



Rebecca Andrews  
Partner  
(713) 834-1109  
rebecca.andrews@bbklaw.com

File No. 60282.00009

May 25, 2023



**VIA DROPBOX**

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Re: Claimant Reply-Comments - Test Claim 22-TC-02, Resentencing to Remove Sentencing Enhancements**

Claimant, County of San Diego, submits this response to the April 28, 2023 comment letter submitted in this matter by the Department of Finance (“Department”).

The Department recognizes that the Mandated Activities described in Section V of the Narrative Statement are state mandated new programs or higher levels of service.<sup>1</sup> Without any explanation, the Department asserts that Senate Bill 483 as a whole relates directly to the enforcement of the crime or infraction and is, therefore, not a reimbursable state mandate under Government Code section 17556(g). This position, however, is not consistent with the exception in Government Code section 17556(g) (“Section 17556(g)”) or this Commission’s prior determinations.

Section 17556(g) is intended to implement the provisions of Section 6(a)(2) of Article XIII B of the California Constitution (“Section 6(a)(2)”) and must be read consistently with that provision. Section 6(a)(2) reads, in relevant part:

the Legislature may, but need not, provide a subvention of funds for the following mandates: ... Legislation defining a new crime or changing an existing definition of a crime.”

Section 17556(g) reads, in relevant part (emphasis added):

The commission shall not find costs mandated by the state, ... if, after a hearing, the commission finds any one of the following: ... The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, **but only**

<sup>1</sup> See Department Letter at p. 1 (“SB 483 created a new process ...”), citing Gov. Code, § 17556, subd. (g).

***for that portion of the statute relating directly to the enforcement of the crime or infraction.***

Exceptions to the subvention requirement must be narrowly construed to give effect to voter intent for Section 6.<sup>2</sup> As a result, to the extent Section 17556(g) added the exception for statutes that “changed the penalty for a crime or infraction” and then limited that exception to “only ... that portion of the statute relating directly the enforcement of a crime or infraction,” the exception must be narrowly construed and the limitation on that exception must be broadly construed under *Long Beach Unified School District*. To construe exceptions and limitations otherwise is contrary to the constitution.

To the extent Senate Bill 483 changed the penalty for a crime, only sections 2(a) and 3(a) affected that change in penalty, by declaring “[a]ny sentence enhancement that was imposed ... legally invalid.”<sup>3</sup> This test claim does not seek reimbursement for sections 2(a) or 3(a) of Senate Bill 483.<sup>4</sup>

This test claim seeks reimbursement for costs incurred to comply with sections 2(b)-(e) and 3(b)-(e) of Senate Bill 483.<sup>5</sup> These sections go beyond changing the penalty for a crime and require Claimant to undertake additional non-enforcement related activities, including: (1) identifying and reviewing incarcerated individuals’ records after a sentence has been invalidated; (2) acting as appointed counsel for individuals after a sentence has been invalidated; and (3) representing individuals and the State of California regarding the applicability of post-conviction changes in law and all “post-conviction factors” (the “Mandated Activities”).

This Commission has previously determined that the same types of activities as the Mandated Activities do not directly relate to enforcement of a crime.<sup>6</sup> The Mandated Activities involve evidence gathering and presentation activities and activities to assess a defendant’s future probability of committing a crime which this Commission determined did not “directly penalize a defendant” or “relate directly to the enforcement of a crime” for purposes of Section 6(a)(2).<sup>7</sup> The codification of these requirements in Part 2 of the Penal Code – “Of Criminal Procedure,” further demonstrates that the Test Claim Statutes do not relate “directly to the enforcement of the crime or infraction.”<sup>8</sup>

Finally, to the extent there is any uncertainty regarding whether the Mandated Activities relate directly to the enforcement of a crime, *Long Beach Unified School District* requires Section

---

<sup>2</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 175.

<sup>3</sup> Codified at Penal Code §§ 1172.7(a), 1172.75(a).

<sup>4</sup> *Id.*

<sup>5</sup> Codified at Penal Code §§ 1172.7(b)-(e), 1172.75(b)-(e).

<sup>6</sup> See 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”).

<sup>7</sup> SARATSO, *supra*, at pp. 29-30; see also DVTS-ACM, *supra*, at p. 4.

<sup>8</sup> Gov. Code, § 17556, subd. (g).

17556(g) to be applied in a constitutional manner – that is, by honoring voter intent to limit exceptions to the State’s subvention obligation.

