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October 20, 2025



Juliana F. Gmur
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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 San Francisco District Attorney's (SFDA) Office comments and recommended changes to the Commission's Draft Proposed Decision and Parameters and Guidelines for Test Claim Criminal Procedure: Discrimination, 24-TC-02. The Draft Proposed Parameters and Guidelines address new state-mandated activities and costs incurred as a result from the amendments to Penal Code sections 745 and 1473 under Assembly Bill (AB) 256, known as the Racial Justice Act for All.

The Racial Justice Act (RJA), originally enacted in 2020 under AB 2542, seeks to combat implicit bias based on race, ethnicity, or national origin in the criminal justice system. Originally, the RJA only applied to cases where judgment was entered on or after January 1, 2021. But the Legislature amended section 745 through AB 256 to provide a tiered, retroactive application to all cases where judgment was entered before January 1, 2021. Under AB 256, the RJA applies retroactively on an annual basis to the following groups of cases: a petitioner who is sentenced to death or challenges actual or potential immigration consequences (2023); a petitioner who is currently serving a state prison or county jail sentence or has been committed to the Division of Juvenile Justice (DJJ) (2024); cases where the judgment for a felony conviction or juvenile disposition with a DJJ commitment became final on or after January 1, 2015 (2025); any and all judgements for a felony conviction or juvenile disposition with a DJJ commitment, regardless of when the judgment became final (2026).

Generally, the RJA sets out a three-step process to litigate claims:

1. Discovery: If desired, a defendant who plausibly alleges facts demonstrating an RJA claim may seek a court order requiring the prosecution to disclose information concerning the alleged RJA violation(s). (Pen. Code, § 745, subd. (d).)

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2. Prima Facie Case: Regardless of whether a defendant seeks RJA discovery or not, a defendant seeking RJA relief must file a motion establishing a prima facie case that the RJA has been violated. (Pen. Code, § 745, subds. (b), (c).)
3. Evidentiary Hearing: If the trial court concludes that a prima facie showing has been made, an evidentiary hearing occurs where a defendant must prove by a preponderance of the evidence that they are entitled to relief. (Pen. Code, § 745, subd. (c)(1)-(3).)

The Test Claim here focuses on the second tier: cases where the petitioner is currently serving a state prison or county jail sentence or has been committed to the DJJ, as noted in section 745, subdivision (j)(3). SFDA agrees that before the enactment of section 745, subdivision (j)(3), individuals serving state prison sentences were not eligible to file writ petitions to challenge a racially biased prosecution, as stated in the supporting Declaration of Los Angeles Deputy Public Defender Elizabeth Lashley-Haynes. SFDA also agrees that following the appointment of counsel, an attorney with the Public Defender must consult with clients, run conflicts 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 noted in Deputy Public Defender Lashley-Haynes's declaration.

With a subsequent amendment to sections 745 and 1473, the pre-hearing work (investigate claims, retrieve and review records, and draft and file writs and motions where appropriate) will only increase, particularly for those cases that are the focus of the Test Claim. On October 13, 2025, Governor Newsom signed AB 1071, which amends subdivision (d) of section 745 to allow a defendant or petitioner to file a motion for discovery of all evidence relevant to a potential violation of subdivision (a) of section 745. Thus, with the concurrent amendment to section 1473, this discovery motion provision will now also apply to indigent habeas corpus petitioners.

And the state-mandated obligations under the RJA after AB 256 are not limited to Public Defenders. They apply equally to District Attorneys; and with discovery, District Attorneys have additional obligations. The following is a list of reasonably necessary activities of the District Attorney to comply with statutes found to impose a state-mandated program for retroactive claims under the RJA, as outlined in the Test Claim. (Cal. Code Regs., tit. 2, § 1183.7, subd. (d).)

Case Review

According to the California Department of Corrections and Rehabilitation (CDCR) in-custody population demographics, there are about 456 people currently incarcerated in CDCR from San Francisco County (as of September 2025). Of those, about 92.1% of those people are incarcerated for a crime against a person.

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Most cases that involve a state prison commitment (like the group involved in the Test Claim) are complex. For these complex cases, the files often consist of box(es) of materials, which may include police reports, photographs, audio recordings, video recordings, transcripts, and forensic reports. If the matter proceeded to trial, the court's docket and the transcript of proceedings would also be voluminous. Addressing an RJA claim in a case that resulted in a state prison commitment would therefore be likely to require considerable time to review the case file.

