protection purposes because the statute does not similarly exclude youthful offenders who are convicted of the more serious crime of first degree murder. (*Id.* at pp. 196-197, 246 Cal.Rptr.3d 40.)

However, in *Edwards*, the court was comparing first-time offenders to first-time offenders. " 'The distinguishing characteristic of Three Strikes offenders, of course, is that they are not being sentenced for a first-time offense. Thus, the ample authority rejecting equal protection challenges from Three Strikes offenders did not apply in *Edwards.* Indeed, *Edwards* itself took pains to "note that criminal history plays no role in defining a One Strike crime" and that "[t]he problem in this case is" the categorical exclusion of "an entire class of youthful offenders convicted of a crime short of homicide ..., *regardless of criminal history* ...." [Citation.]' [Citation.]" ****293** (*People v. Moore, supra,* 68 Cal.App.5th at p. 864, 283 Cal.Rptr.3d 754.)

In contrast, appellant's exclusion from early parole consideration is directly attributable to his criminal history and the fact he failed to reform after ***103** suffering his first strike conviction. This failure both distinguishes him from first-time offenders and renders his exclusion rational for purposes of equal protection. Therefore, he is not entitled to a YOPH and a concomitant *Franklin* proceeding as a matter of equal protection.

Section 4801

But there is another legal basis for granting appellant a *Franklin* proceeding. As respondent concedes, that entitlement lies in subdivision (c) of section 4801, which was enacted in conjunction with 3051.[3]

[3] After initial briefing in this case was complete, we solicited and received supplemental briefing from the parties on the potential applicability of section 4801, subdivision (c) to appellant's request for a *Franklin* proceeding.

Like section 3051, section 4801, subdivision (c) was enacted in 2014 as part of the Legislature's effort to bring California law into conformity with Supreme Court precedent respecting juvenile sentencing. (*Franklin, supra,* 63 Cal.4th at pp. 268, 276, 202 Cal.Rptr.3d 496, 370 P.3d 1053.) That subdivision provides, "When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, when he or she was 25 years of age or younger, 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." (§ 4801, subd. (c).)

Section 3041.5 sets forth the procedures governing parole hearings and applies generally to "all [such] hearings." (§ 3041.5, subd. (a).) It is apparent from the Legislature's reference to that statute that it intended the criteria set forth in section 4801, subdivision (c) to apply broadly to all parole hearings, not just YOPHs. (*People v. Howard* (2021) 74 Cal.App.5th 141, 147, 288 Cal.Rptr.3d 114; *In re Brownlee* (2020) 50 Cal.App.5th 720, 725, 264 Cal.Rptr.3d 169.) Consequently, even though appellant is not entitled to a YOPH, the parole board will still – someday – have to consider his diminished capacity and subsequent maturation in assessing his suitability for parole. (*Ibid.*)

Those are the same factors the board must consider in conducting a YOPH under section 3051. Given their importance at appellant's parole hearing, it follows from *Franklin* that he should be given the opportunity to make a record of those factors. Now. In fact, respondent admirably concedes that because section 4801, subdivision (c) requires the parole board to consider youth-related factors during parole hearings for youthful offenders, *Franklin* ***104** proceedings should be provided to appellant and all other defendants who are statutorily ineligible for a YOPH under section 3051.

We accept this concession as a logical extension of the *Franklin* decision. Because appellant was sentenced before section 4801, subdivision (c) was enacted, he is entitled to a limited remand to make a record of youth-related factors for his future parole hearing under section 3041.5. At that proceeding, the presentation of evidence shall proceed with an eye to providing a meaningful baseline of appellant's characteristics and circumstances so the parole board can someday judge the extent to which he has matured and rehabilitated ****294** himself while in custody. In that regard, only such evidence as meaningfully adds to the existing record shall be permitted. (*In re Cook, supra,* 7 Cal.5th at p. 459, 247

Cal.Rptr.3d 669, 441 P.3d 912; *People v. Howard, supra,* 74 Cal.App.5th at p. 153 288 Cal.Rptr.3d 114.)

DISPOSITION

The trial court's order denying appellant's request for a *Franklin* proceeding is reversed and the matter is remanded for such a proceeding.

WE CONCUR:

MOORE, J.

ZELON, J.*

* Retired Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

All Citations

78 Cal.App.5th 95, 293 Cal.Rptr.3d 288, 22 Cal. Daily Op. Serv. 4384, 2022 Daily Journal D.A.R. 4324

166 Cal.App.4th 1380
Court of Appeal, Third District, California.

The PEOPLE, Plaintiff and Respondent,
v.
Steven Andrew DEHLE, Defendant and Appellant.

No. C055869.
|
Sept. 18, 2008.
|
Certified for Partial Publication.*

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of part II of the Discussion.

Synopsis
Background: Defendant pleaded no contest in the Superior Court, Siskiyou County, No. 05406, Robert F. Kaster, J., to vehicular manslaughter, and was ordered to make restitution to victim's surviving spouse in the amount of $622,750.45. Defendant appealed.

The Court of Appeal, Hull, J., held that it was abuse of discretion for trial court to allow restitution hearing to proceed without presence of district attorney.

Reversed and remanded.

Attorneys and Law Firms

****462** Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

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****463** HULL, J.

***1383** Defendant Steven Andrew Dehle pleaded no contest to vehicular manslaughter. (Pen.Code, § 192, subd. (c)(1); further undesignated statutory references are to the Penal Code.) In exchange, the court dismissed three other counts related to the incident in question and it was agreed defendant would not be sent to state prison for more than four years. Imposition of sentence was suspended and defendant was placed on probation for three years on the condition, among others, that he serve 365 days in the county jail. Following a hearing, the trial court ordered defendant to make restitution to the decedent's surviving spouse in the amount of $622,750.45.

***1384** On appeal, defendant contends (1) the trial court erred when it found him liable for restitution for the decedent's future earnings and household services, (2) the restitution hearing was invalid because it was prosecuted by the surviving spouse's private counsel rather than by the district attorney or his deputy, and (3) the large restitution order constitutes punishment, which was imposed without jury findings of fact in contravention of *Apprendi v. New Jersey* (2000) 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435; *Blakely v. Washington* (2004) 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403; *United States v. Booker* (2005) 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621; and *Cunningham v. California* (2007) 549 U.S. 270, 127 S.Ct. 856, 166 L.Ed.2d 856. Because we agree it was an abuse of discretion for the trial court to allow the restitution hearing to proceed without the presence of the district attorney, we reverse the judgment. We need not resolve the remaining assignments of error.

FACTS AND LEGAL PROCEEDINGS

The Offense
Because defendant pleaded no contest, our statement of the facts upon which the prosecution was based is taken from the probation officer's report.

On an evening in February 2006, California Highway Patrol officers were sent to the location of a motor vehicle accident. At that location, they found a Jeep resting on its side. John Bodine's head was crushed under the Jeep's roll bar.

The officers spoke to defendant, who was the driver, and his two backseat passengers. Defendant told an officer

that the Jeep's throttle had stuck, causing the jeep to accelerate. He swerved to avoid a pole and lost control of the Jeep at which point it overturned. An officer detected an odor of alcohol while talking to the defendant and defendant admitted that he had consumed several beers after the accident occurred but said he had not consumed any alcohol before the accident. He failed a field sobriety test; his blood-alcohol content was .11 percent.

It appears that none of the occupants of the Jeep was wearing a seatbelt.

The two passengers told an officer that defendant did not drink any alcohol before the accident but after the accident he drank four to five beers in quick succession. The officer detected the odor of alcohol while talking to each of the passengers.

In a written statement prepared for the probation report, defendant explained that "the gas pedal stuck on the Jeep[.] I tried to get it unstuck as this ***1385** had worked in the past." Perhaps in response to preliminary hearing testimony that the Jeep could have been stopped by depressing the clutch, defendant explained that, "having just put a new engine in the Jeep I didn't want to blow it up," evidently by removing the load from the fast-turning engine. Defendant did not address the alternative of turning off the ignition switch.

****464** *Restitution*

In October 2006, after the terms and conditions of defendant's probation were set, the prosecutor asked the trial court to "expressly authorize [counsel for the decedent's surviving spouse, Debra Bodine] to conduct the restitution hearing on behalf of the victim.... [H]is knowledge of the case will allow much more full and accurate airing of the issues involved than if I handle it with him assisting me." Defendant objected that private counsel should not be allowed to perform the functions of the district attorney. The trial court ruled: "First of all, I think it's necessary and appropriate for the district attorney's office to participate in the restitution portion of these proceedings, and so without necessarily implying that [Bodine's counsel] doesn't have a right to have a presence either, I think it's the district attorney's responsibility to be present. [¶] So I expect the district attorney's office to continue to participate in that." The prosecutor replied, "Oh, absolutely."

