



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 26-074

For business meeting on April 24, 2026

Title

Criminal Procedure: Rule and Form
Revisions Related to the Racial Justice Act

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188

Recommended by

Appellate Advisory Committee
Hon. Allison M. Danner, Chair

Criminal Law Advisory Committee
Hon. Lisa Rodriguez, Chair

Report Type

Action Required

Effective Date

July 1, 2026

Date of Report

April 2, 2026

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Executive Summary

The Racial Justice Act prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin. To implement recent legislation related to the Racial Justice Act and address urgent issues identified by courts on existing court forms that are used to make a claim under the act, the Appellate Advisory Committee and the Criminal Law Advisory Committee recommend amending two rules of court and revising three forms.

Recommendation

The Appellate Advisory Committee and the Criminal Law Advisory Committee recommend that the Judicial Council, effective July 1, 2026:

1. Amend California Rules of Court, rules 4.551 and 8.385, to implement legislation clarifying court procedures related to the Racial Justice Act (Assem. Bill 1071);

2. Revise *Petition for Writ of Habeas Corpus* (form HC-001) to implement Senate Bill 734, which requires service of specified Racial Justice Act claims on law enforcement agencies, improve the presentation of Racial Justice Act claims, and make clarifying and technical changes;
3. Revise *Motion to Vacate Conviction or Sentence* (form CR-187) to implement Assembly Bill 1071 and Senate Bill 734, add an option stating that the party will request discovery after appointment of counsel, add a case citation, and make clarifying and technical changes; and
4. Revise *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to make clarifying and technical changes.

The proposed amended rules and revised forms are attached at pages 14–36.

Relevant Previous Council Action

California Rules of Court, rules 4.551 and 8.385, and forms HC-001, CR-187, and CR-188 were most recently revised effective September 1, 2024, to implement the Racial Justice Act of 2020¹ and subsequent related legislation.²

Analysis/Rationale

Effective January 1, 2026, Assembly Bill 1071 (Stats. 2025, ch. 721)³ (Link A) clarifies the legislative intent regarding court procedures to effectuate the Racial Justice Act, and amends relevant statutes to state that:

- A defendant or petitioner may file a motion for disclosure of all relevant evidence in any proceeding alleging a violation of the Racial Justice Act, including in preparation for filing a petition for writ of habeas corpus under Penal Code section 1473(e)(2) or a motion to vacate a conviction under Penal Code section 1473.7(a)(3);⁴
- The definitions in section 745(h) apply to Racial Justice Act claims in petitions for writ of habeas corpus and motions to vacate convictions;⁵

¹ Assem. Bill 2542 (Stats. 2020, ch. 317).

² Assem. Bill 256 (Stats. 2022, ch. 739); Assem. Bill 1118 (Stats. 2023, ch. 464).

³ AB 1071 was double-jointed with Senate Bill 734 (Stats. 2025, ch. 784), as both bills amended sections 745, 1473, and 1473.7. Double-jointing occurs when two or more bills amend the same code section in different ways and the Legislature approves both. It makes effective all changes proposed by the bills. (See letter to committee staff colleagues from Peter Detwiler, consultant to Sen. Com. on Local Government, July 21, 2009, <https://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/DOUBLEJOINTING.pdf>.)

⁴ Pen. Code, § 745(d). All further references are to the Penal Code unless otherwise specified.

⁵ § 745(h).

- Before a judgment has been entered, the remedies listed in section 745(e)(1) are mandatory rather than discretionary if the court finds a violation of the Racial Justice Act;⁶
- Counsel must be appointed in a habeas proceeding if a petitioner “pleads a plausible allegation” of a violation of the Racial Justice Act;⁷ and
- A prima facie determination of a violation of the Racial Justice Act in a habeas proceeding is based on a petitioner’s showing and the record; the court may request an informal response from the state.⁸

Additionally, section 1 of the bill includes legislative findings and declarations that the threshold showing for appointment of counsel for a habeas proceeding does not require a prima facie showing, as held by *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, and should be construed as a minimal pleading requirement.

Also, effective January 1, 2026, Senate Bill 734 (Stats. 2025, ch. 784) (Link B), in relevant part, amends several statutes to state that if a person is represented by counsel and is raising a claim under section 745(a)(1) or (2) based on the conduct of a law enforcement officer, counsel must serve a copy of the petition or motion on the law enforcement agency that employs the officer.⁹

In addition to these legislative changes, the committees considered feedback from courts on the presentation and processing of Racial Justice Act claims in habeas proceedings. Courts reported that petitioners without Racial Justice Act claims were filling in the Racial Justice Act portions of the petition, and that there was insufficient space for a petitioner to explain the basis of a Racial Justice Act claim.

To reflect each committee’s respective subject matter expertise, the Criminal Law Advisory Committee led the development of the recommended amendments to rule 4.551 and revisions to forms CR-187 and CR-188, as they primarily impact the trial courts. The Appellate Advisory Committee led the development of the recommended amendments to rule 8.385 on petitions for writ of habeas corpus in the appellate courts. Both committees jointly developed the recommended revisions to form HC-001.

⁶ § 745(e)(1).

⁷ § 1473(e)(5).

⁸ § 1473(e)(7)(A).

⁹ §§ 745(c)(3), 1473(e)(6), 1473.7(a)(3)(B).

Rule 4.551, Habeas corpus proceedings

Rule 4.551 establishes procedures for habeas corpus petitions filed in the trial court in noncapital cases. The committees recommend the following amendments to reflect changes under AB 1071:

- Amend subdivision (b), Informal response, to add petitioner’s counsel as a party to be served with the informal response and related filings.
- Amend subdivision (c), Order to show cause, to add a new provision stating that when a petition raises a Racial Justice Act claim, the court must issue an order to show cause if the petitioner has made a prima facie showing as defined under section 745(h), and state that the determination must be based on the petitioner’s showing and the record.
- Amend subdivision (d), Appointment of counsel, to address appointment of counsel for Racial Justice Act claims first in paragraph (1), followed by appointment of counsel for all other claims in paragraph (3).
- Amend subdivision (d)(1)(B) to state that in Racial Justice Act claims, counsel must be appointed if the petition pleads a plausible allegation of a Racial Justice Act violation and the inquiry must be limited to the facial sufficiency of the allegations of the petition alone.
- Revise the advisory committee comment stating that counsel must be appointed on the issuance of an order to show cause to state the exception for Racial Justice Act claims, which are addressed in subdivision (d)(1).
- Remove the advisory committee comment stating “the issue of whether the prima facie showing for a petition for writ of habeas corpus under section 1473(e) is the same as in section 745(h)(2) or defined in (c)(1) of this rule ... is unresolved,” because this question has been resolved by section 745(h)(2).
- To implement section 1473(e)(6), add an advisory committee comment stating that as in other cases, when considering a petition raising a claim under section 745(a), the court may request an informal response from the state, and should consider simultaneously appointing counsel for an unrepresented petitioner under the standards of section 1473(e)(5).
- Add an advisory committee comment stating that the standard set out in subdivision (d)(1)(B) is to be construed as a minimal pleading requirement consistent with the Legislature’s statement of intent in AB 1071.