Discovery under the RJA

As noted, the RJA does not require a defendant to seek discovery from the prosecution to make a case that the RJA has been violated. But most do. And, as noted above, AB 1071 will extend those discovery obligations to any person who is currently incarcerated and who seeks to proceed by way of a petition for habeas corpus. The showing necessary to trigger a discovery obligation on the prosecution is low. The defense need only to establish "good cause" to begin receiving materials. Oftentimes, any provision of discovery is prefaced by lengthy motion work and court hearings to determine the nature and scope of discovery that the defense is entitled to receive.

Discovery under the RJA is often broader than traditional criminal discovery, and, in San Francisco, is a burden imposed almost entirely on the prosecution. Such discovery often requires prosecuting agencies to look beyond the moving defendant's case to investigate, compile, and produce a list of all defendants who have engaged in similar conduct, and who are similarly situated. For a lengthy state prison commitment that was imposed long ago, this review requires a physical review of paper—not electronic—case files, often consisting of boxes of materials which must be reviewed and redacted to protect personal identifying information from being disclosed.

Discovery production may also require the prosecution to retrieve numerous materials including accusatory pleadings, incident reports, emails, text messages, and training records—all of which must also be reviewed and redacted to protect privacy interests. While the bulk of RJA discovery litigation so far has focused on pending cases in San Francisco, an example involving a sexual assault case is informative as to what are reasonably necessary costs to comply with the obligations imposed under AB 256. There, the discovery phase in a sexual assault case required the prosecution to review about 181 other cases identified as similarly situated. For those 181 cases, discovery production included the following tasks: retrieving and redacting police reports; embedding de-identifiers; retrieving Records of Arrests and Prosecutions (RAP) sheets; BATES stamping materials; and disclosure. The discovery phase required over 130 hours of paralegal staff time to obtain police reports and redact them. Discovery of information from RAP sheets also required attorney review to answer the binary question of whether each defendant had prior convictions. And in other RJA discovery cases, an attorney reviewed emails and text messages to identify responsive records and any applicable privileges.

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Evidentiary Hearings

In habeas litigation, the court must review any petition alleging an RJA claim and determine whether the petitioner has made a prima facie showing. Under AB 1071, the court may also request an informal response from the prosecution. At an evidentiary hearing, the petitioner has the burden of proving the RJA claim by a preponderance of the evidence. The RJA evidentiary hearings in San Francisco have involved pending and post-conviction cases, both of which are instructive here.

Expert witnesses are often retained and charge (on average) between \$300 to \$500 per hour. There can also be additional litigation over pre-hearing discovery concerning these experts. And should an expert testify, the RJA's focus on statistical analysis now requires attorneys to prepare by reviewing numerous studies which are not only lengthy, but dense. The hearings themselves are also lengthy and can occur over several court days. And most, if not all, evidentiary hearings involve extensive post-hearing briefing and additional expenses for hearing transcripts.

Based on the foregoing, the state-mandates imposed by AB 256 extend beyond the obligations for counsel to represent indigent habeas corpus petitioners whose criminal judgments have been entered before January 1, 2021, and are currently serving a state prison or county jail sentence or committed to the DJJ. Instead, they apply equally to the District Attorney (if not more in the case of discovery). Therefore, it is respectfully suggested that the Draft Expedited Parameters and Guidelines be amended to include as "reasonably necessary activities," those obligations imposed on the District Attorney, including: case review; discovery (including motion work, court hearings, processing, and production); and evidentiary hearings (including pre-hearing discovery, expert witnesses, briefing, and transcripts).

Respectfully submitted,



Allison Garbutt Macbeth, Division Chief
Special Litigation and Post Conviction Division
San Francisco District Attorney's Office

Cc: Greg Wagner, Controller
City and County of San Francisco

Sophia Kittler, Budget Director
San Francisco Mayor Daniel Lurie

DECLARATION OF ALLISON GARBUTT MACBETH

I, Allison Garbutt Macbeth, declare as follows:

1. I am an attorney at law licensed to practice in all courts in the State of California and am employed as the Division Chief of the Special Litigation and Post Conviction Division at the San Francisco District Attorney's Office. As Division Chief, I supervise the Writs & Appeals Unit, the Trial Integrity and Post Conviction Review Units, and the Supervision and Rehabilitation Unit. These duties include litigation and/or supervision for several different aspects of the Racial Justice Act (RJA): discovery, legal briefing, and evidentiary hearings.
2. Assembly Bill (AB) 256, known as the Racial Justice Act for All, amended Penal Code section 745 to apply the RJA retroactively in phases to all cases where judgment was entered on or after January 1, 2021. Under AB 256, subdivision (j)(3) of section 745 states that the provision applies as follows: "Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) 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."
3. As a result, the San Francisco District Attorney incurs additional legal obligations relative to these retroactive claims.
4. I am informed and believe that those obligations are as follows:
 - a. Case Review: According to the California Department of Corrections and Rehabilitation (CDCR) in-custody population demographics, there are about 456 people currently incarcerated in CDCR from San Francisco County (as of September 2025). Of those, about 92.1% of those people are incarcerated for a crime against a person. Most cases that involve a state prison commitment (like the group involved in the Test Case) are complex. For these complex cases, the files often consist of box(es) of materials, which may include police reports, photographs, audio recordings, video recordings, transcripts, and forensic reports. If the matter proceeded to trial, the court's docket and the transcript of proceedings would also be voluminous. Addressing an RJA claim in a case that resulted in a state prison commitment would therefore be likely to require considerable time to review the case file.
 - b. Discovery under the RJA: As noted, the RJA does not require a defendant to seek discovery from the prosecution to make a case that the RJA has been violated. But most do. And, as noted above, AB 1071 will extend those discovery obligations to any person who is currently incarcerated and who seeks to proceed by way of a petition for habeas corpus. The showing necessary to trigger a discovery obligation on the prosecution is low. The defense need only to establish "good cause" to begin receiving materials. Oftentimes, any provision of discovery is prefaced by lengthy

motion work and court hearings to determine the nature and scope of discovery that the defense is entitled to receive. Discovery under the RJA is often broader than traditional criminal discovery, and, in San Francisco, is a burden imposed almost entirely on the prosecution. Such discovery often requires prosecuting agencies to look beyond the moving defendant's case to investigate, compile, and produce a list of all defendants who have engaged in similar conduct, and who are similarly situated. For a lengthy state prison commitment that was imposed long ago, this review requires a physical review of paper—not electronic—case files, often consisting of boxes of materials which must be reviewed and redacted to protect personal identifying information from being disclosed. Discovery production may also require the prosecution to retrieve numerous materials including accusatory pleadings, incident reports, emails, text messages, and training records—all of which must also be reviewed and redacted to protect privacy interests. While the bulk of RJA discovery litigation so far has focused on pending cases in San Francisco, an example involving a sexual assault case is informative as to what are reasonably necessary costs to comply with the obligations imposed under AB 256. There, the discovery phase in a sexual assault case required the prosecution to review about 181 other cases identified as similarly situated. For those 181 cases, discovery production included the following tasks: retrieving and redacting police reports; embedding de-identifiers; retrieving Records of Arrests and Prosecutions (RAP) sheets; BATES stamping materials; and disclosure. The discovery phase required over 130 hours of paralegal staff to obtain police reports and redact them. Discovery of information from RAP sheets also required attorney review to answer the binary question of whether each defendant had prior convictions. And in other RJA discovery cases, an attorney reviewed emails and text messages to identify responsive records and any applicable privileges.

- c. Evidentiary Hearings: In habeas litigation, the court must review any petition alleging an RJA claim and determine whether the petitioner has made a prima facie showing. Under AB 1071, the court may also request an informal response from the prosecution. At an evidentiary hearing, the petitioner has the burden of proving the RJA claim by a preponderance of the evidence. The RJA evidentiary hearings in San Francisco have involved pending and post-conviction cases, both of which are instructive here. Expert witnesses are often retained and charge (on average) between \$300 to \$500 per hour. There can also be additional litigation over pre-hearing discovery concerning these experts. And should an expert testify, the RJA's focus on statistical analysis now requires attorneys to prepare by reviewing numerous studies which are not only lengthy, but dense. The hearings themselves are also lengthy and can occur over several court days. And most, if not all, evidentiary hearings involve extensive post-hearing briefing and additional expenses for hearing transcripts.
5. The San Francisco District Attorney has not received any local, State, or federal funding and does not have a fee authority to offset its increased direct or indirect costs associated with our work related to AB 256.

6. The San Francisco 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 declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, based upon my personal knowledge, except to those items stated on information and belief and as to those items, I believe them to be true.

Executed at San Francisco, California on October 20, 2025.



Allison Garbutt Macbeth

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**

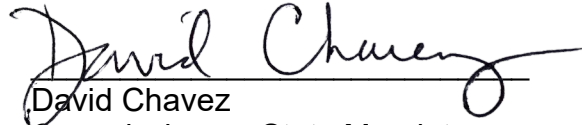
Criminal Procedure: Discrimination, 24-TC-02

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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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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