At a conference in November 2006, the prosecutor renewed his request to have Bodine's counsel represent Bodine at the restitution hearing, stating that her counsel was "in a much better position to concisely present the case than" was the prosecutor. Defendant again objected.

In January 2007, the court conducted the restitution hearing. Neither the district attorney nor any of his deputies were present. Again defense counsel objected to the prosecutor's absence but the trial court overruled the objection. The court reasoned that the hearing was limited to the issue of direct victim restitution, and "I just kind of think we're wasting a resource to have some other person sit at the counsel table today."

Bodine's counsel called three witnesses; the decedent's employer, a retired economics professor, and Debra Bodine. Defendant called a certified public accountant.

In April 2007, the trial court found that Debra Bodine had suffered economic loss as a result of defendant's criminal conduct. Defendant was ordered to pay $748,183 for future lost earnings and $172,032 for future lost household services (§ 1202.4, subd. (a)(3)(B)), plus 10 percent interest per annum (§ 1202.4, subd. (f)(3)(G)). Defendant's liability was reduced by ***1386** $297,464.55, the amount of a civil wrongful death settlement. Although it was undisputed that Debra Bodine's attorney received $100,000 and costs in fees for pursuing the settlement, the trial court did not award Debra Bodine attorney fees because her attorney "declined to submit an itemized statement setting forth actual time spent on the case" and, therefore, the court did not have "sufficient information to determine the reasonableness of the fees." The total restitution ordered was $622,750.45.

Following a subsequent hearing in which the district attorney's office participated, defendant was ordered to pay $500 per month toward his restitution obligation. Payment of those sums was made an express condition of defendant's probation.

DISCUSSION

I

The District Attorney's Absence from the Restitution Hearing

Defendant contends the restitution hearing was invalid, and the restitution order void, because the hearing was prosecuted by Debra Bodine's counsel in the absence of the district attorney. In defendant's view, the trial court abused its discretion when it allowed the restitution hearing to go forward without the district attorney. We agree.

****465** Restitution hearings held pursuant to section 1202.4 are sentencing hearings and are thus hearings which are a significant part of a criminal prosecution. (*People v. Giordano* (2007) 42 Cal.4th 644, 662, 68 Cal.Rptr.3d 51, 170 P.3d 623, fn. 6 (*Giordano*).) Restitution orders have as their goal economic compensation for the victim or victims of the defendant's crime, rehabilitation of the defendant, and the deterrence of defendant and others from committing future offenses. (*People v. Bernal* (2002) 101 Cal.App.4th 155, 162, 123 Cal.Rptr.2d 622.)

"The district attorney is the public prosecutor, except as otherwise provided by law.

"The public prosecutor shall attend the courts and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses." (Gov.Code, § 26500.)

"In California, all criminal prosecutions are conducted in the name of the People of the State of California and by their authority. (Gov.Code, § 100, subd. (b).) California law does not authorize private prosecutions. Instead, ***1387** '[t]he prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor .... [¶][who] ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek. [Citation.] No private citizen, however personally aggrieved, may institute criminal proceedings independently [citation], and the prosecutor's own discretion is not subject to judicial control at the behest of persons other than the accused.' (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451, 279 Cal.Rptr. 834, 807 P.2d 1063.)

"The district attorney of each county is the public prosecutor, vested with the power to conduct on behalf of the People all prosecutions for public offenses within the county. (Gov.Code, § 26500; *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 240, 138 Cal.Rptr. 101.) Subject to supervision by the Attorney General (Cal. Const., art. V, § 13; Gov.Code, § 12550), therefore, the district attorney of each county independently exercises all the executive branch's discretionary powers in the initiation and conduct of criminal proceedings. (*People ex rel. Younger v. Superior Court* (1978) 86 Cal.App.3d 180, 203, 150 Cal.Rptr. 156; *People v. Municipal Court (Pellegrino)* (1972) 27 Cal.App.3d 193, 199–204, 103 Cal.Rptr. 645.) The district attorney's discretionary functions extend from the investigation and gathering of evidence relating to criminal offenses (*Hicks v. Board of Supervisors, supra*, 69 Cal.App.3d at p. 241, 138 Cal.Rptr. 101), through the crucial decisions of whom to charge and what charges to bring, to the numerous choices the prosecutor makes at trial regarding 'whether to seek, oppose, accept, or challenge judicial actions and rulings.' (*Dix v. Superior Court, supra*, 53 Cal.3d at p. 452, 279 Cal.Rptr. 834, 807 P.2d 1063; see also *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 267, 137 Cal.Rptr. 476, 561 P.2d 1164 [giving as examples the manner of conducting voir dire examinations, the granting of immunity, the use of particular witnesses, the choice of arguments, and the negotiation of plea bargains].)

"The importance, to the public as well as to individuals suspected or accused of crimes, that these discretionary functions be exercised 'with the highest degree of integrity and impartiality, and with the appearance thereof' (*People v. Superior Court (Greer), supra*, 19 Cal.3d at p. 267, 137 Cal.Rptr. 476, 561 P.2d 1164) cannot easily be overstated. The public prosecutor ' "is the representative not of any ordinary party to a controversy, ****466** but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer." ' (*Id.* at p. 266, 137 Cal.Rptr. 476, 561 P.2d 1164, quoting *Berger v. United States* (1935) 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314, 1321.)

***1388** "The nature of the impartiality required of the public prosecutor follows from the prosecutor's role as representative of the People as a body, rather than as individuals. 'The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of "The People" includes the defendant and his family and those who care about him. It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name.' (Corrigan, *On Prosecutorial Ethics* (1986) 13 Hastings Const.L.Q. 537, 538–539.) Thus the district attorney is expected to exercise his or her discretionary functions in the interests of the People at large, and not under the influence or control of an interested individual.

(*People v. Superior Court (Greer), supra,* 19 Cal.3d at p. 267, 137 Cal.Rptr. 476, 561 P.2d 1164.)

"While the district attorney does have a duty of zealous advocacy, 'both the accused and the public have a legitimate expectation that his zeal ... will be born of objective and impartial consideration of each individual case.' (*People v. Superior Court (Greer), supra,* 19 Cal.3d at p. 267, 137 Cal.Rptr. 476, 561 P.2d 1164.) 'Of course, a prosecutor need not be disinterested on the issue whether a prospective defendant has committed the crime with which he is charged. If honestly convinced of the defendant's guilt, the prosecutor is free, indeed obliged to be deeply interested in urging that view by any fair means. [Citation.] True disinterest on the issue of such a defendant's guilt is the domain of the judge and the jury—not the prosecutor. It is a bit easier to say what a disinterested prosecutor is not than what he is. He is not disinterested if he has, or is under the influence of others who have, an axe to grind against the defendant, as distinguished from the appropriate interest that members of society have in bringing a defendant to justice with respect to the crime with which he is charged.' (*Wright v. United States* (2d Cir.1984) 732 F.2d 1048, 1056.)" (*People v. Eubanks* (1996) 14 Cal.4th 580, 588–590, 59 Cal.Rptr.2d 200, 927 P.2d 310)

As our long quote from *Eubanks* makes clear, the People have an interest in being heard throughout the course of a criminal prosecution and it is the duty of the district attorney to advocate on the People's behalf in an effort to achieve a fair and just result.

In this matter, both the defendant and Debra Bodine had a voice at the restitution hearing; the People did not. The district attorney, having left the proceedings, did not allow the People to be heard on several issues that may have affected a fair and just result on the question of victim restitution. While we express no opinion on the resolution of these issues, they include, among others, the following: given the fact that it appears that the decedent was not wearing a seatbelt at the time of the accident, whether the decedent's own negligence contributed to his death and whether the defendant should be required ***1389** to make restitution for economic harm caused in part by the victim himself; whether it was just to deny Debra ****467** Bodine restitution for her attorney fees in the underlying action against the insurance carrier because her attorney refused to produce his billing records; whether the proper measure of Debra Bodine's economic loss was the loss of John Bodine's gross income to age 67, adjusted as it was by Debra Bodine's expert witness, or something less than that, such as John Bodine's taxable income; whether it was appropriate to reduce John Bodine's gross income by 30 percent per year based on an estimate of his personal consumption; and whether the victim restitution statutes allow for or require compensation for the loss of a decedent's services around the home and, if so, the proper measure of that compensation.