Rule 8.385, Proceedings after the petition is filed

Rule 8.385 establishes procedures for petitions for a writ of habeas corpus filed in the Supreme Court or Court of Appeal. The committees recommend the following amendments to reflect changes under AB 1071:

- Amend subdivision (d), Order to show cause, to add a new provision stating that when a petition raises a Racial Justice Act claim, the court must issue an order to show cause if the petitioner has made a prima facie showing as defined under section 745(h), and state that the determination must be based on the petitioner’s showing and the record.
- Amend subdivision (d)(1) to add the language of the prima facie standard.
- Amend subdivision (g)(2)(B) to state that in Racial Justice Act claims, counsel must be appointed if the petition pleads a plausible allegation of a Racial Justice Act violation and that this determination must be limited to the facial sufficiency of the allegations of the petition alone.
- To implement section 1473(e)(6), add an advisory committee comment stating that as in other cases, when considering a petition raising a claim under section 745(a), the court may request an informal response by the state, and should consider simultaneously appointing counsel for an unrepresented petitioner under the standards of section 1473(e)(5).
- Add an advisory committee comment stating that the standard set out in subdivision (g)(2)(B) is to be construed as a minimal pleading requirement consistent with the Legislature’s statement of intent in AB 1071.

Petition for Writ of Habeas Corpus (form HC-001)

Form HC-001 can be used to petition a superior court, a Court of Appeal, or the Supreme Court for a writ of habeas corpus. Under the California Rules of Court, a self-represented person must use form HC-001 to petition any of these courts for a writ of habeas corpus, with exceptions for good cause.¹⁰ Form HC-001 is designed to provide the court with sufficient information to either issue an order to show cause, deny the petition, or request an informal response. For Racial Justice Act claims, the form may also be used for a court to consider appointment of counsel and discovery requests.

The committees recommend the following changes to form HC-001 to implement legislation and address feedback from courts and commenters:

- Reorganize the form into three separate parts (A, B, and C):
 - Part A is required for all petitioners and asks for information relevant to all claims. Part A contains items 1 through 5, 7 through 9, and 11 through 17 from the current version of the form, and these items have been renumbered 1 through 16.¹¹

¹⁰ Cal. Rules of Court, rules 4.551(a)(1), 8.380(a). Note that rule 4.571 contains different requirements for death penalty–related habeas corpus proceedings.

¹¹ Item 3 from the current version of the form is divided into two separate items in the proposed form.

- Part B is for all claims except for those under the Racial Justice Act. Part B contains items 6 and 10 from the current version of the form, which have been renumbered 1, 2, and 3 (item 6 is now two separate items).
- Part C is for Racial Justice Act claims. Part C contains item 18 from the current version of the form, which has been renumbered 1 through 7.
- Add an instruction to incorporate the service requirements of SB 734: an attorney filing this petition on behalf of a petitioner, based on a claim under section 745(a)(1) or (2) that involves conduct by a law enforcement officer, must serve a copy of this petition on the law enforcement agency that employs the officer.
- Add an instruction stating that the form is intended for use by petitioners filing for relief in habeas corpus proceedings and who have not been sentenced to death.

The revisions for claims under the Racial Justice Act, in part C, also incorporate feedback to add more space for the petitioner to explain the basis of the claim and additional information to assist with decisions on requests for counsel and discovery. Specifically, the committees recommend the following revisions:

- Renumber item 18a on the category of retroactivity as item 1 and revise to remove references to whether the petitioner is currently serving a sentence and whether the petition was filed on or after January 1, 2025, or 2026, and replace with a checkbox indicating that judgment was for a felony conviction.¹²
- Renumber item 18b on the basis of the claim as item 2 and add an introductory sentence and space for the petitioner to explain the basis of the Racial Justice Act claim.
- Renumber item 18d on appointment of counsel as item 4 and add a question about whether the petitioner was represented by appointed counsel in trial and/or on appeal, to assist with an indigency determination.
- Renumber item 18f on discovery as item 6; revise to allow the petitioner to indicate that at this time, they do not need discovery, have previously received discovery, or may request discovery after counsel is appointed; and add a reference to section 745(d).
- Renumber item 18g as item 7 and add a question about whether the claim is being raised again due to a change in law.

¹² Item 18a incorporates the phased-in retroactive application of section 745(a), as stated in section 745(j). As the last phase-in date is January 1, 2026, the committees recommend removing the checkboxes implementing the phase-in dates and categories.

Motion to Vacate Conviction or Sentence (form CR-187) and Order on Motion to Vacate Conviction or Sentence (form CR-188)

A petitioner may use *Motion to Vacate a Conviction or Sentence* (form CR-187) to file a motion for relief under sections 1016.5 and 1473.7(a)(1)–(3). A court uses *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to grant or deny the requested relief.

Under section 1473.7(a)(3), a person who is out of custody may file a motion to vacate a conviction or sentence based on a Racial Justice Act claim. The committees recommend the following revisions to form CR-187:

- Add an instruction to incorporate the service requirements of SB 734: an attorney filing this motion on behalf of a moving party, based on a claim under section 745(a)(1) or (2) that involves conduct of a law enforcement officer, must serve the motion on the law enforcement agency that employs the officer.
- Replace references to section 745(a) with “the Racial Justice Act” in items 5a and 5f to use plain language and align with form HC-001.
- Replace items 5a(3) and 5a(4) with a single checkbox indicating that the judgment is for a felony conviction.¹³
- Revise item 5f to replace “disclosure” with “discovery,” add a cite to section 745(d), and use plain language and align with form HC-001.
- Add new item 5f(3) to allow a moving party to indicate that at this time, they do not need discovery, have previously obtained discovery, or may request discovery after counsel is appointed.
- Add a citation to *People v. Gutierrez* (2025) 113 Cal.App.5th 906¹⁴ to item 6 on requesting counsel.

The committees recommend the following revisions to form CR-188:

- Remove item 5b, which allows the court to dismiss a prematurely filed motion under the time frames in section 745(j). Because phased-in retroactivity is complete as of January 1, 2026, dismissal based on the premature filing of a motion will no longer apply.

¹³ Item 5a incorporates the phased-in retroactive application of section 745(a), as stated in section 745(j). As the last phase-in date is January 1, 2026, the committees recommend removing the checkboxes implementing the phase-in dates and categories.

¹⁴ In *Gutierrez*, the Court of Appeal, Second Appellate District, Division Five held that there is a right to appointed counsel under section 1473.7(a)(3) when an indigent defendant makes a prima facie showing of entitlement to relief.

- Replace references to section 745(a) with “the Racial Justice Act” in item 5 to use plain language and align with form HC-001.
- Replace “disclosure” with “discovery” in item 5c to use plain language and align with form HC-001.

Policy implications

The rule amendments and form revisions recommended by the committees will implement legislative changes and make the requirements clearer for petitioners seeking to present Racial Justice Act claims. Accordingly, the key policy implications are ensuring that council rules and forms correctly reflect the law and increase access to justice.

These revisions are therefore consistent with the *Strategic Plan for California’s Judicial Branch*, specifically the goals of Modernization of Management and Administration (Goal III) and Quality of Justice and Service to the Public (Goal IV). This recommendation also implements Goal I, Access, Fairness, Diversity, and Inclusion, by making forms easier for self-represented litigants to complete and understand.

Comments

The proposal circulated for comment from December 5, 2025, to January 7, 2026. Fourteen comments were received. Four commenters agreed with the proposal, one agreed if modified, four disagreed, and five did not indicate a position. The committees appreciate the time taken by commenters to respond to this proposal. Below is a summary of substantive issues that were raised in the comments. All comments received, and the committees’ responses, are provided in the attached chart of comments at pages 37–89.

