Sacramento County District Attorney's Office
THIEN HO
District Attorney

October 20, 2025

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

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

Dear Ms. Gmur:

Please accept the Sacramento County District Attorney's comments and recommended changes to the Commission's Draft Expedited Parameters and Guidelines.

The Commission found that the requirements of Assembly Bill 256 (AB 256) created a new state-mandated local program or higher level of service for which the state is required to reimburse local governments for their costs incurred to comply with these requirements. In addition to the reimbursable activity identified by the Los Angeles County Public Defender and approved by the Commission, the Sacramento County District Attorney's Office has similarly been required to dedicate additional staff, expand the scope of our work and incur additional costs because of AB 256. As such, the Sacramento County District Attorney's Office encourages the Commission to consider expanding the Draft Expedited Parameters and Guidelines to include the additional "reasonably necessary activities" as defined by Cal. Code Regs., tit. 2, §1183.7(d) that now must be performed by our office.

For example, prior to the enactment of the Racial Justice Act (RJA) and AB 256's amendment to the RJA, claims for post-conviction discovery were controlled by Penal Code section 1054.9. Only defendants who had been convicted of a serious or violent felony resulting in a sentence of 15 years or more were eligible to seek post-conviction discovery under the statute, and they were only entitled to obtain materials to which they would have been entitled at time of trial. After the passage of the RJA, Penal Code section 745(d) now authorizes a defendant to file a motion for post-conviction discovery requesting disclosure of all evidence relevant to a potential violation of the RJA without regard to the type of conviction or length of the sentence. Furthermore, the material typically requested regarding a potential violation of the RJA is not material that would be eligible for disclosure pursuant to Penal Code section 1054.9. Statistical information regarding charging decisions or sentencing information on other cases to be used as case comparators is not the type of discovery material a defendant would normally "have been entitled to at the time of the trial." As a result, the number of requests for post-conviction discovery and the scope of those requests have greatly expanded under the RJA.

Similarly, requests for pre-trial discovery were controlled by Penal Code section 1054 *et. seq.* Pursuant to Penal Code section 1054.1, the prosecution shall disclose:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
(b) Statements of all defendants.
(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
(e) Any exculpatory evidence.
(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

However, Penal Code section 745(d) now authorizes a defendant pending criminal charges to file a request for disclosure of all evidence relevant to a potential violation of the RJA. The scope of material that can be requested pursuant to Penal Code section 745(d) far exceeds the previous scope of the prosecution's discovery obligations under Penal Code section 1054.1.

This increase in pre-trial and post-conviction requests for discovery has resulted in our office having to dedicate additional attorneys, investigative and support staff to address the increase in litigation. For example, investigative staff must now search law enforcement and other databases and order birth and/or death certificates, coroner's reports and police reports to search for racial demographic information on victims, witnesses and defendants. Support staff must now gather documents from the superior and appellate courts to be analyzed in conjunction with the pending RJA discovery motion. Attorneys must now review requests for RJA discovery, research and review old case files and trial transcripts, respond to court orders, make additional court appearances and litigate discovery motions that did not exist prior to the enactment of the RJA.

Furthermore, the Sacramento County District Attorney's Office was compelled to retain the services of a data analytics firm to engage in large-scale data retrieval, verification, and empirical analysis to evaluate, under the RJA, whether similarly situated individuals receive similar charging decisions, convictions, and sentences. Additionally, the data analytics firm has been and will continue to be needed to analyze data proffered by defense counsel in individual cases and provide expert testimony during contested hearings, which will result in indefinite, reoccurring costs.

Accordingly, the Sacramento County District Attorney's Office recommends adding the following reasonably necessary activities described below to the Draft Expedited Parameters and Guidelines:

Discovery: Upon receipt of a pre-trial discovery motion or post-conviction writ filed pursuant to Penal Code section 745(d), an attorney must review the filing to determine whether it states a sufficient legal basis for the request. If it is determined that the request is legally insufficient, the attorney must then research, write and file an opposition to the request. The attorney must then appear in court to litigate the discovery issues.