We recognize that many of the questions that arose during the restitution hearing are the subject of developed law in a civil action for wrongful death. But the focus of a restitution hearing in a criminal matter—economic compensation to the victim, rehabilitation of the offender, and the deterrence of the offender and others from similar conduct—is different from the focus of a civil wrongful death action even though the former raises many of the same issues as the latter. The goals of a restitution hearing are matters that the People expect will be achieved in a just and fair manner which can only be accomplished with the participation of the district attorney acting in accordance with his responsibilities to the criminal justice system.

We also recognize that, in September 2006, approximately four months prior to the restitution hearing, the district attorney submitted a letter to the court requesting restitution to Debra Bodine in the amount of $985,324. The letter does not explain the process by which the district attorney arrived at that number. While that letter is some indication of the district attorney's point of view regarding restitution in September 2006, we cannot say it was a figure informed by the evidence and issues presented four months later at the restitution hearing. The district attorney's obligation to the People to seek a just and fair result can only be accomplished by his presence at the hearing and his consideration of the evidence and issues presented as they bear on the ultimate goals of victim restitution in a criminal case.

Finally, we note that it has long been the law in California that the trial court may permit private counsel to assist the district attorney in a given prosecution. Thus, in *People v. Blackwell* (1864) 27 Cal. 65, 1864 WL 715, our high court said: "It appears from the record that the court, by the request of the district attorney, permitted other counsel to assist him at trial. Before trial commenced, however, the counsel of the appellant moved the court to vacate the order. The motion was overruled and the defendant excepted.

"It appears that the district attorney had the active superintendence and management of the case during the progress of the trial. Whether the State, ***1390** through him, should be allowed to avail itself of additional professional aid, was a matter addressed to the discretion

of the court, and there is nothing in the record showing that the court abused its discretion in granting the request of the attorney. [Citation.]" (*Id.* at p. 67.)

In *People v. Turcott* (1884) 65 Cal. 126, 3 P. 461, the same issue arose. In *Turcott,* the trial court allowed private counsel to assist the district attorney in the prosecution of the case. The defendant claimed error. In resolving the issue, the *Turcott* court wrote: "The practice allowing district attorneys to have the assistance of other counsel in the prosecution of criminal cases has existed and been acquiesced in almost since the organization of the ****468** State, and this practice seems to have been sanctioned by legislative action. In prescribing the course of the trial the legislature has provided by the second subdivision of section 1093 of the Penal Code, that the district attorney or other counsel for the people must open the cause and offer the evidence in support of the charge, and by section 1095—that if the indictment or information be for an offense punishable with death—two counsel on each side may argue the cause to the jury. We think the point not well taken." (*Turcott, supra,* 65 Cal. 126 at pp. 126–127, 3 P. 461.)

Section 1093, still in effect and not amended as pertinent to our discussion, now provides in subdivision (b): "The district attorney or *other counsel for the people,* may make an opening statement in support of the charge." (§ 1093, subd. (b); emphasis added.)

In this matter however, Debra Bodine's attorney was not appearing on behalf of the district attorney or the People, he was appearing solely on behalf of Debra Bodine. We have not been cited to a case, and we are aware of none, where the district attorney in a criminal proceeding has been permitted to simply walk away from an important part of the criminal proceedings, leaving conduct of the restitution hearing to a private attorney who has a duty only to his client and no duty to the People.

The trial court abused its discretion when it allowed the restitution hearing to go forward without the presence of the People and there must be a new restitution hearing.

II[**]

[**] See footnote *, *ante*.

***1391 DISPOSITION**

The judgment is reversed and the matter is remanded to the trial court to conduct a new restitution hearing held in accordance with the views set forth herein.

We concur: BLEASE, Acting P.J., and BUTZ, J.

All Citations

166 Cal.App.4th 1380, 83 Cal.Rptr.3d 461, 08 Cal. Daily Op. Serv. 12,375, 2008 Daily Journal D.A.R. 14,687

Senate Bill No. 180

CHAPTER 677

An act to amend Section 11370.2 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 11, 2017. Filed with Secretary of State October 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 180, Mitchell. Controlled substances: sentence enhancements: prior convictions.

Existing law imposes on a person convicted of a violation of, or of conspiracy to violate, specified crimes relating to controlled substances a sentence enhancement to include a full, separate, and consecutive 3-year term for each prior conviction of, or for each prior conviction of conspiracy to violate, specified controlled substances crimes, including possession for sale and purchase for sale of opiates, opium derivatives, and hallucinogenic substances.

This bill would instead limit the above sentence enhancement to only be based on each prior conviction of, or on each prior conviction of conspiracy to violate, the crime of using a minor in the commission of offenses involving specified controlled substances.

The people of the State of California do enact as follows:

SECTION 1. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11380, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(f) Prior convictions from another jurisdiction qualify for use under this section pursuant to Section 668.

O

Senate Bill No. 136

CHAPTER 590

An act to amend Section 667.5 of the Penal Code, relating to sentencing.

[Approved by Governor October 8, 2019. Filed with Secretary of State October 8, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 136, Wiener. Sentencing.

Existing law imposes an additional 3-year sentence for each prior separate prison term served by a defendant where the prior and current offense was a violent felony, as defined. For other felonies, existing law imposes an additional one-year term for each prior separate prison term or county jail felony term, except under specified circumstances.

This bill would instead impose that additional one-year term served for each prior separate prison term served for a conviction of a sexually violent offense, as defined.

The people of the State of California do enact as follows:

SECTION 1. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the

imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 287 or of former Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 18745, 18750, or 18755.

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special

consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under subdivision (h) of Section 1170.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under subdivision (h) of Section 1170 if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the

defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

O

Public Defense Pilot Program

Application Instructions Packet

Release Date: October 1, 2021

Applications Due: January 14, 2022

Grant Period: March 1, 2022 to March 1, 2025

STATE OF CALIFORNIA
BOARD OF STATE AND COMMUNITY CORRECTIONS
2590 VENTURE OAKS WAY, STE 200 ♦ SACRAMENTO CA 95833 ♦ WWW.BSCC.CA.GOV

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Table of Contents

This document contains the necessary information for completing the Public Defense Pilot Program Application Packet. The Application Packet is provided as a stand-alone document on the BSCC website at www.bscc.ca.gov.

PART I: GRANT INFORMATION

Contact Information

This Application Instructions Packet provides the information necessary to prepare an application to the Board of State and Community Corrections (BSCC) for grant funds available through the Public Defense Pilot Program. Any questions concerning this program must be submitted by email to: publicdefensegrant@bscc.ca.gov.

Background Information

The Budget Act of 2021 (Senate Bill 129) established the Public Defense Pilot Program. Public Defense Pilot Program funds must be utilized for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code.

For Fiscal Year (FY) 2021-22, the Budget Act appropriated $50,000,000 for the Public Defense Pilot Program of which $49,500,000 is available for California counties and $500,000 is available for administrative costs and for an independent evaluation. In addition to the FY 2021-22 allocation, the BSCC anticipates similar appropriations in FY 2022-23 and 2023-24[1]. While the BSCC anticipates $500,000 for administrative and evaluation costs in FY 2022-23 and 2023-24, there may be a reduction in this allocation amount and the funding will not be known until each budget is passed. Subject to future appropriations, it is anticipated that a total of $148,500,000 will be available to counties and $1,500,0000 will be available for administrative costs ***and*** for an independent evaluation. A display of the three-year projected allocation is provided below:

Fiscal Year (FY)	Appropriation	Administration/Evaluation	Total
FY 2021-22	$49,500,000	$500,000	$50,000,000
FY 2022-23	$49,500,000	Unknown amount up to $500,000*	$50,000,000
FY 2023-24	$49,500,000	Unknown amount up to $500,000*	$50,000,000
Total	**$148,500,000**	**$500,000 - $1,500,000***	**$150,000,000**

*BSCC received $500,000 in FY 2020-21 for administration and evaluation expenses. Future appropriations and the amount are not guaranteed.

Pursuant to the Budget Act, county funding allocations are determined by the total adult population. The BSCC calculated the amount of funding each county is eligible to receive for FY 2021-22 by dividing $49,500,000 by the county's share of the total adult population using the 2021 projected population figures from the Department of Finance. FY 2021-22 funding will be allocated to counties as shown in Table I (next page).

[1] Assumes funding will be appropriated in the FY 2022-23 and 2023-24 State Budget Acts.