Discovery requests on forms HC-001 and CR-187

Multiple commenters noted that the discovery statutes available to petitioners seeking relief under the Racial Justice Act do not require the filing of a legal claim,¹⁵ and that part C, items 6–8 on the circulated version of form HC-001, could mislead petitioners by creating an impression that claims must be pleaded prior to requesting discovery. There were also concerns that a petitioner could preclude potential future relief by filing the petition with the intent to request discovery when a separate pre-petition discovery motion would be appropriate.

The commenters suggested various solutions, including creating a separate discovery form for Racial Justice Act claims. The committees intend to consider this suggestion in the future, as time and resources allow. In a comment suggesting a separate discovery form, the Office of the State Public Defender recommended, at the very least, adding a new instruction to form HC-001 stating that a petitioner may file a stand-alone discovery request before filing the petition. The

¹⁵ AB 1071 amended sections 1473(e)(2) and 1473.7(e) to state that a petitioner or defendant may file a motion for evidence in preparation to file a Racial Justice Act habeas petition or motion to vacate. Additionally, section 1054.9(a) requires a court to order a defendant be provided reasonable access to specified discovery materials in preparation to file a postconviction writ of habeas corpus or a motion to vacate a judgment.

committees declined this suggestion but propose modifying part C, item 6, to reference previously obtained discovery.

The committees agree with comments recommending the form adopt the approach taken in *Request for Relief Under the Racial Justice Act—Juvenile Adjudication* (form JV-720). Item 5b on form JV-720 allows the applicant to state that they will request disclosure of evidence after an attorney is appointed to represent them. The committees recommend modifying item 6a of form HC-001 in a similar manner and added new item 5f(3) of form CR-187.

Deleting items 7 and 8 on previous requests for discovery (form HC-001)

In the invitation to comment, the committees proposed adding items 7 and 8 to part C of form HC-001 to assist courts when considering requests for discovery and evaluating claims. Item 7 asked if the petitioner had tried before to obtain evidence to support their claims, with yes and no checkboxes. If the petitioner checked yes, they were prompted to attach any information or documents they found to support the claim. Item 8 asked if before filing this petition, whether the petitioner asked a court for discovery, with yes and no checkboxes. If the petitioner checked yes, they were prompted to provide the result and attach any information or court order received.

The California Appellate Project and Habeas Corpus Resource Center expressed concern that these items were confusing, as previous requests for discovery are required under section 1054.9(a)¹⁶ but not under sections 745(d) and 1473(e)(2). The commenters also noted that asking petitioners to describe discovery they previously requested and received could cause issues with future litigation, such as revealing information that may not be known to opposing counsel. The commenters recommended removing both items.

To balance court and petitioner interests, the committees recommend deleting part C, items 7 and 8, and adding language in part C, item 2, directing the petitioner to attach any previously received documents in discovery or other documents supporting their claim, such as transcripts, declarations, or other relevant records.

Whether to incorporate section 1054.9 discovery requests into the proposal

The invitation to comment asked for specific comments about whether to incorporate discovery requests under section 1054.9 into the Racial Justice Act forms. Effective January 1, 2026, Assembly Bill 1036 (Stats. 2025, ch. 444) (Link C) amends section 1054.9 to expand access to discovery in a postconviction proceeding to defendants convicted of felonies resulting in incarceration in state prison; it is not specific to Racial Justice Act proceedings.¹⁷ AB 1036 also broadens the definition of discovery materials for purposes of the statute.

¹⁶ Under section 1054.9(a), a defendant filing a postconviction habeas petition or motion to vacate a judgment must show “that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful” before the court orders reasonable access to specified discovery materials.

¹⁷ Prior to AB 1036, this was limited to defendants convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more.

Four commenters recommended including a request for discovery under section 1054.9 in the forms, and four commenters recommended against it. The committees do not recommend incorporating discovery requests under section 1054.9 into the forms at this time but will consider it as part of the proposal for a separate Racial Justice Act discovery form in the future, as time and resources allow.

Incorporating updated statutory and legislative intent language on the threshold showing for appointment of counsel in a habeas proceeding

AB 1071 included legislative findings and declarations that the threshold showing for appointment of counsel for a habeas proceeding does not require a prima facie showing, as held by *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, and should be construed as a minimal pleading requirement. Section 1473(e) was also amended to require appointment of counsel if the petition “pleads a plausible allegation” of a Racial Justice Act violation, replacing previous language about “alleges facts that would establish” a Racial Justice Act violation.

The committees recommend amending rules 4.551(d)(1)(B) and 8.385(g)(2)(B) to read as follows:

The petition pleads a plausible allegation of a violation of section 745(a). This inquiry is limited to the facial sufficiency of the allegations of the petition alone.

Prior to circulation, the committees discussed replacing the former statutory language (“the petition alleges facts that would establish” a Racial Justice Act violation) with the updated statutory language (“the petition pleads a plausible allegation” of a Racial Justice Act violation). However, the committees decided to retain the former statutory language in the proposal when it circulated for comment due to concerns that by echoing the “plausible allegation” language of AB 1071, the rule would be taken as an invitation to weigh credibility at a preliminary stage, contrary to AB 1071’s legislative intent. In addition, the committees added the second clause to further emphasize the holding in *McIntosh*.

Several commenters requested that the rules of court reflect the new statutory language, noting that the new language reflects the minimal pleading requirement and that retaining the former language would make the rules misaligned with statute. The committees agree with the recommendation.

Indigency determination for purposes of appointment of counsel

On form HC-001, the committees proposed new item 4c in part C, asking if the petitioner was represented by appointed counsel in this case at the trial court and/or on appeal, to assist courts with indigency determinations.

The University of San Francisco Racial Justice Clinic and the Ella Baker Center for Human Rights, in a joint comment, stated that the structure and phrasing of item 4 could be confusing for petitioners, and recommended clarifying language for items 4a and 4b. In addition, these commenters and the Los Angeles County Public Defender recommended removing item 4c,

stating that an inquiry into prior appointed counsel serves no purpose as an indicator of present financial capacity. To retain the item but avoid confusion, the committees recommend clarifying the language used in item 4 and reordering the item so that item 4c is renumbered as item 4a, item 4a as item 4b, and item 4b as item 4c.

Subsequent Racial Justice Act claim

The Office of the State Public Defender recommended modifying part C, item 9, to include a change in law as a justification for filing a subsequent Racial Justice Act claim. The committees agree and recommend adding this item (now numbered item 7b(1)) to the form.

Adding instruction to form HC-001 for capitolly sentenced petitioners

In a joint comment, the California Appellate Project and Habeas Corpus Resource Center expressed concern that form HC-001 invites capitolly sentenced petitioners to complete all parts without counsel, including non-Racial Justice Act claims. For capitolly sentenced petitioners who have not yet been appointed habeas counsel, inclusion of non-Racial Justice Act claims could result in forfeiture of habeas claims not included, if a successor or timeliness bar is imposed. As such, the commenters requested an instruction be added to form HC-001: “Under the rules of court, form HC-001 must be used by self-represented petitioners filing for relief in noncapital habeas corpus proceedings (Cal. Rules of Court, rules 4.551(a)(1), 8.830(a)) but **this form is not intended for use by self-represented petitioners with a judgment of death**. Death penalty-related habeas proceedings are governed by different statutes and rules of court.”

