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October 20, 2025

Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



**RE: Comments to Draft Expedited Parameters and Guidelines
Test Claim Criminal Procedure: Discrimination, 24-TC-02**

Dear Ms. Gmur:

We appreciate the difficult work the Commission on State Mandates is doing to help counties recoup the increased costs of complying with new state mandates arising from recent legislation. Our office herein submits for your consideration the following proposed comments and modifications to the Commission's Draft Expedited Parameters and Guidelines. The duties and obligations described below are "reasonably necessary activities" required by our office to comply with our mandated duties under AB 256's amendments to Penal Code sections 745 and 1473.

The Racial Justice Act For All Created Additional Mandated Duties

Assembly Bill (AB) 256, known as the Racial Justice Act for All, amended Penal Code sections 745 and 1473 to allow the California Racial Justice Act of 2020 to apply **retroactively**. AB 256, amended Penal Code section 745 to add subdivision (j)(3), which allows any petitioner currently serving a sentence in State prison or in county jail pursuant to Penal Code section 1170(h), or committed to the Division of Juvenile Justice, regardless of when the judgment or disposition became final, to file a motion or habeas corpus writ petition alleging a racially biased prosecution under Penal Code section 1473(e).

Prior to the passage of AB 256 and the addition of Penal Code section 745(j)(3), individuals serving State prison sentences were not eligible to file writ petitions to challenge a conviction alleging racial bias.

The Guidelines Should Include Reimbursement of All the Increased Costs for Both Parties Involved in RJA Matters

The test claim before the Commission focuses on claims made by those offices representing indigent habeas corpus petitioners only. It is not just the public defenders and those representing indigent petitioners who incur additional costs. The guidelines should consider claims made from district attorneys in reviewing and opposing such petitions under Penal Code Section 745.

The following duties are reasonably necessary activities of the District Attorney's Office pursuant to Cal. Code Regs., tit. 2, §1183.7(d):

Discovery under the RJA: First and foremost, the District Attorney is obligated to provide requested discovery related to an alleged violation of the RJA upon a showing of good cause. Discovery requested and provided often includes years and/or decades of data on all similar cases received and filed by the District Attorney's office including charge, enhancement, special circumstance, or special allegation information, race/ethnicity/age of defendant and race/ethnicity of victim, case number and name, disposition and sentencing information, criminal history, police reports/factual narratives of each case, file or no file considerations. Cases that fall within this (j)(3) category often involve serious/violent crimes, carrying lengthy prison sentences so the case files in each of these similar comparison cases for which the defendant seeks discovery are often comprised of 10-20 boxes of paper records. Where discovery has been ordered for decades worth of archived historical records, personnel are required to locate, organize, and review the contents of the file boxes for sometimes hundreds of cases for the ordered discovery. Personnel then digitizes and redacts privileged and confidential information from the discovery before disclosure to the defense. Historical data managed in various case management systems often has to be manually collected, checked for accuracy and completeness. Maintenance of our case management system, the queries and code written to gather the relevant data, and the creation of spreadsheets to exhibit this data is also part of this discovery process.

Review of the record and case file: For these post-judgment claims, a review of the record does not include only the District Attorney's case files. It also includes the record on appeal which are often comprised of tens of thousands of pages of reporter's transcripts and pleadings filed throughout the life of the case, both pre-conviction and post-judgment including writs and appeals filed in the Superior Court, Court of Appeal, and Supreme Court.

Expert consultation and analysis: Statisticians, data analysts, and implicit bias experts are often consulted and retained in these RJA matters to review the data or the facts of the case to determine if a violation occurred.

Preparation of briefs and legal argument – review of data and expert conclusions: RJA litigation is generally comprised of several phases: discovery, prima facie, and evidentiary hearing. Each phase often requires significant legal research and writing over many months. In the post-

judgment context, briefing often entails authoring a statement of the facts and procedural history of the case taken from a lengthy record on appeal. To appropriately brief the matter at the prima facie stage, a detailed review of each line of foundational data on a several hundred page excel spreadsheet to assess accuracy and an understanding of the methodology utilized by an expert to assess reliability are often necessitated. A response to a writ of habeas corpus requires even more briefing where a court may order an informal response even before the return and traverse. At each stage, extensive research and legal writing are required.

Court appearances and hearings: RJA litigation requires regular court appearances and hearings on substantive issues. Evidentiary hearings can take months and involve the testimony of witnesses including Public Defender and District Attorney experts.

The duties imposed on Stanislaus County because of the RJA, and in particular AB 256's amendments to the RJA extend beyond the simple provision of defense counsel to represent indigent habeas corpus petitioners in these retroactive claims. They include additional duties for our office which fall far outside the scope of our normal statutory duties to seek justice and prosecute cases. Accordingly, the Stanislaus County District Attorney's Office respectfully requests the Commission modify the Draft Expedited Parameters and Guidelines to include these additional "reasonably necessary activities" as part of its mandate.