Proposal Due Date and Submission Instructions

Applications must be received by 5:00 P.M. on Friday, January 14, 2022. Applicants must ensure the application packet is signed with a digital signature **OR** a wet blue ink signature that is then scanned with the completed proposal package. Submit one (1) completed proposal packet via email to: publicdefensegrant@bscc.ca.gov.

Description of the Grant

Grant Period

The grant project period is from March 1, 2022 to Jan 1, 2025. Grantees will be required to submit final progress reports and any final data required for the statewide evaluation by March 1, 2025.

Eligibility to Apply

All California counties are eligible to participate in the Public Defense Pilot Program.

Eligible Activities

Public Defense Pilot Program funds must be utilized for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code (Appendix A). In support of these efforts, each applicant will develop a Project Work Plan that identifies measurable project goals, objectives, and commensurate timelines (Appendix B).

Funding Information

The Budget Act of 2021 made $49,500,000 available in FY 2021-22 for indigent defense services. Subject to future appropriations, a total of $148,500,000 is available to counties through FY 2023-24 for the Public Defense Pilot Program.

Funding Allocation

Pursuant to the Budget Act, county funding allocations are determined by the total adult population. The BSCC calculated the amount of funding each county is eligible to receive by dividing $49,500,000 by the county's share of the total adult population using the 2021 projected population figures from the Department of Finance. Funding will be allocated to counties as shown in Table I. A detailed funding chart is also provided as Appendix C.

Table 1: Funding Allocation Chart

County	2021 Adult Population Projection*	Percent of State's Adult Population	Funding Allocation
Alameda County	1,310,463	4.26%	$2,107,280.30
Alpine County	950	0.00%	$1,527.64
Amador County	32,097	0.10%	$51,613.34
Butte County	178,559	0.58%	$287,130.47
Calaveras County	37,331	0.12%	$60,029.84

Colusa County	16,466	0.05%	$26,478.03
Contra Costa County	913,324	2.97%	$1,468,663.88
Del Norte County	21,061	0.07%	$33,866.98
El Dorado County	156,085	0.51%	$250,991.33
Fresno County	748,839	2.43%	$1,204,165.00
Glenn County	22,104	0.07%	$35,544.17
Humboldt County	106,276	0.35%	$170,896.33
Imperial County	139,633	0.45%	$224,535.81
Inyo County	14,393	0.05%	$23,144.56
Kern County	668,405	2.17%	$1,074,823.70
Kings County	113,142	0.37%	$181,937.15
Lake County	50,623	0.16%	$81,403.94
Lassen County	25,584	0.08%	$41,140.16
Los Angeles County	7,910,391	25.70%	$12,720,245.54
Madera County	119,430	0.39%	$192,048.53
Marin County	211,320	0.69%	$339,811.56

County	2021 Adult Population Projection[1]	Percent of State's Adult Population	Funding Allocation
Mariposa County	14,277	0.05%	$22,958.02
Mendocino County	68,911	0.22%	$110,811.82
Merced County	208,364	0.68%	$335,058.18
Modoc County	7,555	0.02%	$12,148.76
Mono County	10,891	0.04%	$17,513.19
Monterey County	326,955	1.06%	$525,757.56
Napa County	112,201	0.36%	$180,423.99
Nevada County	82,255	0.27%	$132,269.54
Orange County	2,490,391	8.09%	$4,004,654.76
Placer County	318,725	1.04%	$512,523.37
Plumas County	16,362	0.05%	$26,310.79
Riverside County	1,892,294	6.15%	$3,042,889.32
Sacramento County	1,188,728	3.86%	$1,911,525.24
San Benito County	47,881	0.16%	$76,994.69
San Bernardino County	1,637,398	5.32%	$2,633,005.70
San Diego County	2,542,693	8.26%	$4,088,758.61
San Francisco County	743,109	2.41%	$1,194,950.91
San Joaquin County	580,077	1.88%	$932,788.51
San Luis Obispo County	231,049	0.75%	$371,536.63
San Mateo County	606,435	1.97%	$975,173.30
Santa Barbara County	350,503	1.14%	$563,623.75
Santa Clara County	1,520,817	4.94%	$2,445,538.49
Santa Cruz County	220,402	0.72%	$354,415.80

Shasta County	139,023	0.45%	$223,554.90
Sierra County	2,665	0.01%	$4,285.43
Siskiyou County	35,470	0.12%	$57,037.27
Solano County	346,196	1.12%	$556,697.91
Sonoma County	406,287	1.32%	$653,326.79
Stanislaus County	419,536	1.36%	$674,631.75
Sutter County	75,397	0.24%	$121,241.59
Tehama County	49,445	0.16%	$79,509.67
Trinity County	11,188	0.04%	$17,990.78
Tulare County	344,299	1.12%	$553,647.45
Tuolumne County	43,726	0.14%	$70,313.27
Ventura County	657,705	2.14%	$1,057,617.64
Yolo County	179,802	0.58%	$289,129.27
Yuba County	57,279	0.19%	$92,107.07
Grand Total	**30,782,767**	**100.00%**	**$49,500,000.00**

Note: *2021 county adult population is based on projections obtained from the Department of Finance's Report P- 2B: Population Projections by Individual Year of Age, 2010-2060 California Counties (2019 baseline). Obtained from: https://www.dof.ca.gov/forecasting/demographics/Projections/.

Funding Request

For the purposes of this Request for Applications (RFA), each county may request the maximum amount of funding available in FY 2021-22 (Table I). Subject to future appropriations, a re-application will be made available to counties on the BSCC website. Please note funding will be recalculated each year based on the county's share of the total adult population.

Match Requirement

The Public Defense Pilot Program does not have a match requirement.

Supplanting

Supplanting is the deliberate reduction in the amount of federal, state, or local funds being appropriated to an existing program or activity because grant funds have been awarded for the same purposes. Supplanting is strictly prohibited for all BSCC grants. Public Defense Pilot Program shall be used to support new program activities or to augment or expand existing program activities but shall not be used to replace existing funds. When using outside funds as match, applicants must be careful not to supplant. It is the responsibility of the grantee to ensure that supplanting does not occur. The grantee must keep clear and detailed financial records to show that grant funds are used only for allowable costs and activities.

General Grant Requirements

Grant Agreement

Applicants approved for funding by the BSCC Board are required to enter into a grant agreement with the BSCC. Grantees must agree to comply with all terms and conditions

of the Grant Agreement. See Appendix D for a sample grant agreement (State of California: Contract and General Terms and Conditions). The terms and conditions of the grant agreement may change before execution.

The grant agreement start date is expected to be March 1, 2022. Grant agreements are considered fully executed only after they are signed by both the Grantee and the BSCC. Work, services and encumbrances cannot begin prior to the grant agreement start date. Work, services and encumbrances that occur after the start date but prior to grant agreement execution may not be reimbursed. Grantees are responsible for maintaining their grant agreement, all invoices, records and relevant documentation for at least three years after the final payment under the contract.

Governing Board Resolution

Local governmental applicants must submit a resolution from their governing board addressing specified requirements as included in the sample Governing Board Resolution, which can be found in Appendix E. A signed resolution is not required at the time of proposal submission; however, grant recipients must have a resolution on file for the Indigent Defense Grant Program before a fully executed grant agreement can be completed.

Invoices

Disbursement of grant funds occurs in one lump sum upon execution of the Grant Agreement. The State Controller's Office (SCO) will issue the warrant (check) to the County Applicant as listed on the Applicant Information Form. Grantees must submit statements of expenditures to the BSCC through an online process no later than 45 days following the end of the invoicing period. Grantees must maintain adequate supporting documentation for all costs claimed on invoices. BSCC staff may conduct a desk review process which requires grantees to submit electronic documentation to support all grant funds claimed during the invoicing period and on-site monitoring visits that will include a review of documentation maintained as substantiation for project expenditures.

Additional information about invoicing can be found in the BSCC Grant Administration Guide, located on the BSCC website.

Progress Reports

Grant award recipients are required to submit progress reports; the frequency of the reports (e.g., annual, bi-annual, quarterly) will be determined by the outside evaluator (see below). Progress reports are a critical element in the monitoring and oversight process and likely the evaluation. Grantees that are unable to demonstrate that they are making sufficient progress toward project goals and objectives and that funds are being spent down in accordance with the Grant Award Agreement could be subject to the withholding of funds. Applicable forms and instructions will be available to grantees on the BSCC's website.