Considering these concerns, the committees recommend adding the following instruction at the top of form HC-001: “This form is intended for use by petitioners filing for relief in habeas corpus proceedings and who are not sentenced to death (Cal. Rules of Court, rules 4.551(a)(1), 8.830(a)).” While rules 4.551(a)(1) and 8.830(a) generally require the use of form HC-001, the form is an optional one—not mandatory. Given this, including the instruction that “form HC-001 must be used by self-represented petitioners” could be considered legal advice. Similarly, the portion of the requested instruction that the form is not intended for use by petitioners with a judgment of death and death penalty–related habeas proceedings are governed by different statutes and rules of court could be considered legal advice. Simply instructing that the form is intended for use by noncapital habeas petitioners should be sufficient to address this concern while not providing legal advice.

New separate form for Racial Justice Act–related claims for capitolly sentenced petitioners

In a joint comment, the California Appellate Project and Habeas Corpus Resource Center requested a new separate form solely for capitolly sentenced people to present their Racial Justice Act–related claims. *People v. Wilson* (2024) 16 Cal.5th 874, 944 provides that capitolly sentenced petitioners who have not yet been appointed habeas counsel may file Racial Justice Act–only habeas petitions. These petitioners need not await appointment of Proposition 66 counsel to pursue relief under the Racial Justice Act, and a stand-alone Racial Justice Act petition will not bar later habeas claims developed by appointed counsel.

Adopting a new separate form is outside the scope of this proposal, but the committees may consider this suggestion in the future as time and resources allow.

Providing copies of the informal response to counsel

Rule 4.551(b)(2) requires the court and the respondent to notify and serve the petitioner with information and filings related to an informal response. A member of the Criminal Law Advisory Committee recommended amending the rule to add petitioner’s counsel as an additional party to be notified and served, since a petitioner with a Racial Justice Act claim may have counsel appointed prior to the court requesting an informal response. The committees requested specific comments on whether including a reference to petitioner’s counsel in rule 4.551(b)(2) would be helpful. Five commenters responded that adding a reference to counsel would be helpful. In response, the committees recommend modifying the rule to require notice and service of the informal response on petitioner’s counsel, if represented, similar to rule 8.385(b) on informal responses in habeas proceedings in appellate court.

Additional comments on informal responses

The San Francisco Public Defender requested that if an unrepresented petitioner has requested counsel and the court requests an informal response, rule 4.551(b) should specify that the court should appoint counsel at that time; that rule 4.551(d)(1) should state, “A court that requests informal briefing under subdivision (b)(1) of this Rule should consider simultaneous appointment of counsel”; and that similar language should be added to the existing advisory committee comment on rule 4.551(b).

The committee recommends adding language to the advisory committee comment on subdivision (b) to guide courts to consider appointing counsel when requesting an informal response:

Subdivision (b). As in other cases, when considering a petition raising a claim under Penal Code section 745(a), the court may request an informal response by the People. In addition, the court should consider simultaneously appointing counsel for an unrepresented petitioner under the standards of section 1473(e)(5).

Alternatives considered

The committees did not consider the alternative of not amending the rules and forms because they determined that revisions were necessary to implement new legislation. To the extent the recommended revisions were not required by the terms of the legislation, the committees considered taking no action but ultimately determined the revisions were warranted in light of the benefits the revisions would provide to the courts and court users.

In response to concerns raised by Court of Appeal staff, the committees discussed whether to develop a separate form for petitions for writ of habeas corpus based on Racial Justice Act claims. In addition to the feedback from appellate courts, several large trial courts provided feedback on the impact of separate habeas petition forms as compared to the current joint form, with some courts preferring separate and others preferring joint. The committees also considered

how separate petition forms might impact self-represented litigants, especially those with mixed claims who are only aware of and file only one type of petition form.

The committees were also concerned about possible issues with successive petitions and timeliness. To address these concerns, the committees recommend keeping all claims on form HC-001 but more clearly differentiating between Racial Justice Act and other claims by dividing the form into three separate parts.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are largely attributable to recent legislation. Expected costs include training, case management system updates, and the production of new forms. The revisions to form HC-001 should reduce operational demands by reducing the number of litigants who check the box for a Racial Justice Act claim without including facts to support such a claim. The Superior Courts of Los Angeles, Orange, and San Diego Counties stated that this proposal would provide minimal or no cost savings. The Superior Court of Orange County noted that the proposal would improve document processing and reduce the number of unnecessary hearings, which would result in cost savings.

Attachments and Links

1. Cal. Rules of Court, rules 4.551 and 8.385, at pages 14–17
2. Forms HC-001, CR-187, and CR-188, at pages 18–36
3. Chart of comments, at pages 37–89
4. Link A: Assembly Bill 1071,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1071
5. Link B: Senate Bill 734,
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB734
6. Link C: Assembly Bill 1036,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1036

Rules 4.551 and 8.385 of the California Rules of Court are amended effective July 1, 2026, to read:

1 **Rule 4.551. Habeas corpus proceedings**

2
3 **(a) Petition; form and court ruling**

4
5 * * *

6
7 **(b) Informal response**

8
9 (1) Before passing on the petition, the court may request an informal response
10 from:

11
12 (A) The respondent or real party in interest; or

13
14 (B) The custodian of any record pertaining to the petitioner's case,
15 directing the custodian to produce the record or a certified copy to be
16 filed with the clerk of the court.

17
18 (2) A copy of the request must be sent to the petitioner or, if represented,
19 petitioner's counsel.

20
21 ~~(3) The informal response, if any, must be served on the petitioner by the party~~
22 ~~of whom the request is made.~~ The informal response must be in writing and
23 must be served and filed within 15 days. If the petitioner is not represented by
24 counsel in the habeas corpus proceeding, the informal response must be
25 served on the petitioner. If the petitioner is represented by counsel in the
26 habeas corpus proceeding, the informal response must be served on the
27 petitioner's counsel. If any informal response is filed, the court must notify
28 the petitioner that ~~he or she may a reply to the informal response~~ may be filed
29 within 15 days from the date of service of the response on the petitioner or
30 counsel. If the informal response consists of records or copies of records, a
31 copy of every record and document furnished to the court must be furnished
32 to the petitioner or counsel.

33
34 ~~(34)~~ After receiving an informal response, the court may not deny the petition
35 until the petitioner has filed a timely reply to the informal response or the 15-
36 day period provided for a reply under (b)(2) has expired.

37
38 **(c) Order to show cause**

39
40 (1) Except as provided in (2), the court must issue an order to show cause if the
41 petitioner has made a prima facie showing that the petitioner is entitled to
42 relief. In doing so, the court takes petitioner's factual allegations as true and
43 makes a preliminary assessment regarding whether the petitioner would be

1 entitled to relief if the petitioner’s factual allegations were proved. If so, the
2 court must issue an order to show cause.

3
4 (2) When a petition raises a claim under Penal Code section 745(a), the court
5 must issue an order to show cause if the petitioner has made a prima facie
6 showing, which means that the petitioner has produced facts that, if true,
7 establish that there is a substantial likelihood that a violation of section
8 745(a) has occurred. A prima facie determination must be based on the
9 petitioner’s showing and the record.

10
11 (3) An order to show cause is a determination that the petitioner has made a
12 showing that they may be entitled to relief. It does not grant the relief sought
13 in the petition.

