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October 20, 2025

Commission on State Mandates
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October 20, 2025

Ms. Juliana F. Gmur
Executive Director
Commission on State Mandates
980 Ninth Street, Ste 300
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Comments to Draft Expedited Parameters and Guidelines
Test Claim Criminal Procedure: Discrimination, 24-TC-02

Dear Ms. Gmur,

On behalf of the Sonoma County District Attorney's Office, please accept the following proposed comments and modifications to the Commission's Draft Expedited Parameters and Guidelines. We appreciate the opportunity to provide input to ensure that the reimbursement framework accurately captures the range of activities reasonably required for compliance with the State's mandate.

Given the breadth and scope of AB 256, we respectfully request the approval of additional reimbursable activities that are directly tied to compliance with the underlying mandate and fall within the purview of "reasonably necessary activities" as outlined below.

<u>Discovery Obligations, Data Collection and Data Synthesis Systems</u>:

The Sonoma County District Attorney's Office (SCDAO) is Sonoma County's prosecuting agency. The office plays an integral role in matters involving habeas petitioners seeking relief under Penal Code section 745. The habeas petitioners cannot move forward in their cases unless the District Attorney's Office is able to retrieve, review, and produce extensive statistical data and historical case materials. In practice, the activities outlined in the test claim cannot be carried out unless the appropriate infrastructure is implemented in local prosecutor's offices.

In other words, the pace of progress is closely linked to the resources and infrastructure available to local prosecutors to meet discovery and data production obligations under section 745. While the SCDAO would like to have a complete electronic database with case information going back decades, this has not yet happened. The amount of work needed to locate, review, and download relevant information needed to provide aggregate data is monumental given that the data has not been collected in a single location.

Effective representation for habeas petitioners, and the timely resolution of their cases, therefore, depends on two key factors: (1) the ability of prosecutors' offices to retrieve and analyze historical data, and (2) personnel to comply with the necessary discovery orders pursuant to subdivision (d) of section 745. Any reimbursable activity established by the Commission that does not include the corresponding resources to the local prosecutor's office for improved data infrastructure and staffing will fail to achieve its desired outcome. Indigent habeas petitioners will obtain representation, but their petitions will endlessly circle the runway that is yet to be built.

Accordingly, we recommend the following language addition to Section IV (Reimbursable Activities):

"Preparation activities undertaken by the District Attorney's Office, including extraction, review, and synthesis of case data and evidence necessary to comply with the statutory requirements imposed by the mandate."

Salaries and Benefits for prosecutors necessary for representation:

The SCDAO receives no grant money or other compensation to handle litigation pursuant to AB 256. Only senior attorneys with the requisite research and litigation experience can handle these cases.

In addition, the representation of these habeas petitioners is directly tied to the district attorney's ability to respond in a timely and comprehensive manner. The commission aptly strives to fund this newly created mandated activity enacted pursuant to AB256. The inclusion of prosecution personnel costs is vital to ensuring petitioners' effective representation in these habeas matters. Otherwise, any order to financially support the representation indigent habeas petitioners will fail to achieve its desired outcome.

Accordingly, we recommend the following language addition to Section IV (Reimbursable Activities):

"Personnel costs borne by the District Attorney's Office, to appropriately respond to habeas petitioner's claims for discovery, which are necessary to comply with the statutory requirements imposed by the mandate."

Both data systems and prosecution personnel costs are directly linked to mandated compliance and support effective representation contemplated by this test claim. Excluding these activities would fail to capture the full scope of costs imposed by the State's directive. We appreciate the Commission's careful attention to the realities of county implementation. We respectfully request that the final Parameters and Guidelines be modified to include the proposed reimbursable activities described above.

Respectfully Submitted,

Carla Rodriguez

Carla Rodriguez
Sonoma County District Attorney

DECLARATION OF ANDREA E. TAVENIER

I, Andrea E. Tavenier, 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 a Chief Deputy District Attorney at the Sonoma County District Attorney's Office. My current assignment includes supervision of the Writs, Appeals, Law, and Research Division. A large part of those duties include supervision and coordination of 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 Sonoma County District Attorney's Office has incurred additional legal obligations and associated costs relative to these retroactive claims.

4) Those AB 256 obligations are as follows:

   a. Discovery:

      AB 256 obligates the District Attorney's Office to provide historical discovery related to an alleged violation of the RJA after a prima facie violation of the Act has been found, and upon a showing of good cause.

      The discovery sought and/or ordered may include decades of case-specific data on cases unrelated to the petitioner's, but sharing either "offense type" or "charge." The data sought often includes basic information, like charge, enhancement, special circumstance, or special allegation information, and also case specific facts, like race/ethnicity/age of defendant, 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 (like special circumstance murder) and carry lengthy prison sentences. The comparison cases therefore also involve serious/violent crimes with lengthy prison sentences. Because the data sought is *historical*, the petitioner's case and the comparison cases are often voluminous and not digitized – instead, existing in (sometimes dozens) of banker's boxes in a storage facility. When discovery is ordered, sometimes for decades worth of archived, paper case files, District Attorney's Office personnel must locate, organize, and review the contents of each box, often deciphering handwritten notes to find the targeted information. Office personnel then must digitize and redact privileged and confidential information from the discovery before disclosure to the defense.

      Historical data managed in various case management systems often must be manually collected and manually checked for accuracy – and even then, the data housed in historical systems does not include the level of case specific detail requested by the defense, ordered by the court, or required to engage in a meaningful RJA analysis.

   b. Review of the record and case file:

      AB 256 obligates the District Attorney's Office to engage in extensive work even for non-data based post-judgment claims.

Often, if not always, evaluation of these non-data based claims will require not only review of the District Attorney's case file – it requires a review of the record on appeal – which is 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 may be necessary to consult and retain in these RJA matters to review the data or the facts of the case to aid in determining whether an RJA 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 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 is required. 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 Sonoma County District Attorney's Office has not received any local, State, or federal funding specific to the implementation of AB 256, and has not received any grant funding to offset the substantial costs associated with that legislation.

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 October 20, 2025 in Santa Rosa, California.

Andrea Tavenier
Chief Deputy District Attorney
Sonoma County District Attorney's Office

<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

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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