If the attorney, or the court, determines the request for discovery is legally sufficient, the District Attorney's Office is obligated to provide the requested discovery related to the alleged violation(s) of the RJA. Depending on the nature of the material requested, gathering the ordered discovery would require investigative staff to research, order and obtain records from law enforcement agencies and other entities. Support staff would have to order and obtain superior and appellate court records. Internet Technology (IT) and data analytics staff would have to query case management systems and prepare reports. Attorneys would have to review the material returned by the investigative, support and technical staff. Additionally, attorneys would have to order old case files, review those files, and collect responsive information from each file. Often these old cases involve serious and/or violent crimes and the file can encompass 5-25 boxes of paper records and audio/visual/electronic media. If the discovery ordered is connected to a post-conviction claim, attorneys will also need to review the record on appeal for each case. The appellate record is often comprised of thousands of pages of reporter's transcripts, clerk's transcripts and pleadings filed in the Superior Court, Court of Appeal, and Supreme Court. Once the responsive discovery has been collected, support staff would need to digitize and redact privileged and confidential information from the discovery before disclosure to the defense.

Litigation of substantive claims: Upon receipt of a pre-trial motion or post-conviction writ alleging a substantive violation of Penal Code section 745(a)(1)-(4), attorneys must review the filing and prepare to litigate the legal sufficiency of the defendant's claim(s). Attorneys must research, write and file responsive pleadings. If the substantive claim involves an alleged violation of Penal Code section 745(a)(1) or (2), attorneys may be required to consult with implicit bias and other subject matter experts to prepare for litigation. If the substantive claim involves an alleged violation of Penal Code section 745(a)(3) or (4), attorneys will be required to consult with IT staff, statisticians, and/or data analysts to evaluate the evidence proffered by the defendant and prepare to present our own statistical data to the court. Attorneys will be required to meet with the witnesses they intend to present at the evidentiary hearing and prepare for their eventual testimony. While the litigation is pending, attorneys will be required to make regular court appearances and attend hearings on the substantive issues.

One-time and ongoing expert costs: As a result of the RJA and AB 256's amendment to the RJA, the Sacramento County District Attorney's Office was compelled to retain the services of a data analytics firm to engage in large-scale data retrieval, verification, and empirical analysis. Additionally, the data analytics firm will be needed to analyze data proffered by defense counsel in individual cases and provide expert testimony during contested hearings, which will result in indefinite, reoccurring costs. Depending on the nature of the substantive claim, it is also anticipated the District Attorney's Office will need to consult and hire subject matter experts in areas such as sociology, racial demographics and implicit bias to assist attorneys in preparation for contested hearings and provide expert testimony during those hearings.

AB 256 amended Penal Code sections 745 and 1473 to allow the California Racial Justice Act of 2020 to apply retroactively. In so doing, it amended Penal Code section 745(j) to allow for retroactive claims to be made on a tiered basis. The present Test Claim focuses on claims made pursuant to Penal Code section 745(j)(3). While many of the RJA claims filed in Sacramento County also fall within that retroactive tier, it is important to note the scope of work performed by the Sacramento County District Attorney's Office from 2023 forward has, and likely will, encompass all tiered categories of cases in Penal Code section 745(j). Additionally, recently enacted Assembly Bill 1071 will further expand the Sacramento County District Attorney's Office's duties under the RJA starting on January 1, 2026.

The duties imposed on the Sacramento County District Attorney's Office as a result of the RJA and AB 256's amendments to the RJA extend beyond the singular reimbursable activity approved in the Test Claim and presently included in the Draft Expedited Parameters and Guidelines. Accordingly, the Sacramento County District Attorney's Office respectfully requests the Commission modify the Draft Expedited Parameters and Guidelines to include these additional "reasonably necessary activities" described above as part of its mandate.

Respectfully submitted,

Michael Blazina
Assistant District Attorney
Sacramento County District Attorney's Office

DECLARATION OF MICHAEL BLAZINA

I, Michael Blazina, declare as follows:

1) I am an attorney-at-law licensed to practice in all courts of the State of California. I am employed as the Assistant District Attorney for the County of Sacramento. My current assignment includes management of the Justice, Training and Integrity Unit. The Justice, Training and Integrity Unit is tasked with litigating post-conviction matters and Racial Justice Act (RJA) writs and motions.