14
15 **(d) Appointment of counsel**

16
17 (1) ~~On issuing an order to show cause, the court must appoint counsel for any~~
18 ~~unrepresented petitioner who desires but cannot afford counsel.~~

19
20 (2) When a petition raises a claim under Penal Code section 745(a) and requests
21 appointment of counsel, the court must appoint counsel if the petitioner
22 cannot afford counsel and either: ~~the petition alleges facts that would~~
23 ~~establish a violation of section 745(a) or~~

24
25 (A) ~~¶The State Public Defender requests that counsel be appointed; or~~
26 ~~Newly appointed counsel may amend a petition filed before their~~
27 ~~appointment.~~

28
29 (B) The petition pleads a plausible allegation of a violation of section
30 745(a). This inquiry is limited to the facial sufficiency of the
31 allegations of the petition alone.

32
33 (2) Newly appointed counsel may amend a petition filed before their
34 appointment.

35
36 (3) On issuing an order to show cause, the court must appoint counsel for any
37 unrepresented petitioner who desires but cannot afford counsel.

38
39 **(e)–(i) * * ***

40
41 **Advisory Committee Comment**

42
43 Except for claims raising a violation of Penal Code section 745(a) that are addressed in
44 subdivision (d)(1), the court must appoint counsel on the issuance of an order to show cause. (In

1 *re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The
2 Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of
3 appointed counsel in a habeas corpus proceeding challenging the underlying conviction.
4 (*Charlton v. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2
5 authorizes appointment of the public defender, or private counsel if there is no public defender
6 available, for indigents in criminal proceedings.

7
8 ~~The issue of whether the prima facie showing for a petition for writ of habeas corpus under~~
9 ~~section 1473(e) is the same as in section 745(h)(2) or defined in subdivision (e)(1) of this rule~~
10 ~~(see *In re Marquez* (2007) 153 Cal.App.4th 1, 11) is unresolved.~~

11
12 **Subdivision (a)(4) and (7).** * * *

13
14 **Subdivision (b).** As in other cases, when considering a petition raising a claim under Penal Code
15 section 745(a), the court may request an informal response from the state. In addition, for claims
16 under Penal Code section 745(a), the court should consider simultaneously appointing counsel for
17 an unrepresented petitioner under the standards of section 1473(e)(5).

18
19 **Subdivision (d).** The standard set out in paragraph (1)(B) is to be construed as a minimal
20 pleading requirement consistent with the Legislature’s statement of intent in Assembly Bill 1071
21 (Stats. 2025, ch. 721).

22
23
24 **Rule 8.385. Proceedings after the petition is filed**

25
26 **(a)–(c)** * * *

27
28 **(d) Order to show cause**

29
30 (1) Except as provided in (2), if the petitioner has made the required prima facie
31 showing that he or she is entitled to relief, the court must issue an order to
32 show cause. In doing so, the court takes petitioner’s factual allegations as true
33 and makes a preliminary assessment regarding whether the petitioner would
34 be entitled to relief if the petitioner’s factual allegations were proved. If so,
35 the court must issue an order to show cause.

36
37 (2) When a petition raises a claim under section 745(a), the court must issue an
38 order to show cause if the petitioner has made a prima facie showing, which
39 means that the defendant has produced facts that, if true, establish that there
40 is a substantial likelihood that a violation of section 745(a) occurred. A prima
41 facie determination must be based on the petitioner’s showing and the record.

42
43 (3) An order to show cause does not grant the relief sought in the petition.

1
2 (e)–(f) * * *

3
4 (g) **Appointment of counsel**

5
6 (1) Except as provided in (2), if the return is ordered to be filed in the Supreme
7 Court or the Court of Appeal, the court in which the return is ordered filed
8 must appoint counsel for any unrepresented petitioner who desires but cannot
9 afford counsel.

10
11 (2) When a petition raises a claim under Penal Code section 745(a) and requests
12 appointment of counsel, the court must appoint counsel if the petitioner
13 cannot afford counsel and either ~~the petition alleges facts that would establish~~
14 ~~a violation of section 745(a) or:~~

15
16 (A) The State Public Defender requests that counsel be appointed; or

17
18 (B) The petition pleads a plausible allegation of a violation of section
19 745(a). This inquiry is limited to the facial sufficiency of the
20 allegations of the petition alone.

21
22 (3) Newly appointed counsel may amend a petition filed before their
23 appointment.

24
25 **Advisory Committee Comment**

26
27 **Subdivision (a).** * * *

28
29 **Subdivision (b).** As in other cases, when considering a petition raising a claim under Penal Code
30 section 745(a), the court may request an informal written response from the state. In addition, for
31 claims under Penal Code section 745(a), the court should consider simultaneously appointing
32 counsel for an unrepresented petitioner under the standards of section 1473(e)(5).

33
34 **Subdivision (c).** * * *

35
36 **Subdivision (d).** * * *

37
38 **Subdivision (g).** The standard set out in paragraph (2)(B) is to be construed as a minimal
39 pleading requirement consistent with the Legislature’s statement of intent in Assembly Bill 1071
40 (Stats. 2025, ch. 721).

Name: _____

Address: _____

DRAFT
Not approved by the
Judicial Council
02/26/2026

CDCR or ID Number: _____

(Court)

_____ Petitioner	v.	_____ Respondent
---------------------	----	---------------------

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction or sentence and are filing this petition in the superior court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the superior court, you should file it in the county in which you are confined.
- **This form is intended for use by petitioners filing for relief in habeas corpus proceedings and who have not been sentenced to death (Cal. Rules of Court, rules 4.551(a)(1), 8.380(a)).**

- Read the entire form *before* answering any questions.
- Answer all questions in Part A. Also fill out Part B for all claims except for those based on a violation of the Racial Justice Act (RJA). For RJA claims, fill out Part C. If you have RJA claims and other claims, fill out both Parts B and C.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- An attorney filing this petition on behalf of a petitioner, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct by a law enforcement officer, must serve a copy of this petition on the law enforcement agency that employs the officer.

Approved by the Judicial Council of California for use under rules 4.551 (as amended July 1, 2026) and 8.380 (as amended January 1, 2020) of the California Rules of Court. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.



Part A (must be filled out by all petitioners)

This petition concerns (check all that apply):

- A conviction
- A sentence
- Jail or prison conditions
- Other (specify): _____
- Parole
- Credits
- Prison discipline
- A conviction or sentence involving a violation of the Racial Justice Act under Penal Code section 745(a) **(Part C must be completed if this box is checked.)**

1. Your name: _____

2. a. Where are you incarcerated? _____

b. If you are not incarcerated, are you on supervised release, such as probation, parole, mandatory supervision, or postrelease community supervision?

- Yes (specify): _____
- No

3. Why are you in custody or on supervised release?

- Criminal conviction
- Civil commitment

4. Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court: _____

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced/Date of judgment: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court?

- No
- Yes If yes, state the attorney's name and address:

5. What was the LAST plea you entered? (check one):

- Not guilty
- Guilty
- Nolo contendere
- Other: _____

6. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial



7. Did you appeal from the conviction, sentence, or commitment?

No

Yes If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: _____

c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. All issues raised:

(1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal?

No

Yes If yes, state the attorney's name and address, if known:

8. Did you seek review in the California Supreme Court?

No

Yes If yes, give the following information:

a. Result: _____

b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. All issues raised:

(1) _____

(2) _____

(3) _____

9. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

10. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, sentence, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)

No If no, skip to number 13.

Yes If yes, continue with number 11.