Working with an Outside Evaluator

The BSCC plans to contract with an outside evaluator. The contractor is expected to: develop the research methodology for the statewide evaluation; design and develop

instruments for collecting evaluation data from grantees, including the progress reports; provide ongoing technical assistance to grantees for data collection and evaluation activities; compile, screen, and analyze data obtained from grantees; and develop a final evaluation report. As a condition of award, all grantees agree to collect data requested by the outside evaluator.

Grantee Orientation Process

Following the start of the grant period, BSCC staff will conduct a virtual Grantee Orientation on March 10-11, 2022. The purpose of this mandatory session is to review the program requirements, invoicing and budget modification processes, data collection and reporting requirements, as well as other grant management and monitoring activities. Typically, the Project Director, Financial Officer, Day-to-Day Contact, and service providers attend.

Travel

Travel is usually warranted when personal contact by project-related personnel is the most appropriate method of completing project-related business. The most economical method of transportation, in terms of direct expenses to the project and the project-related personnel's time away from the project, must be used. Grantees are required to include sufficient per diem and travel allocations for project-related personnel to attend any required BSCC training conferences or workshops as described in the Request for Applications and Grant Agreement.

Units of Government

Grantees that are units of government using BSCC funds may follow either their own written travel and per diem policy or the California State travel and per diem policy. Units of government that plan to use cars from a state, county, city, district carpool, or garage may budget either the mileage rate established by the carpool or garage, or the state mileage rate, not to exceed the loaning agency.

Out-of-State Travel

Out-of-state travel is generally restricted and only allowed in exceptional situations. Grantees must receive written BSCC approval prior to incurring expenses for out-of-state travel. Even if previously authorized in the Grant Agreement, Grantees must submit a separate written request on Grantee letterhead for approval to the assigned BSCC Field Representative. Out-of-state travel requests must include a detailed justification and budget information.

In addition, California prohibits travel, except under specified circumstances, to states that have been found by the California Attorney General to have discriminatory laws. The BSCC will not reimburse for travel to these states unless the travel meets a specific exception under Government Code section 11139.8, subdivision (c). For additional information, please see: https://oag.ca.gov/ab1887.

Compliance Monitoring Visits

The BSCC staff will monitor each project to assess whether the project is in compliance with grant requirements and making progress toward grant objectives. As needed,

monitoring visits may also occur to provide technical assistance on fiscal, programmatic, evaluative, and administrative requirements.

Overview of the Request for Applications (RFA) Process

Confirmation of Receipt of Application

Upon submission of an application, applicants will receive a confirmation email from the BSCC stating that the application package has been received. The email will be sent to the individual that signed the application and the person listed as the Project Director.

Review Process

BSCC staff will review each application for compliance with the criteria in this RFA.

Summary of Key Dates

The following table shows a timeline of key dates related to the RFA

Activity	Date
Release Request for Applications	October 1, 2021
Applications Due to the BSCC	**January 14, 2022**
New Grants Begin	March 1, 2022
Mandatory New Grantee Orientation	March 10-11, 2022
Mandatory New Grantee Data & Evaluation Orientation	April - TBD

PART II: APPLICATION INSTRUCTIONS

This section contains pertinent information for completing the Public Defense Pilot Program Application Packet. The Application Packet is provided as a stand-alone document on the BSCC website at www.bscc.ca.gov.

Project Narrative and Budget Instructions

Project Narrative

Public Defense Pilot Program funds must be utilized for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code.

Provide a project narrative that addresses each of the following items:

- Identify the specific section(s) of the Penal Code the proposal will address.
    - Note: It is the applicant's discretion to determine the specific section that will be addressed and if one or more sections will be addressed in the proposal.
- Description of the need(s) to be addressed by the Public Defense Pilot Program.
- Description of how the need(s) to be addressed Public Defense Pilot Program were identified.
- Describe why the need(s) described above is not met with existing resources.
- Provide relevant qualitative and/or quantitative data with citations in support of the need(s).

The project narrative must be submitted in Arial 12-point font with one-inch margins on all four sides and at 1.5-line spacing. The project narrative may not exceed **three (3) numbered** pages in length.

Budget Section

Applicants must provide a 12-month budget covering March 1, 2022 to March 1, 2023.

Applicants should be aware that budgets will be subject to review and approval by the BSCC staff to ensure all proposed costs listed within the budget narrative are allowable and eligible for reimbursement. Regardless of any ineligible costs that may need to be addressed post award, the starting budget for the statements of expenditures and the total amount requested will be the figures used for the Standard Grant Agreement.

Applicants are solely responsible for the accuracy and completeness of the information entered in the Budget Section. Detailed instructions for completing the Budget Attachment are listed on the Instructions tab of the Excel workbook. All project costs must be directly related to the objectives and activities of the project. For additional guidance related to grant budgets, refer to the BSCC Grant Administration Guide.

To access the Public Defense Pilot Program Budget Template, click **here**.

PART III: APPENDIXES

Appendixes

This section includes the following appendixes:

- Appendix A: Senate Bill 129
- Appendix B: Project Work Plan
- Appendix C: Funding Allocation Chart
- Appendix D: Sample Grant Agreement
- Appendix E: Governing Board Resolution

Appendix A: Senate Bill 129

Of the amount appropriated in Schedule (1), $49,500,000 shall be provided for the Public Defense Pilot to each county based on the county's share of the total adult population in the state for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code. This pilot shall end January 1, 2025. Prior to distribution of these resources for each county, the Board of State and Community Corrections shall work in consultation with the Office of the State Public Defender to identify those entities who provide public defender services on behalf of each county. No later than March 1, 2025, each of those entities who provide public defender services on behalf of a county and receive these resources shall report to the Board of State and Community Corrections on how much funding was received and how the funding was used to address the workload pursuant to this provision. The Board of State and Community Corrections shall contract with a university or research institution to complete an independent evaluation to assess how these resources provided to public defender service providers impact outcomes for the workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code. The Board of State and Community Corrections will submit this evaluation to the Joint Legislative Budget Committee by August 1, 2025. This funding is intended to supplement, and not supplant, existing funding levels for public defender offices.

Of the amount appropriated in Schedule (1), $500,000 shall be available for the Board of State and Community Corrections for administrative costs and to contract with a university or research institution to complete the independent evaluation. These funds shall be available for encumbrance or expenditure until June 30, 2026.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB129

Appendix B: Project Work Plan

This Project Work Plan identifies measurable goals and objectives, activities and services, the responsible parties and a timeline. Completed plans should (1) identify the project's **top goals and objectives** (minimum of two); (2) identify how the top goals will be achieved in terms of the activities, responsible staff/partners, and start and end dates; and (3) provide goals and objectives with a clear relationship to the need and intent of the grant. Please provide a project workplan in the below fields.

(1) Goal:			
Objectives (A., B., etc.)	A. B. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. 2. 3.			

(2) Goal:			
Objectives (A., B., etc.)	A. B. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. 2. 3.			

(3) Goal:			
Objectives (A., B., etc.)	A. B. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. 2. 3.			

(4) Goal:			
Objectives (A., B., etc.)	A. B. C.		
Project activities that support the identified goal and objectives:	Responsible staff/partners	Timeline	
		Start Date	End Date
1. 2. 3.			

Appendix C: Funding Allocation

County	2021 Adult Population Projection[1]	Percent of State's Adult Population	Funding Allocation
Alameda County	1,310,463	4.26%	$2,107,280.30
Alpine County	950	0.00%	$1,527.64
Amador County	32,097	0.10%	$51,613.34
Butte County	178,559	0.58%	$287,130.47
Calaveras County	37,331	0.12%	$60,029.84
Colusa County	16,466	0.05%	$26,478.03
Contra Costa County	913,324	2.97%	$1,468,663.88
Del Norte County	21,061	0.07%	$33,866.98
El Dorado County	156,085	0.51%	$250,991.33
Fresno County	748,839	2.43%	$1,204,165.00
Glenn County	22,104	0.07%	$35,544.17
Humboldt County	106,276	0.35%	$170,896.33
Imperial County	139,633	0.45%	$224,535.81
Inyo County	14,393	0.05%	$23,144.56
Kern County	668,405	2.17%	$1,074,823.70
Kings County	113,142	0.37%	$181,937.15
Lake County	50,623	0.16%	$81,403.94
Lassen County	25,584	0.08%	$41,140.16
Los Angeles County	7,910,391	25.70%	$12,720,245.54
Madera County	119,430	0.39%	$192,048.53
Marin County	211,320	0.69%	$339,811.56
Mariposa County	14,277	0.05%	$22,958.02
Mendocino County	68,911	0.22%	$110,811.82
Merced County	208,364	0.68%	$335,058.18
Modoc County	7,555	0.02%	$12,148.76
Mono County	10,891	0.04%	$17,513.19
Monterey County	326,955	1.06%	$525,757.56
Napa County	112,201	0.36%	$180,423.99
Nevada County	82,255	0.27%	$132,269.54
Orange County	2,490,391	8.09%	$4,004,654.76
Placer County	318,725	1.04%	$512,523.37
Plumas County	16,362	0.05%	$26,310.79
Riverside County	1,892,294	6.15%	$3,042,889.32
Sacramento County	1,188,728	3.86%	$1,911,525.24
San Benito County	47,881	0.16%	$76,994.69
San Bernardino County	1,637,398	5.32%	$2,633,005.70
San Diego County	2,542,693	8.26%	$4,088,758.61
San Francisco County	743,109	2.41%	$1,194,950.91
San Joaquin County	580,077	1.88%	$932,788.51
San Luis Obispo County	231,049	0.75%	$371,536.63