Under this Commission’s previous rulings and the requirement to construe subvention exceptions narrowly, Government Code section 17556(g) provides no basis for excepting the State from its subvention obligation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca Andrews". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rebecca Andrews  
of BEST BEST & KRIEGER LLP

RA:lma

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 25, 2023, I served the:

- **Claimant's Rebuttal Comments filed May 25, 2023**

*Resentencing to Remove Sentencing Enhancements*, 22-TC-02  
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 May 25, 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:** 5/17/23

**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.)

**Adaoha Agu**, *County of San Diego Auditor & Controller Department*

Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123

Phone: (858) 694-2129

Adaoha.Agu@sdcounty.ca.gov

**Rebecca Andrews**, Partner, *Best Best & Krieger, LLP*

**Claimant Representative**

655 West Broadway, 15th Floor, San Diego, CA 92101

Phone: (619) 525-1300

Rebecca.Andrews@bbklaw.com

**Rachelle Anema**, Division Chief, *County of Los Angeles*

Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012

Phone: (213) 974-8321

RANEMA@auditor.lacounty.gov

**Lili Apgar**, Specialist, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

**Socorro Aquino**, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Aaron Avery**, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

Aarona@csda.net

**Anna Barich**, Attorney, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
Anna.Barich@csm.ca.gov

**Guy Burdick**, Consultant, *MGT Consulting*  
2251 Harvard Street, Suite 134, Sacramento, CA 95815  
Phone: (916) 833-7775  
gburdick@mgtconsulting.com

**Allan Burdick**,  
7525 Myrtle Vista Avenue, Sacramento, CA 95831  
Phone: (916) 203-3608  
allanburdick@gmail.com

**Evelyn Calderon-Yee**, Bureau Chief, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 324-5919  
ECalderonYee@sco.ca.gov

**Michael Cantrall**, *California Public Defenders Association*  
10324 Placer Lane, Sacramento, CA 95827  
Phone: (916) 362-1686  
webmaster@cpda.org

**Peter Chang**, *California Department of Justice*  
1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550  
Phone: (916) 324-8835  
peter.chang@doj.ca.gov

**Annette Chinn**, *Cost Recovery Systems, Inc.*  
705-2 East Bidwell Street, #294, Folsom, CA 95630  
Phone: (916) 939-7901  
achinnrcrs@aol.com

**Carolyn Chu**, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*  
925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8326  
Carolyn.Chu@lao.ca.gov

**Kris Cook**, Assistant Program Budget Manager, *Department of Finance*  
915 L Street, 10th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
Kris.Cook@dof.ca.gov

**Brian Cote**, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*  
1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 650-8184  
bcote@counties.org

**Thomas Deak**, Senior Deputy, *County of San Diego*  
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101  
Phone: (619) 531-4810  
Thomas.Deak@sdcounty.ca.gov

**Kalyn Dean**, Senior Legislative Analyst, *California State Association of Counties (CSAC)*  
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814  
Phone: (916) 327-7500  
kdean@counties.org

**Ted Doan**, Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Ted.Doan@dof.ca.gov

**Tracy Drager**, Auditor and Controller, *County of San Diego*  
**Claimant Contact**  
1600 Pacific Highway, Room 166, San Diego, CA 92101  
Phone: (619) 531-5413  
tracy.drager@sdcountry.ca.gov

**Donna Ferebee**, *Department of Finance*  
915 L Street, Suite 1280, Sacramento, CA 95814  
Phone: (916) 445-8918  
donna.ferebee@dof.ca.gov

**Tim Flanagan**, Office Coordinator, *Solano County*  
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533  
Phone: (707) 784-3359  
Elections@solanocounty.com

**Heather Halsey**, Executive Director, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
heather.halsey@csm.ca.gov

**Chris Hill**, Principal Program Budget Analyst, *Department of Finance*  
Local Government Unit, 915 L Street, Sacramento, CA 95814  
Phone: (916) 445-3274  
Chris.Hill@dof.ca.gov

**Tiffany Hoang**, Associate Accounting Analyst, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 323-1127  
THoang@sco.ca.gov

**Linnea Hull**, *California District Attorneys Association (CDA)*  
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833  
Phone: (916) 443-2017  
lhull@cdaa.org

**Jason Jennings**, Director, *Maximus Consulting*  
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236  
Phone: (804) 323-3535  
SB90@maximus.com

**Angelo Joseph**, Supervisor, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,  
Sacramento, CA 95816  
Phone: (916) 323-0706  
AJoseph@sco.ca.gov