11. a. (1) Nature of proceeding (for example, "habeas corpus petition"): _____

(2) Name of court: _____

(3) Result (*attach order or explain why unavailable*): _____

(4) Date of decision: _____

(5) Case number or citation of opinion, if known: _____

(6) All issues raised:

(a) _____

(b) _____

(c) _____



- b. (1) Nature of proceeding: _____
- (2) Name of court: _____
- (3) Result (*attach order or explain why unavailable*): _____
- (4) Date of decision: _____
- (5) Case number or citation of opinion, if known: _____
- (6) All issues raised:
 - (a) _____
 - (b) _____
 - (c) _____

12. If any of the courts listed in number 11 held a hearing, state name of court, date of hearing, nature of hearing, and result:

13. Explain any delay in discovering or presenting the claims for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; Pen. Code, § 1473(e).)

14. Are you presently represented by counsel?

No

Yes If yes, state the attorney's name and address, if known:

15. Do you have any petition, appeal, or other matter pending in any court?

No

Yes If yes, explain:

16. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

Before moving to Parts B and C of this form, read this chart to decide which parts of the form you must complete.

Do you have a Racial Justice Act claim?	You must fill out:
No	Parts A and B only
Yes, I only have a Racial Justice Act claim.	Parts A and C only
Yes, I have a Racial Justice Act claim and other claims.	Parts A, B, and C



3. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available?

- Yes
 No

Attach documents that show you have exhausted your administrative remedies. (See People v. Duvall (1995) 9 Cal.4th 464, 474.)

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



Signature of Petitioner

If you do not have a Racial Justice Act claim, fill out Part A and Part B only and stop here.



4. a. Were you represented by appointed counsel in this case (at the trial court and/or on appeal)?

- Yes
- No

b. Do you want appointed counsel at no cost to you?

- Yes
- No

c. Can you afford to hire and pay for your own attorney?

- Yes
- No

5. a. Do you request permission to amend a pending petition for writ of habeas corpus with this claim?

- Yes
- No

b. If yes, in what court is your petition pending? _____

c. If yes, what is the case number of your pending petition? _____

6. Do you request discovery relevant to a potential violation of the Racial Justice Act?

No; at this time, I do not need discovery, have previously obtained discovery, or may request discovery after counsel is appointed to represent me.

Yes, under Pen. Code, § 745(d). (If yes, complete 6a and b)

a. Describe, as specifically as you can, the type of records or information you seek:

b. List the reasons you need the records or information:

7. Are you raising this claim for the first time?

a. Yes (Skip to the declaration at the bottom of this page.)

b. No (Complete the following questions.)

Why are you raising this claim again? (Complete (1), (2), and (3).)

(1) Change in law (provide the cases or statutes):

(2) Change of facts

Could the new evidence have been previously known to you?

- Yes
- No

Explain:

(3) Other: _____

If you need additional space to answer any question on this petition, add an extra page and indicate that your answer is "continued on additional page."

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



Signature of Petitioner

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY 03/03/2026 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	CASE NUMBER: _____
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: _____ DATE OF BIRTH: _____	FOR COURT USE ONLY DATE: _____ TIME: _____ DEPARTMENT: _____

MOTION TO VACATE CONVICTION OR SENTENCE

- Pen. Code, § 1016.5
 Pen. Code, § 1473.7(a)(1)
 Pen. Code, § 1473.7(a)(2)
 Pen. Code, § 1473.7(a)(3)

Instructions—Read carefully if you are filing this motion for yourself

- The term "Moving Party" as used in this form refers to the person asking for relief.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. If you make a statement that you know is false, you could be convicted of perjury (lying under oath).
- You must file a separate motion for each separate case number.
- Fill in the requested information. If you need more space, add an extra page and note that your answer is "continued on added page," or use *Attachment to Judicial Council Form* (form MC-025) as your additional page.
- Serve the motion on the prosecuting agency.
- An attorney filing this motion on behalf of a moving party, based on a claim under Penal Code section 745(a)(1) or (2) that involves conduct of a law enforcement officer, must serve the motion on the law enforcement agency that employs the officer.
- **File the motion in the superior court in the county where the conviction or sentence was imposed.** Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filing your motion.

1. This motion concerns a conviction or sentence in case number _____ . On (date): _____ , the Moving Party was convicted of a violation of the following offenses (list all offenses included in the conviction):

CODE	SECTION	TYPE OF OFFENSE (felony, misdemeanor, or infraction)

If you need more space to list offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

2. **MOTION UNDER PENAL CODE SECTION 1016.5**a. **GROUND FOR RELIEF: The Moving Party requests relief based on the following:**

- (1) Before acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise the Moving Party that the conviction might have immigration consequences, as required under Penal Code section 1016.5(a).
- (2) The conviction that was based on the plea of guilty or nolo contendere may result in immigration consequences for the Moving Party, including possible deportation, exclusion from admission to the United States, or denial of naturalization.
- (3) The Moving Party likely would not have pleaded guilty or nolo contendere if the court had advised the Moving Party of the immigration consequences of the plea. (*People v. Arriaga* (2014) 58 Cal.4th 950.)

b. **Supporting Facts**

Tell your story. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences, (2) the possible immigration consequences, and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. (*If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.*)

3. **MOTION UNDER PENAL CODE SECTION 1473.7(a)(1), Legal Invalidity With Actual or Potential Immigration Consequences**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **GROUND FOR RELIEF: Moving Party requests relief based on the following:**

The conviction or sentence is legally invalid due to a prejudicial error (a mistake that causes harm) that damaged the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. (Note: A determination of legal invalidity may, *but is not required to*, include a finding of ineffective assistance of counsel.) If you are claiming that your conviction or sentence is invalid due to ineffective assistance of counsel, before the hearing is held on this motion, you (or the prosecutor) must give timely notice to the attorney who you are claiming was ineffective in representing you.



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

3. b. **Supporting Facts**

Tell your story. What facts show prejudicial error? Include information that shows that the conviction or sentence you are challenging is currently causing or has the possibility of causing your removal from the United States, or the denial of your application for an immigration benefit, lawful status, or naturalization.

CAUTION: You must *state facts, not conclusions*. For example, if claiming ineffective assistance of counsel, you must state facts detailing what the attorney did or failed to do and how that affected your conviction or sentence.

Note: The court presumes your conviction or sentence is not legally valid if

- (1) you pleaded guilty or nolo contendere based on a law that provided that the arrest and conviction would be deemed never to have occurred if specific requirements were completed;
- (2) you completed those specific requirements; and
- (3) despite completing those requirements, your guilty or nolo contendere plea has been, or possibly could be, used as a basis for adverse immigration consequences.

(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)

c. **Reasonable Diligence (check all that apply)**

- (1) (a) On *(date)*: _____, the Moving Party received a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.
- (b) The Moving Party has not received a notice to appear in immigration court or other notice from immigration authorities as described above.
- (2) (a) On *(date)*: _____, the Moving Party received notice that a final removal order was issued against the Moving Party, based on the conviction or sentence that the Moving Party seeks to vacate.
- (b) The Moving Party has not received a final notice of removal as described above.

(If you are requesting appointment of counsel, you may skip the following item, 3c(3).)

- (3) This motion may be denied because of a delay in filing it. If you received *both* notices mentioned above, explain why you did not bring and could not bring this motion earlier. If you received both notices before this law went into effect on January 1, 2017, when did you become aware of the law? Did something happen to give you a reason to look for conviction relief?