County	2021 Adult Population Projection[1]	Percent of State's Adult Population	Funding Allocation
San Mateo County	606,435	1.97%	$975,173.30
Santa Barbara County	350,503	1.14%	$563,623.75
Santa Clara County	1,520,817	4.94%	$2,445,538.49
Santa Cruz County	220,402	0.72%	$354,415.80
Shasta County	139,023	0.45%	$223,554.90
Sierra County	2,665	0.01%	$4,285.43
Siskiyou County	35,470	0.12%	$57,037.27
Solano County	346,196	1.12%	$556,697.91
Sonoma County	406,287	1.32%	$653,326.79
Stanislaus County	419,536	1.36%	$674,631.75
Sutter County	75,397	0.24%	$121,241.59
Tehama County	49,445	0.16%	$79,509.67
Trinity County	11,188	0.04%	$17,990.78
Tulare County	344,299	1.12%	$553,647.45
Tuolumne County	43,726	0.14%	$70,313.27
Ventura County	657,705	2.14%	$1,057,617.64
Yolo County	179,802	0.58%	$289,129.27
Yuba County	57,279	0.19%	$92,107.07
Grand Total	**30,782,767**	**100.00%**	**$49,500,000.00**

Note: [1]2021 county adult population is based on projections obtained from the Department of Finance's Report P- 2B: Population Projections by Individual Year of Age, 2010-2060 California Counties (2019 baseline). Obtained from: https://www.dof.ca.gov/forecasting/demographics/Projections/.

Appendix D: Sample Grant Agreement

STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES — **SCO ID:5227-BSCCXXXXXX**

STANDARD AGREEMENT STD 213 (Rev 03/2019)	AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
	BSCC XXX- 21	BSCC-5227

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

BOARD OF STATE AND COMMUNITY CORRECTIONS

CONTRACTOR NAME

XXX

2. The term of this Agreement is:

START DATE

March 1, 2022

THROUGH END DATE

March 1, 2025

3. The maximum amount of this Agreement is:

$000,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits, attachments, and appendices which are by this reference made a part of the Agreement.

EXHIBITS	TITLE	PAGES
Exhibit A	Scope of Work	3
Exhibit B	Budget Detail and Payment Provisions	3
Exhibit C	General Terms and Conditions (04/2017)	4
Exhibit D	Special Terms and Conditions	4
Attachment 1	Public Defense Pilot Program Application Instructions	x
Attachment 2	Public Defense Pilot Program Application Package	x

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

GRANTEE NAME

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
XXX	XXX	XX	XXX
PRINTED NAME OF PERSON SIGNING	TITLE		
XXX	XXX		
CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED		
✍			

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

BOARD OF STATE AND COMMUNITY CORRECTIONS

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
2590 Venture Oaks Way, Suite 200	Sacramento	CA	95833
PRINTED NAME OF PERSON SIGNING	TITLE		
RICARDO GOODRIDGE	Deputy Director		
CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED		
✍			

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL: EXEMPT PER SCM, VOLUME 1, CH. 4.06

EXHIBIT A: SCOPE OF WORK

1. GRANT AGREEMENT – Public Defense Pilot Program

This Grant Agreement is between the State of California, Board of State and Community Corrections (hereafter referred to as BSCC) and Grantee Name (hereafter referred to as the Grantee or Contractor).

2. PROJECT SUMMARY AND ADMINISTRATION

A. The State Budget Act of 2021 (Senate Bill 129) appropriated funding for the Public Defense Pilot to each county for indigent defense providers, including public defenders, alternate defenders, and other qualifying entities that provide indigent defense in criminal matters for the purposes of workload associated with the provisions in paragraph (1) of subdivision (d) of Section 1170 of, and Sections 1170.95, 1473.7, and 3051 of, the Penal Code.

B. Grantee agrees to administer the project in accordance with Attachment 2: Public Defense Pilot Program Application Package, which is attached and hereto and made part of this agreement.

3. PROJECT OFFICIALS

A. The BSCC's Executive Director or designee shall be the BSCC's representative for administration of the Grant Agreement and shall have authority to make determinations relating to any controversies that may arise under or regarding the interpretation, performance, or payment for work performed under this Grant Agreement.

B. The Grantee's project officials shall be those identified as follows:

Authorized Officer with legal authority to sign:

Name: xxx
Title: xxx
Address: xxx
Phone: xxx

Designated Financial Officer authorized to receive warrants:

Name: xxx
Title: xxx
Address: xxx
Phone: xxx
Email: xxx

Project Director authorized to administer the project:

Name: xxx
Title: xxx
Address: xxx
Phone: xxx
Email: xxx

C. Either party may change its project representatives upon written notice to the other party.

D. By signing this Grant Agreement, the Authorized Officer listed above warrants that he or she has full legal authority to bind the entity for which he or she signs.

4. DATA COLLECTION AND EVALUATION REQUIREMENTS

Grantees will be required to comply with all data collection, evaluation, and reporting requirements of the Public Defense Pilot Program. This includes the timely submission of progress reports to the BSCC.

EXHIBIT A: SCOPE OF WORK

The BSCC plans to contract with an outside evaluator for a statewide evaluation of the impact of the projects funded by the Public Defense Pilot Program in consultation with the State Public Defender's Office. The contractor is expected to: develop the research methodology for the statewide evaluation; design and develop instruments for collecting evaluation data from grantees, including the progress reports; provide ongoing technical assistance to grantees for data collection and evaluation activities; compile, screen, and analyze data obtained from grantees; and develop a final evaluation report. As a condition of award, all grantees agree to collect data requested by the outside evaluator.

5. REPORTING REQUIREMENTS

A. Quarterly Progress Reports

Grantees will submit progress reports to the BSCC in a format prescribed by the outside evaluator in consultation with the BSCC and the OSPD. Questions about the Quarterly Progress Reports shall be directed to the outside evaluator and the BSCC. These reports, which will describe progress made on program objectives and include required data, shall be submitted according to the following schedule:

Progress Report Periods	Due no later than:
1. March 1, 2022 to June 30, 2022	August 15, 2022
2. July 1, 2022 to September 30, 2022	November 15, 2022
3. October 1, 2022 to December 31, 2022	February 15, 2023
4. January 1, 2023 to March 30, 2023	May 15, 2023
5. April 1, 2023 to June 30, 2023	August 15, 2023
6. July 1, 2023 to September 30, 2023	November 15, 2023
7. October 1, 2023 to December 31, 2023	February 15, 2024
8. January 1, 2024 to March 30, 2024	May 15, 2024
9. April 1, 2024 to June 30, 2024	August 15, 2024
10. July 1, 2024 to September 30, 2024	November 15, 2024
11. October 1, 2024 to January 1, 2025	March 1, 2025

6. PROJECT RECORDS

A. The Grantee shall establish an official file for the project. The file shall contain adequate documentation of all actions taken with respect to the project, including copies of this Grant Agreement, approved program/budget modifications, financial records and required reports.

B. The Grantee shall establish separate accounting records and maintain documents and other evidence sufficient to properly reflect the amount, receipt, and disposition of all project funds, including grant funds and any matching funds by the Grantee and the total cost of the project. Source documentation includes copies of all awards, applications, approved modifications, financial records and narrative reports.

C. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under the grant, whether they are employed full-time or part-time. Time and effort reports are also required for all subcontractors and consultants.

D. The grantee shall maintain documentation of donated goods and/or services, including the basis for valuation.

E. Grantee agrees to protect records adequately from fire or other damage. When records are stored away from the Grantee's principal office, a written index of the location of records stored must be on hand and ready access must be assured.