2) Assembly Bill (AB) 256, known as the Racial Justice Act for All, 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).

3) As a result of AB 256, the Sacramento County District Attorney's Office has incurred additional legal obligations relative to these retroactive claims.

4) Those AB 256 obligations are as follows:

   a. Discovery: Upon receipt of a pre-trial discovery motion or post-conviction writ filed pursuant to Penal Code section 745(d), an attorney must review the filing to determine whether it states a sufficient legal basis for the request. If it is determined that the request is legally insufficient, the attorney must then research, write and file an opposition to the request. The attorney must then appear in court to litigate the discovery issues.

   If the attorney, or the court, determines the request for discovery is legally sufficient, the District Attorney's Office is obligated to provide the requested discovery related to the alleged violation(s) of the RJA. Depending on the nature of the material requested, gathering the ordered discovery would require investigative staff to research, order and obtain records from law enforcement agencies and other entities, including ordering birth and/or death certificates, coroner's reports and police reports to search for racial demographic information on victims, witnesses and defendants. Support staff would have to order and obtain superior and appellate court records. Internet Technology (IT) and data analytics staff would have to query case management systems and prepare reports. Attorneys would have to review the material returned by the investigative, support and technical staff. Additionally, attorneys would have to order old case files, review those files, and collect responsive information from each file. Often these old cases involve serious and/or violent crimes and the file can encompass 5-25 boxes of paper records and audio/visual/electronic media. If the discovery ordered is connected to a post-conviction claim, attorneys will also need to review the record on appeal for each case. The appellate record is often comprised of thousands of pages of reporter's transcripts, clerk's transcripts and pleadings filed in the Superior Court, Court of Appeal, and Supreme Court. Once the responsive discovery has been collected, support staff would need to digitize and redact privileged and confidential information from the discovery before disclosure to the defense.

b. Litigation of substantive claims: Upon receipt of a pre-trial motion or post-conviction writ alleging a substantive violation of Penal Code section 745(a)(1)-(4), attorneys must review the filing and prepare to litigate the legal sufficiency of the defendant's claim(s). Attorneys must research, write and file responsive pleadings. If the substantive claim involves an alleged violation of Penal Code section 745(a)(1) or (2), attorneys may be required to consult with implicit bias and other subject matter experts to prepare for litigation. If the substantive claim involves an alleged violation of Penal Code section 745(a)(3) or (4), attorneys will be required to consult with IT staff, statisticians, and/or data analysts to evaluate the evidence proffered by the defendant and prepare to present our own statistical data to the court. Attorneys will be required to meet with the witnesses they intend to present at the evidentiary hearing and prepare for their eventual testimony. While the litigation is pending, attorneys will be required to make regular court appearances and attend hearings on the substantive issues.

c. One-time and ongoing expert costs: As a result of the RJA and AB 256's amendment to the RJA, the Sacramento County District Attorney's Office was compelled to retain the services of a data analytics firm to engage in large-scale data retrieval, verification, and empirical analysis to evaluate whether similarly situated individuals receive similar charging decisions, convictions, and sentences. Additionally, the data analytics firm has been and will continue to be needed to analyze data proffered by defense counsel in individual cases and provide expert testimony during contested hearings, which will result in indefinite, reoccurring costs. Depending on the nature of the substantive claim, it is also anticipated the District Attorney's Office will need to consult and hire subject matter experts in areas such as sociology, racial demographics and implicit bias to assist attorneys in preparation for contested hearings and provide expert testimony during those hearings.

5) The Sacramento County District Attorney's Office 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 Sacramento County District Attorney's Office 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. I hereby declare under penalty of perjury that the foregoing is true and correct.

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

Michael Blazina
Assistant District Attorney
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<u>DECLARATION OF SERVICE BY EMAIL</u>

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.

David Chavez
Commission on State Mandates
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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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