Respectfully submitted,



JEFF LAUGERO
Stanislaus County District Attorney

DECLARATION OF MARK L. ZAHNER

I, Mark L. Zahner, declare as follows:

- 1) I am an attorney-at-law licensed to practice in all courts of the State of California and am employed as the Assistant District Attorney with the County of Stanislaus. My current assignment includes supervision of the Law and Motion/Writs and Appeals Division of our office. A large part of those duties include work on Racial Justice Act (RJA) writs and motions.
- 2) Assembly Bill (AB) 256, known as the Racial Justice Act for All, amended Penal Code (PC) § 745 to add sub § (j)(3), which allows any petitioner currently serving a sentence in State prison or in county jail pursuant to PC § 1170(h), or committed to the Division of Juvenile Justice, regardless of when the judgment or disposition became final, to file a motion or habeas corpus writ petition alleging a racially biased prosecution under PC § 1473(e).
- 3) As a result of AB 256, the District Attorney of the County of Stanislaus has incurred additional legal obligations relative to these retroactive claims.
- 4) Those AB 256 obligations are as follows:
 - a. Discovery under the RJA: First and foremost, the District Attorney is obligated to provide requested discovery related to an alleged violation of the RJA upon a showing of good cause. Discovery requested and provided often includes years and/or decades of data on all similar cases received and filed by the District Attorney's office including charge, enhancement, special circumstance, or special allegation information, race/ethnicity/age of defendant and race/ethnicity of victim, case number and name, disposition and sentencing information, criminal history, police reports/factual narratives of each case, file or no file considerations. Cases that fall within this (j)(3) category often involve serious/violent crimes, carrying lengthy prison sentences so the case files in each of these similar comparison cases for which the defendant seeks discovery are often comprised of 10-20 boxes of paper records. Where discovery has been ordered for decades worth of archived historical records, personnel are required to locate, organize, and review the contents of the file boxes for sometimes hundreds of cases for the ordered discovery. Personnel then digitizes and redacts privileged and confidential information from the discovery before disclosure to the defense. Historical data managed in various case management systems often has to be manually collected, checked for accuracy and completeness. Maintenance of our case management system, the queries and code written to gather the relevant data, and the creation of spreadsheets to exhibit this data is also part of this discovery process.
 - b. Review of the record and case file: For these post-judgment claims, a review of the record does not include only the District Attorney's case files. It also includes the record on appeal which are often comprised of tens of thousands of pages of reporter's transcripts and pleadings filed throughout the life of the case, both pre-conviction and post-judgment including writs and appeals filed in the Superior Court, Court of Appeal, and Supreme Court.

- c. Expert consultation and analysis: Statisticians, data analysts, and implicit bias experts are often consulted and retained in these RJA matters to review the data or the facts of the case to determine if a violation occurred.
 - d. Preparation of briefs and legal argument – review of data and expert conclusions: RJA litigation is generally comprised of several phases: discovery, prima facie, and evidentiary hearing. Each phase often requires significant legal research and writing over many months. In the post-judgment context, briefing often entails authoring a statement of the facts and procedural history of the case taken from a lengthy record on appeal. To appropriately brief the matter at the prima facie stage, a detailed review of each line of foundational data on a several hundred page excel spreadsheet to assess accuracy and an understanding of the methodology utilized by an expert to assess reliability are often necessitated. A response to a writ of habeas corpus requires even more briefing where a court may order an informal response even before the return and traverse. At each stage, extensive research and legal writing are required.
 - e. Court appearances and hearings: RJA litigation requires regular court appearances and hearings on substantive issues. Evidentiary hearings can take months and involve the testimony of witnesses including Public Defender and District Attorney experts.
- 5) The District Attorney of Stanislaus County has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct and indirect costs associated with our work related to AB 256.
 - 6) The District Attorney is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter.

I have personal knowledge of the foregoing facts and information presented in these Comments to Draft Expedited Parameters and Guidelines, and, if so required, I could and would testify to the statements made herein.

Executed this 20th day of October, 2025 in Modesto, California.



Mark L. Zahner
Assistant District Attorney
Stanislaus County District Attorney's Office

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 October 22, 2025, I served the:

- **Current Mailing List dated October 16, 2025**
- **City and County of San Francisco Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **Contra Costa County Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **County of Marin Office of the County Counsel's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **County of Santa Clara Office of the County Counsel's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **County of Sonoma Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **Sacramento County Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**
- **Stanislaus County Office of the District Attorney's Comments on the Draft Expedited Parameters and Guidelines filed October 20, 2025**

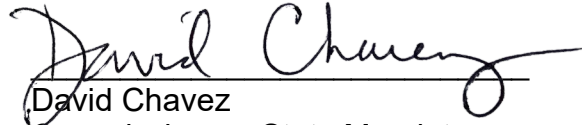
Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Sections 2 and 3.5 (AB 256); Penal Code Sections 745 and 1473, effective January 1, 2023

County of Los Angeles, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 22, 2025 at Sacramento, California.

A handwritten signature in black ink, reading "David Chavez", with a horizontal line extending from the end of the signature.

David Chavez
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/16/25

Claim Number: 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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