EXHIBIT A: SCOPE OF WORK

F. All Grantee records relevant to the project must be preserved a minimum of three (3) years after closeout of the grant project and shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and auditing by the BSCC or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the regular three-year period, whichever is later.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENTS

A. The Grantee shall be paid in one lump sum upon execution of the Grant Agreement. Grantee shall only use grant funds for allowable costs (see Exhibit B, "Project Costs") and shall provide statements of expenditures and supporting documentation to the BSCC upon request and on a quarterly basis as set forth in the schedule below.

Quarterly Invoicing Periods:	**Due no later than:**
1. March 1, 2022 to June 30, 2022	August 15, 2022
2. July 1, 2022 to September 30, 2022	November 15, 2022
3. October 1, 2022 to December 31, 2022	February 15, 2023
4. January 1, 2023 to March 31, 2023	May 15, 2023
5. April 1, 2023 to June 30, 2023	August 15, 2023
6. July 1, 2023 to September 30, 2023	November 15, 2023
7. October 1, 2023 to December 31, 2023	February 15, 2024
8. January 1, 2024 to March 31, 2024	May 15, 2024
9. April 1, 2024 to June 30, 2024	August 15, 2024
10. July 1, 2024 to September 30, 2024	November 15, 2024
11. October 1, 2024 to January 1, 2025	February 16, 2025
Final Invoicing Period:	**Due no later than:**
12. January 2, 2025 to March 1, 2025*	April 16, 2025

**Note: Only expenditures associated with completion of the final progress report may be included on invoice 12.*

B. All project expenditures (excluding costs associated with the completion of the final progress report) must be incurred by the end of the grant project period, January 1, 2025, and included on the invoice due February 16, 2025. Project expenditures incurred after January 1, 2025 will not be reimbursed.

C. The final progress report is due to the BSCC by March 1, 2025. Expenditures incurred for the completion of the final progress report during the period of January 2, 2025 to March 1, 2025 must be submitted no later than April 16, 2025. Supporting fiscal documentation will be required for all expenditures claimed during the Final Invoicing Period and must be submitted with the final invoice.

D. Grantee shall submit an invoice to the BSCC each invoicing period, even if grant funds are not expended or requested during the invoicing period. If applicable, grantees may submit an invoice with a $0 claim.

E. Upon the BSCC's request, supporting documentation must be submitted for project expenditures. Grantees are required to maintain supporting documentation for all expenditures on the project site for the life of the grant and make it readily available for review during BSCC site visits. See Exhibit A. Scope of Work, Item 6. Project Records.

F. Any unspent funds remaining at the end of the agreement term, including any interest earned, must be returned to the BSCC within 30 days of the submission of the final invoice.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

2. GRANT AMOUNT AND LIMITATION

A. In no event shall the BSCC be obligated to pay any amount in excess of the grant award. Grantee waives any and all claims against the BSCC, and the State of California on account of project costs that may exceed the sum of the grant award.

B. Under no circumstance will a budget item change be authorized that would cause the project to exceed the amount of the grant award identified in this Grant Agreement.

3. BUDGET CONTINGENCY CLAUSE

A. This grant agreement is valid through Public Defense Pilot Program funding generated from the General Fund. The Grantee agrees that the BSCC's obligation to pay any sum to the grantee under any provision of this agreement is contingent upon the availability of sufficient funding granted through the passage of the Budget Act of 2021 (Senate Bill 129). It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Grant Agreement does not appropriate sufficient funds for the program, this Grant Agreement shall be of no further force and effect. In this event, the BSCC shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement.

B. If Public Defense Pilot Program funding is reduced or falls below estimates contained within the Public Defense Pilot Program Application Package, the BSCC shall have the option to either cancel this Grant Agreement with no liability occurring to the BSCC or offer an amendment to this agreement to the Grantee to reflect a reduced amount.

C. If BSCC cancels the agreement pursuant to Paragraph 3(B) or Grantee does not agree to an amendment in accordance with the option provided by Paragraph 3(B), it is mutually agreed that the Grant Agreement shall have no further force and effect. In this event, the BSCC shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement except that Grantee shall be required to maintain all project records required by Paragraph 6 of Exhibit A for a period of three (3) years following the termination of this agreement.

4. PROJECT COSTS

A. Grantee is responsible for ensuring that actual expenditures are for eligible project costs. "Eligible" and "ineligible" project costs are set forth in the July 2020 BSCC Grant Administration Guide, which can be found under Quick Links here:

https://www.bscc.ca.gov/s_correctionsplanningandprograms/

The provisions of the BSCC Grant Administration Guide are incorporated by reference into this agreement and Grantee shall be responsible for adhering to the requirements set forth therein. To the extent any of the provisions of the BSCC Grant Administration Guide and this agreement conflict, the language in this agreement shall prevail.

B. Grantee is responsible for ensuring that invoices submitted to the BSCC claim actual expenditures for eligible project costs.

C. Grantee shall, upon demand, remit to the BSCC any grant funds not expended for eligible project costs or an amount equal to any grant funds expended by the Grantee in violation of the terms, provisions, conditions or commitments of this Grant Agreement.

D. Grant funds must be used to support new program activities or to augment existing funds that expand current program activities. Grant funds shall not replace (supplant) any federal, state and/or local funds that have been appropriated for the same purpose. Violations can result in

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

recoupment of monies provided under this grantor suspension of future program funding through BSCC grants.

5. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

6. WITHHOLDING OF GRANT DISBURSEMENTS

A. The BSCC may withhold all or any portion of the grant funds provided by this Grant Agreement in the event the Grantee has materially and substantially breached the terms and conditions of this Grant Agreement.

B. At such time as the balance of state funds allocated to the Grantee reaches five percent (5%), the BSCC may withhold that amount as security, to be released to the Grantee upon compliance with all grant provisions, including:

1) submittal and approval of the final invoice; and
2) submittal and approval of the final progress report or any additional required reports.

The BSCC will not reimburse Grantee for costs identified as ineligible for grant funding. If grant funds have been provided for costs subsequently deemed ineligible, the BSCC may either withhold an equal amount from future payments to the Grantee or require repayment of an equal amount to the State by the Grantee.

C. In the event that grant funds are withheld from the Grantee, the BSCC's Executive Director or designee shall notify the Grantee of the reasons for withholding and advise the Grantee of the time within which the Grantee may remedy the failure or violation leading to the withholding.

7. PROJECT BUDGET

Budget Line Items	Grant Funds
1. Salaries and Benefits	$0
2. Services and Supplies	$0
3. Professional Services or Public Agency Subcontracts	$0
4. Non-Governmental Organization (NGO) Subcontracts	$0
5. Equipment/Fixed Assets	$0
6. Other (Travel, Training, etc.)	$0
7. Indirect Costs	$0
TOTALS	$0

EXHIBIT C: GENERAL TERMS AND CONDITIONS (04/2017)

1. **APPROVAL:** This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT:** This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT:** Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. **DISPUTES:** Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE:** The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR:** Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).
10. **NON-DISCRIMINATION CLAUSE:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic

EXHIBIT C: GENERAL TERMS AND CONDITIONS (04/2017)

information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. **CERTIFICATION CLAUSES:** The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. **TIMELINESS:** Time is of the essence in this Agreement.

13. **COMPENSATION:** The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. **GOVERNING LAW:** This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. **ANTITRUST CLAIMS:** The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

    A. The Government Code Chapter on Antitrust claims contains the following definitions:

        1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

        2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

    B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective

EXHIBIT C: GENERAL TERMS AND CONDITIONS (04/2017)

at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. **CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

    A. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

    B. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. **SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

    A. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

    B. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual

EXHIBIT C: GENERAL TERMS AND CONDITIONS (04/2017)

percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. **LOSS LEADER:** If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

1. GRANTEE'S GENERAL RESPONSIBILITY

A. Grantee agrees to comply with all terms and conditions of this Grant Agreement. Review and approval by the BSCC are solely for the purpose of proper administration of grant funds and shall not be deemed to relieve or restrict the Grantee's responsibility.

B. Grantee is responsible for the performance of all project activities identified in Attachment 2: Public Defense Pilot Program Application Package.

C. Grantee shall immediately advise the BSCC of any significant problems or changes that arise during the course of the project.

2. GRANTEE ASSURANCES AND COMMITMENTS

A. Compliance with Laws and Regulations

This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Grantee shall at all times comply with all applicable State laws, rules and regulations, and all applicable local ordinances.