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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4. **MOTION UNDER PENAL CODE SECTION 1473.7(a)(2), Newly Discovered Evidence of Actual Innocence**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, post release community supervision (PRCS), or parole).

a. **GROUNDS FOR RELIEF: Moving Party requests relief based on the following:**

- (1) Newly discovered evidence of actual innocence exists that requires vacating the conviction or sentence as a matter of law or in the interests of justice.
- (2) The Moving Party discovered the new evidence of actual innocence on *(date)*:

b. **Supporting Facts**

Tell your story. Describe the newly discovered evidence and how it proves your actual innocence. Explain why you could not discover this evidence at the time of your trial. Explain why you did not bring and could not bring this motion earlier. *(If necessary, attach additional pages. You may use Attachment to Judicial Council Form (form MC-025) for any additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting the claim.)*

5. **MOTION UNDER PENAL CODE SECTION 1473.7(a)(3), Conviction or Sentence Based on Race, Ethnicity, or National Origin in Violation of Penal Code section 745(a) (Racial Justice Act)**

The Moving Party is not currently in criminal custody in the case referred to in item 1 (criminal custody includes in jail or prison or on bail, probation, mandatory supervision, postrelease community supervision (PRCS), or parole).

a. **Filing Date**

If you have a claim for violation of **the Racial Justice Act**, indicate which of the following apply to the case in which you are making this claim *(check all that apply)*:

- (1) Judgment is not final (for example, because an appeal is pending).
- (2) The Moving Party is facing actual or potential immigration consequences related to the conviction or sentence.
- (3)** Judgment is for a felony conviction.



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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6. **REQUEST FOR COUNSEL** (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 981; *People v. Gutierrez* (2025) 113 Cal. App.5th 906)
- a. The Moving Party requests appointment of counsel upon a finding by the court that there is a prima facie case for relief, and
 - b. The Moving Party is indigent and has completed and attached *Defendant's Financial Statement* (form CR-105) showing that the Moving Party cannot afford to hire a lawyer. Form CR-105 is available online at courts.ca.gov/forms.
7. The Moving Party requests that the court hold the hearing on this motion without the Moving Party's personal presence because the Moving Party is (*check one*):
- a. in federal custody awaiting deportation.
 - b. otherwise in custody at (*facility*):
 - c. outside of the United States and lacks permission to enter.
 - d. other (*specify*):
8. The Moving Party requests that the court vacate the conviction or sentence in the above-captioned matter.
9. If the Moving Party entered a plea of guilty or nolo contendere, the Moving Party requests that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

Date:

Name of Moving Party or Attorney for Moving Party

▲ _____
Signature of Moving Party or Attorney

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY 03/17/2026 DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE <input type="checkbox"/> Pen. Code, § 1016.5 <input type="checkbox"/> Pen. Code, § 1473.7(a)(1) <input type="checkbox"/> Pen. Code, § 1473.7(a)(2) <input type="checkbox"/> Pen. Code, § 1473.7(a)(3)	FOR COURT USE ONLY DATE: TIME: DEPARTMENT:

1. FOR APPOINTMENT OF COUNSEL

- a. The court **grants** the request for appointment of counsel.
- b. The court **denies** the request for appointment of counsel because the Moving Party has not shown (*choose all that apply*):
 a prima facie case indigency.

2. FOR PENAL CODE SECTION 1016.5 RELIEF

- a. The court **grants** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- b. The court **denies** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

3. FOR PENAL CODE SECTION 1473.7(a)(1) RELIEF

a. **Request to Waive Personal Appearance (if applicable)**

- (1) The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.

b. **Timeliness**

- (1) The court **deems the motion timely** because the Moving Party did not receive, or acted with reasonable diligence after receiving, notice from immigration authorities.
- (2) The court exercises its discretion to **deem the motion timely**.
- (3) The court **deems the motion untimely and dismisses the motion** after a hearing (*People v. Alatorre* (2021) 70 Cal. App.5th 747).

c. **Vacatur of Conviction or Sentence**

- (1) The court **grants** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.
 The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- (2) The court **denies** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.



DEFENDANT:	CASE NUMBER:
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4. **FOR PENAL CODE SECTION 1473.7(a)(2) RELIEF**

a. **Request to Waive Personal Appearance** (*if applicable*)

- (1) The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.

b. **Undue Delay**

- (1) The court finds that the Moving Party **filed without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence.
- (2) The court finds that the Moving Party **failed to file the motion without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence of actual innocence, and **dismisses** the motion after a hearing.

c. **Vacatur of Conviction or Sentence**

- (1) The court **grants** the Moving Party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.
 The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
- (2) The court **denies** the Moving Party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.
- (3) The court's basis for the ruling:

5. **FOR PENAL CODE SECTION 1473.7(a)(3) RELIEF**

a. **Request to Waive Personal Appearance** (*if applicable*)

- (1) The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
- (2) The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.

b. **Undue Delay**

- (1) The court finds that the Moving Party filed **without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence that provides a basis for relief under **the Racial Justice Act**.
- (2) The court finds that the Moving Party **failed to file the motion without undue delay** from the date the Moving Party discovered, or could have discovered through the exercise of due diligence, the evidence that provides a basis for relief under **the Racial Justice Act**, and **dismisses the motion** after a hearing.

c. **Motion for Discovery**

- (1) The court grants the Moving Party's request for the following records or information relevant to a potential **Racial Justice Act violation**:
- (2) The court denies the Moving Party's request for **discovery** of records or information.



DEFENDANT:	CASE NUMBER:
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5. **d. Vacatur of Conviction or Sentence**

(1) The court finds the following violations of the **Racial Justice Act** occurred (*check all that apply*):

- (a) The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward the Moving Party because of the Moving Party's race, ethnicity, or national origin.
- (b) During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used racially discriminatory language about the Moving Party's race, ethnicity, or national origin. (Racially discriminatory language does not include relaying language used by someone else that is relevant to the case, or giving a racially neutral and unbiased physical description of the suspect.)
- (c) The Moving Party was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origin who have engaged in similar conduct and are similarly situated, **and** the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the Moving Party's race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- (d) The Moving Party received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
- (i) longer or more severe sentences were more frequently imposed for the same offense on people who share the Moving Party's race, ethnicity, or national origin than on others in the county; *and/or*:
- (ii) longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in that county.

(2) The court **grants** the Moving Party's request to vacate the conviction and sentence based on a violation of **the Racial Justice Act** and finds the conviction and sentence legally invalid.

(a) Refer to the court minute order from (*date*): _____

OR (*check all that apply*):

(b) The court orders the following new proceedings consistent with **the Racial Justice Act**:

(c) The court finds a violation of Penal Code section 745(a)(3) and modifies the judgment to the following lesser included or lesser related offense:

(d) The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.

