

Local Government Mandated Services Working Group – MEETING and CALL
Thursday, May 25, 2017 ▪ 3:00 p.m.
1100 K Street, 3rd Floor Conference Room
Call-in number: (916) 445-5476

Discussion Items

- I. Welcome & Introductions (Dorothy Johnson, CSAC)
- II. Sacramento Update (Dorothy Johnson, CSAC)
 - a. [Governor's May Revision for 2017-18](#)
 - i. [CSAC Budget Action Bulletin](#)
 - b. [Introduced Bills with Potential Mandate Impact](#)
 - i. AB 85 (Rodriguez) [Language](#) & [Coalition Concerns Letter](#)
- III. Commission on State Mandates [AGENDA FOR MAY 26, 2017](#) (Dorothy Johnson, CSAC)
- IV. Litigation Update (Jennifer Henning, CSAC)
 - i. Potential Mandate Claim – SB 260 / SB 261 (memo on pages 2 & 3)
- V. Other Business
 - a. Next Meeting Thursday, June 27, 2017 @ 3 pm
- VI. Adjourn



County Counsels' Association of California

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MEMORANDUM

To: Mandates Services Working Group

From: Jennifer Henning, CSAC Litigation Coordinator

Date: May 25, 2017

Re: SB 260 / SB 261

This memorandum will provide you with some information on a possible mandates claim related to [SB 260](#) (effective Jan. 1, 2014) and [SB 261](#) (effective Jan. 1, 2016). SB 260 provides persons who committed their offense under the age of 18 with a possibility of release after no more than 25 years of imprisonment. At that release hearing, SB 260 requires the State Board of Parole Hearings to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity in accordance with relevant case law.” (Penal Code, §§ 3051(d); 4801(c).) The hearing must provide a “meaningful opportunity” for release. (Penal Code, § 3051(e).) SB 261 expanded those rights to persons who committed their offense under the age of 23. On its face, these bills imposed no new duties to local agencies, and were not tagged in the bill analysis with potentially creating new mandates. Rather, the new responsibilities in the bills were imposed on the State (CDCR and Board of Parole Hearings). And those duties were carried out in a variety of ways that did not involve local agencies prior to the cases described below. For example, parole board members received training on the general characteristics of youth offenders, they were provided a probation report with relevant information where available, and the offender might be interviewed by a psychologist in advance of their parole hearing and that information would be provided to the parole board.

In [People v. Franklin](#) (2016) 63 Cal.4th 261, a 16 year old was convicted of murder and was given a 50 year to life sentence as required by mandatory sentencing. The trial court did not consider any of the youth factors at the time of sentencing. The *Franklin* Court ordered the case back to the trial court to determine whether Franklin was afforded “sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing” as the Court found was required by SB 260. (*Id.* at p. 284.) The Court went on to state that if the trial court found that Franklin was not given such an opportunity, then the trial court “may receive submissions and, if appropriate, testimony...” (*Ibid.*) In other words, the Supreme Court held that SB 260 requires that at the time a juvenile is convicted and sentenced, a hearing must be

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held to demonstrate possible diminished culpability based on their age so that when their later parole hearing arrives, that evidence can be used by the Parole Board. Such cases began to get remanded back to counties last fall. Counties (Public Defenders and District Attorneys) began incurring costs in about December 2016 when they started hiring investigators to develop these youth factor reports for cases being remanded back to the trial courts following the *Franklin* opinion.

In [*People v. Perez*](#) (2016) 3 Cal.App.5th 612, the Court of Appeal relied on *Franklin's* to find that SB 261 similarly requires a youth factors hearing if the person was under age 23 at the time of the offense.

Counties have a possible mandate claim SB 260 and SB 261 costs based on these recent court interpretations of those statutes, notwithstanding the fact that the bills themselves have been in place since January 2014 and January 2016. (Note that the limitations period for filing a test claim states that the claim must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of first incurring increased costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, within 12 months means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.” [2 Cal. Code Regs., tit. 2, § 1183.1, subd. (b).])