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October 20, 2025

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

Dear Ms. Gmur,

Please accept the following proposed comments and modifications from the County of Marin to the Commission's Draft Expedited Parameters and Guidelines. We believe the below described "reasonably necessary activities" are activities necessary to comply with our mandated duties under AB 256's amendments to Penal Code sections 745 and 1473.

Background

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 added the following provisions under subdivision (j) of Section 745 to allow for retroactive claims to be made on a tiered basis:

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (f) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment became

final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

Discussion

While this test claim focuses on claims made on or after January 1, 2024 for those serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, and while our post-judgment RJA work largely falls within this particular retroactive tier, the scope of work by this County from 2023 forward would likely encompass all tiered categories of cases in subdivision (j). And while not the current subject of this test claim, AB 1071, contemplates a further expansion of this County's duties under the RJA.

The County of Marin agrees with the following statements set forth in the Declaration of Deputy Public Defender Elizabeth Lashley-Haynes, in support of this test claim:

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).

Prior to the passage of AB 256 and the addition of PC § 745(j)(3), individuals serving State prison sentences were not eligible to file writ petitions to challenge a racially biased prosecution.

Following the appointment of counsel, an attorney with the Public Defender must consult with clients, run conflict checks, investigate claims, retrieve and review records, draft and file writs or motions where appropriate, make court appearances, and document files, among other activities.

As these statements make clear, starting January 1, 2024, defendants serving a state prison or 1170(h) sentence may make a motion or file a petition for relief under the RJA, accordingly, the test claim should not be limited to claims made by "indigent habeas corpus petitioners" only; it should apply to

petitioners and claimants who make a motion or file a petition under subdivision (j)(3) of Section 745.

Akin to the duties of the Public Defender outlined in her Test Claim Declaration, the District Attorney in the County of Marin after AB 256 has additional reciprocal obligations relative to these retroactive claims.

Those duties (underlined below) that comprise the reasonably necessary activities of the District Attorney's Office pursuant to Cal. Code Regs., tit. 2, §183.7(d), are described in detail below.

I. Discovery Under the RJA

First, 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 digitize and redact 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.

II. 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.

III. 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.

IV. 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 is often necessary. 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.

V. 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.

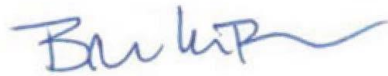
Conclusion

The duties imposed on the County of Marin as a result 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 on the part of the District Attorney, 1) discovery under the RJA, 2) review of the record and case files, 3) expert consultation and analysis, 4) preparation of briefs and legal argument including a review of data and expert conclusions, and 5) court appearances/hearings. Accordingly, the County of Marin respectfully requests the Commission modify the Draft Expedited Parameters and Guidelines to include these additional "reasonably necessary activities" as part of its mandate.

Certification

Pursuant to Title 2, section 1183.8, and section 1183.3 of the California Code of Regulations, I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information, or belief, and that this declaration is executed on this 20th day of October 2025, at San Rafael, California.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Brian Lambert", with a stylized flourish at the end.

Brian Lambert
Deputy County Counsel

DECLARATION OF DORI K. AHANA

I, Doris K. Ahana, 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 with the County of Marin. 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 Marin 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 Marin 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 16th day of October, 2025 in San Rafael, California.



Dori K. Ahana
Chief Deputy District Attorney
Marin 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**

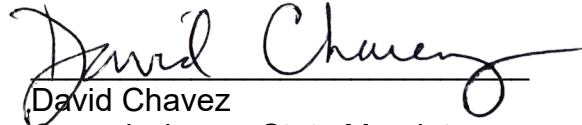
Criminal Procedure: Discrimination, 24-TC-02

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
980 Ninth Street, Suite 300
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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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