**Anita Kerezsi, AK & Company**

2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994

akcompanysb90@gmail.com

**Lisa Kurokawa, Bureau Chief for Audits, State Controller's Office**

Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 327-3138

lkurokawa@sco.ca.gov

**Kim-Anh Le, Deputy Controller, County of San Mateo**

555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 599-1104

kle@smcgov.org

**Fernando Lemus, Principal Accountant - Auditor, County of Los Angeles**

Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-0324

flemus@auditor.lacounty.gov

**Erika Li, Chief Deputy Director, Department of Finance**

915 L Street, 10th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

erika.li@dof.ca.gov

**Diego Lopez, Consultant, Senate Budget and Fiscal Review Committee**

1020 N Street, Room 502, Sacramento, CA 95814

Phone: (916) 651-4103

Diego.Lopez@sen.ca.gov

**Everett Luc, Accounting Administrator I, Specialist, State Controller's Office**

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0766

ELuc@sco.ca.gov

**Jill Magee, Program Analyst, Commission on State Mandates**

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

Jill.Magee@csm.ca.gov

**Darryl Mar, Manager, State Controller's Office**

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706

DMar@sco.ca.gov

**Graciela Martinez, President, California Public Defenders Association**

10324 Placer Lane, Sacramento, CA 95827

Phone: (916) 362-1686

gmartinez@pubdef.lacounty.gov

**Michelle Mendoza, MAXIMUS**

17310 Red Hill Avenue, Suite 340, Irvine, CA 95403

Phone: (949) 440-0845

michellemendoza@maximus.com

**Lourdes Morales, Senior Fiscal and Policy Analyst, Legislative Analyst's Office**

925 L Street, Suite 1000, Sacramento, CA 95814



Phone: (916) 319-8320  
Lourdes.Morales@LAO.CA.GOV

**Marilyn Munoz**, Senior Staff Counsel, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-8918  
Marilyn.Munoz@dof.ca.gov

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Patricia Pacot**, Accountant Auditor I, *County of Colusa*  
Office of Auditor-Controller, 546 Jay Street, Suite #202, Colusa, CA 95932  
Phone: (530) 458-0424  
ppacot@countyofcolusa.org

**Arthur Palkowitz**, *Law Offices of Arthur M. Palkowitz*  
12807 Calle de la Siena, San Diego, CA 92130  
Phone: (858) 259-1055  
law@artpalk.onmicrosoft.com

**Kirsten Pangilinan**, Specialist, *State Controller's Office*  
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816  
Phone: (916) 322-2446  
KPangilinan@sco.ca.gov

**Jai Prasad**, *County of San Bernardino*  
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018  
Phone: (909) 386-8854  
jai.prasad@sbccountyatc.gov

**Jonathan Quan**, Associate Accountant, *County of San Diego*  
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123  
Phone: 6198768518  
Jonathan.Quan@sdcountry.ca.gov

**Roberta Raper**, Director of Finance, *City of West Sacramento*  
1110 West Capitol Ave, West Sacramento, CA 95691  
Phone: (916) 617-4509  
robertar@cityofwestsacramento.org

**Cindy Sconce**, Director, *MGT*  
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864  
Phone: (916) 276-8807  
csconce@mgtconsulting.com

**Camille Shelton**, Chief Legal Counsel, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
camille.shelton@csm.ca.gov

**Carla Shelton**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
carla.shelton@csm.ca.gov

**Natalie Sidarous**, Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: 916-445-8717

NSidarous@sco.ca.gov

**Kim Stone**, Legislation, *California District Attorneys Association*

2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833

Phone: (916) 443-2017

kim@stoneadvocacy.com

**Jolene Tollenaar**, *MGT Consulting Group*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

**Gregory Totten**, Chief Executive Officer, *California District Attorneys Association*

2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833

Phone: (916) 443-2017

gtotten@cdaa.org

**Evelyn Tseng**, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3127

etseng@newportbeachca.gov

**Brian Uhler**, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8328

Brian.Uhler@LAO.CA.GOV

**Antonio Velasco**, Revenue Auditor, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3143

avelasco@newportbeachca.gov

**Ada Waelder**, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*

1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500

awaelder@counties.org

**Renee Wellhouse**, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

**Colleen Winchester**, Senior Deputy City Attorney, *City of San Jose*

200 East Santa Clara Street, 16th Floor, San Jose, CA 95113

Phone: (408) 535-1987

Colleen.Winchester@sanjoseca.gov

**Jacqueline Wong-Hernandez**, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*

1100 K Street, Sacramento, CA 95814

Phone: (916) 650-8104

jwong-hernandez@counties.org

**Elisa Wynne**, Staff Director, *Senate Budget & Fiscal Review Committee*  
California State Senate, State Capitol Room 5019, Sacramento, CA 95814  
Phone: (916) 651-4103  
elisa.wynne@sen.ca.gov

**Helmholt Zinser-Watkins**, Associate Governmental Program Analyst, *State Controller's Office*  
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700,  
Sacramento, CA 95816  
Phone: (916) 324-7876  
HZinser-watkins@sco.ca.gov