B. Fulfillment of Assurances and Declarations

Grantee shall fulfill all assurances, declarations, representations, and statements made by the Grantee in Attachment 2: Public Defense Pilot Program Application Package, documents, amendments, approved modifications, and communications filed in support of its request for grant funds.

C. Permits and Licenses

Grantee agrees to procure all permits and licenses necessary to complete the project, pay all charges and fees, and give all notices necessary or incidental to the due and lawful proceeding of the project work.

3. POTENTIAL SUBCONTRACTORS

A. In accordance with the provisions of this Grant Agreement, the Grantee may subcontract for services needed to implement and/or support program activities. Grantee agrees that in the event of any inconsistency between this Grant Agreement and Grantee's agreement with a subcontractor, the language of this Grant Agreement will prevail.

B. Nothing contained in this Grant Agreement or otherwise, shall create any contractual relation between the BSCC and any subcontractors, and no subcontract shall relieve the Grantee of his responsibilities and obligations hereunder. The Grantee agrees to be as fully responsible to the BSCC for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Grantee. The Grantee's obligation to pay its subcontractors is an independent obligation from the BSCC's obligation to make payments to the Grantee. As a result, the BSCC shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

C. Grantee assures that for any subcontract awarded by the Grantee, such insurance and fidelity bonds, as is customary and appropriate, will be obtained.

D. Grantee agrees to place appropriate language in all subcontracts for work on the project requiring the Grantee's subcontractors to:

1) Books and Records

Maintain adequate fiscal and project books, records, documents, and other evidence pertinent to the subcontractor's work on the project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the accounting records, to the supporting documentation. These records shall be maintained for a minimum of three

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

(3) years after the acceptance of the final grant project audit under the Grant Agreement and shall be subject to examination and/or audit by the BSCC or designees, state government auditors or designees, or by federal government auditors or designees.

2) Access to Books and Records

Make such books, records, supporting documentations, and other evidence available to the BSCC or designee, the State Controller's Office, the Department of General Services, the Department of Finance, California State Auditor, and their designated representatives during the course of the project and for a minimum of three (3) years after acceptance of the final grant project audit. The Subcontractor shall provide suitable facilities for access, monitoring, inspection, and copying of books and records related to the grant-funded project.

4. PROJECT ACCESS

Grantee shall ensure that the BSCC, or any authorized representative, will have suitable access to project activities, sites, staff and documents at all reasonable times during the grant period including those maintained by subcontractors. Access to program records will be made available by both the grantee and the subcontractors for a period of three (3) years following the end of the grant period.

5. ACCOUNTING AND AUDIT REQUIREMENTS

A. Grantee agrees that accounting procedures for grant funds received pursuant to this Grant Agreement shall be in accordance with generally accepted government accounting principles and practices, and adequate supporting documentation shall be maintained in such detail as to provide an audit trail. Supporting documentation shall permit the tracing of transactions from such documents to relevant accounting records, financial reports and invoices.

The BSCC reserves the right to call for a program or financial audit at any time between the execution of this Grant Agreement and three years following the end of the grant period. At any time, the BSCC may disallow all or part of the cost of the activity or action determined to not be in compliance with the terms and conditions of this Grant Agreement or take other remedies legally available.

6. MODIFICATIONS

No change or modification in the project will be permitted without prior written approval from the BSCC. Changes may include modification to project scope, changes to performance measures, compliance with collection of data elements, and other significant changes in the budget or program components contained in Attachment 2: Public Defense Pilot Program Application Package.

7. TERMINATION

A. This Grant Agreement may be terminated by the BSCC at any time after grant award and prior to completion of project upon action or inaction by the Grantee that constitutes a material and substantial breech of this Grant Agreement. Such action or inaction includes but is not limited to:

1) substantial alteration of the scope of the grant project without prior written approval of the BSCC;

2) refusal or inability to complete the grant project in a manner consistent with Attachment 2: Public Defense Pilot Program Application Package or approved modifications;

3) failure to provide the required local match share of the total project costs; and

4) failure to meet prescribed assurances, commitments, recording, accounting, auditing, and reporting requirements of the Grant Agreement.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

B. Prior to terminating the Grant Agreement under this provision, the BSCC shall provide the Grantee at least 30 calendar days written notice stating the reasons for termination and effective date thereof. The Grantee may appeal the termination decision in accordance with the instructions listed in Exhibit D: Special Terms and Conditions, Number 8. Settlement of Disputes.

8. SETTLEMENT OF DISPUTES

A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Grantee shall submit to the BSCC Corrections Planning and Grant Programs Division Deputy Director a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Grant Agreement. Grantee's written demand shall be fully supported by factual information. The BSCC Corrections Planning and Grant Programs Division Deputy Director shall have 30 days after receipt of Grantee's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Grantee's demand, it shall be deemed a decision adverse to the Grantee's contention. If the Grantee is not satisfied with the decision of the BSCC Corrections Planning and Grant Programs Division Deputy Director, the Grantee may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30-day period in the event no decision is rendered), to the BSCC Executive Director, who shall have 45 days to render a final decision. If the Grantee does not appeal the decision of the BSCC Corrections Planning and Grant Programs Division Deputy Director, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Grantee's administrative remedies.

B. Pending the final resolution of any dispute arising under, related to or involving this Grant Agreement, Grantee agrees to diligently proceed with the performance of this Grant Agreement, including the providing of services in accordance with the Grant Agreement. Grantee's failure to diligently proceed in accordance with the State's instructions regarding this Grant Agreement shall be considered a material breach of this Grant Agreement.

C. Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Executive Director, if an appeal was made. If the Executive Director fails to render a final decision within 45 days after receipt of the Grantee's appeal for a final decision, it shall be deemed a final decision adverse to the Grantee's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Grantee commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

D. The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

9. UNION ACTIVITIES

For all agreements, except fixed price contracts of $50,000 or less, the Grantee acknowledges that applicability of Government Code §§16654 through 16649 to this Grant Agreement and agrees to the following:

A. No State funds received under the Grant Agreement will be used to assist, promote or deter union organizing.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

B. Grantee will not, for any business conducted under the Grant Agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State property is equally available to the general public for holding meetings.

C. If Grantee incurs costs or makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and that Grantee shall provide those records to the Attorney General upon request.

10. WAIVER

The parties hereto may waive any of their rights under this Grant Agreement unless such waiver is contrary to law, provided that any such waiver shall be in writing and signed by the party making such waiver.

Appendix E: Governing Board Resolution

Before grant funds can be reimbursed, a grantee must either (1) submit a resolution from its Governing Board that delegates authority to the individual authorized to execute the grant agreement or (2) provide sufficient documentation indicating that the prospective grantee has been vested with plenary authority to execute grant agreements (e.g. County Board of Supervisors delegating such authority to an Agency head).

Below is assurance language that, at a minimum, must be included in the resolution submitted to the Board of State and Community Corrections.

WHEREAS the ***(insert name of Local Government)*** desires to participate in the Public Defense Pilot Program funded through the State Budget Act of 2021 (Senate Bill 129) and administered by the Board of State and Community Corrections (hereafter referred to as the BSCC).

NOW, THEREFORE, BE IT RESOLVED that the ***(insert title of designated official)*** be authorized on behalf of the ***(insert name of Governing Board)*** to submit the grant proposal for this funding and sign the Grant Agreement with the BSCC, including any amendments thereof.

BE IT FURTHER RESOLVED that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

BE IT FURTHER RESOLVED that the ***(insert name of Local Government)*** agrees to abide by the terms and conditions of the Grant Agreement as set forth by the BSCC.

Passed, approved, and adopted by the ***(insert name of Governing Board)*** in a meeting thereof held on ***(insert date)*** by the following:

Ayes:
Notes:
Absent:
Signature: _____ Date: _____

Typed Name and Title: _____

ATTEST: Signature: _____ Date: _____

Typed Name and Title: _____

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 March 30, 2023, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued March 30, 2023**
- **Test Claim filed by the County of San Diego on December 28, 2022**

  Resentencing to Remove Sentencing Enhancements, 22-TC-01
  Statutes 2021, Chapter 728 (SB 483); Penal Code Sections 1171 and 1171.1 (now codified at Penal Code sections 1172.7 and 1172.75); effective January 1, 2022
  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 March 30, 2023 at Sacramento, California.

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/30/23

Claim Number: 22-TC-02

Matter: Resentencing to Remove Sentencing Enhancements

Claimant: County of San Diego

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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