(e) The court grants the following remedies:



DEFENDANT:	CASE NUMBER:
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5. d. (3) The court **grants** the Moving Party's request to vacate the sentence based on a violation of **the Racial Justice Act** and finds the sentence was legally invalid.
- (a) Refer to the court minute order from (date): _____
- OR** (check all that apply):
- (b) The court imposes the following new sentence:
- (c) The court grants the following remedies:
- (4) The court **denies** the Moving Party's request to vacate the conviction or sentence based on a violation of **the Racial Justice Act**.
- (5) The court's basis for the ruling:

Date:

Judicial Officer

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	Commenter	Position	Comment	Committee Response
1.	California Appellate Project and Habeas Corpus Resource Center by Joseph Schlesinger, Executive Director, California Appellate Project; Nisha Shah, Interim Executive Director, Habeas Corpus Resource Center	NI	<p>The California Appellate Project-San Francisco (CAP-SF), joined by the Habeas Corpus Resource Center (HCRC), submits the following comments to Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188.</p> <p>CAP-SF was established in 1983 by the State Bar of California, at the request of the Supreme Court of California, to assist counsel appointed to represent people who have been sentenced to death in California at all stages of the state post-conviction legal proceedings including on Racial Justice Act (RJA) matters. At the end of the past fiscal year CAP was providing assistance in more than 260 ongoing postconviction matters and to more than 360 unrepresented people. Over the past four decades of our existence, we have been involved in countless others.</p> <p>HCRC was created as part of the judicial branch, effective January 1, 1998, by Senate Bill 513. (Stats 1997, ch. 869.) The HCRC’s mission is to provide legal representation to people sentenced to death in California in their postconviction proceedings, and to serve as a resource center for attorneys appointed in capital cases. (See Gov. Code, §§ 68660-68664.) Because capital petitioners may press claims related to the RJA, HCRC raises the following comments for consideration ahead of the promulgation of the proposed rules and forms.</p> <p>I. INTRODUCTION CAP-SF and HCRC offer the following comments to respond to specific questions posed by the Judicial Council regarding proposed changes to HC-001 and California Rules of Court, Rules 4.551 and 8.385, based on the Racial Justice Act and recent amendments to that law. Because we believe the proposed amendments will impact capital sentenced petitioners in ways that are significantly different from their impact on non-capital petitioners, we offer an overview of the current state of capital habeas litigation to provide context for our comments.</p>	<p>The committees appreciate the comments.</p> <p>Please see the committees’ responses to specific suggestions below.</p>

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			<p>Of roughly 563 condemned people in the state, approximately 346 are awaiting appointment of Proposition 66 counsel — many for decades, and many of whom may never receive counsel at all. Of those 346, over 140 have had their death judgments affirmed on appeal and currently have single-issue placeholder <i>Morgan</i> petitions (<i>In re Morgan</i> (2010) 50 Cal.4th 932) pending in the California Supreme Court. <i>Morgan</i> petitions are filed with the expectation that if counsel is ever appointed, the petition will be transferred to the superior court and amended with additional claims developed with the benefit of investigation and expert funding. The sole purpose of a <i>Morgan</i> petition is to toll the federal habeas statute of limitations.</p> <p>By contrast, of the roughly 200 capitally sentenced people who do have habeas counsel, some have cases pending in the superior court or courts of appeal, while many are already in federal court, often after one or more completed rounds of state habeas litigation. It is an extremely heterogeneous population, and for many purposes — particularly under the existing rules and proposed forms — a one-size-fits-all approach is simply unworkable.</p> <p>While Assembly Bill 1071, the primary driver of the proposed amendments under consideration, says nothing about the availability of RJA claims for capital petitioners, the California Supreme Court recently issued an opinion that significantly impacts how capitally sentenced people might access the RJA. In <i>People v. Wilson</i> (2024) 16 Cal.5th 874, 944, the California Supreme Court held that capitally sentenced people who have not yet been appointed habeas counsel are permitted to file RJA-only habeas petitions without being bound by Proposition 66’s rules regarding appointment of habeas counsel, providing the nearly 350 people awaiting Proposition 66 counsel with an alternative path for presenting RJA claims. The Court held that because the RJA includes a funding mechanism for counsel, capitally sentenced people need not</p>	

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			<p>await appointment of Proposition 66 counsel to pursue RJA relief, and that a standalone RJA petition will not bar later habeas claims developed by appointed counsel, should counsel ever be obtained. What <i>Wilson</i> does not address — indeed, is silent on— is whether a petition that includes both RJA and non-RJA habeas claims would or would not trigger the restrictions on later petitions once Proposition 66 counsel is appointed.</p> <p>The <i>Wilson</i> procedure does not allow courts to impose the successor or timeliness petition bars when a capitally sentenced person who still awaits their Proposition 66 counsel files a petition with both RJA and non-RJA habeas claims. The entire structure of Proposition 66’s restrictions on second and successive petitions presupposes that the petitioner has already had the benefit of qualified counsel and access to defense services. That said, the issue is unresolved. Some of our comments and suggestions below are founded on the concern that a capital habeas petition containing both RJA and non-RJA claims — if presented by a pro per petitioner — will incorrectly be subjected to a successor petition and / or timeliness bar.</p> <p>In addition, the proposed amendments do not address <i>Wilson</i>, its procedures or the implications of those procedures for capitally sentenced people. In light of that gap, while we are offering comments on the proposed amendments, we also offer a counterproposal: That the committees include language in boldface type in the instructions to HC-001 indicating that the form is not meant to be used by capitally sentenced people (a position that the committees explicitly took two years ago during the last amendments to HC-001, see Appellate Advisory Com., <i>Criminal Procedure: Racial Justice Act</i> (SPR24-028, at https://jcc.legistar.com/View.ashx?M=F&ID=12870891&GUID=E9B6569C-6089-48C2-B898-6A9FA49A83D4, last visited on January 6, 2026, at page 12) [“SPR24-028 Comments”]) and that they create a separate RJA habeas form for capitally sentenced petitioners whose instructions</p>	

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			<p>indicate in boldface type that it is not meant to be used by non-capitally sentenced petitioners.</p> <p>With this background in mind, CAP-SF and HCRC offer the following comments on the proposed amendments.</p>	
			<p>Does the proposal appropriately address the stated purpose? Yes and no. See specific comments below.</p>	<p>The committees appreciate the comment and provide specific responses below.</p>
			<p>A. Proposed changes to Form HC-001 Certainly, the proposal takes steps toward incorporating changes to the Racial Justice Act as mandated by Assembly Bill 1071 and implemented in Penal Code sections 745 and 1473. And to the extent that the RJA section of the proposed form HC-001 adds questions directing pro per petitioners to the specific allegations they must make to begin RJA habeas litigation — see page 8 of proposed Form HC-001 — the new form is more useful than the previous form.</p> <p>At the same time, the new form HC-001 inadvertently creates a number of problems, specifically for death-sentenced individuals, and may confuse pro per litigants.</p>	<p>Please see responses below regarding specific suggestions related to this comment.</p>
			<p>i. The form inadvertently invites everyone who has a valid RJA claim to include non-RJA claims in the petition.</p> <p>a. By including non-RJA and RJA habeas claims in the same form (Part B for non-RJA habeas, pages 5-7; Part C for RJA habeas, pages 8-9), the form will unintentionally invite pro per RJA petitioners — many of whom have limited education and nearly all of whom have no legal education— to include non-RJA habeas claims, even if those claims have not been fully investigated and/or lack merit at the time the petitioner files the petition. The improvident premature presentation of a non-RJA</p>	<p>The committees appreciate the comment.</p>

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			<p>claim (for example, a prosecutorial misconduct claim or a new evidence claim) has serious consequences for habeas petitioners.</p> <p>b. Most concerning is the death-sentenced petitioner, proceeding without counsel, who elects to include non-RJA claims with RJA claims pursuant to this form.¹ Eventually, this could lead to the imposition of unnecessary successor or timeliness bars when the petitioner obtains counsel who files a fully developed petition. For such a petition, the state may argue that any non-RJA claims filed subsequent to the first petition are procedurally barred as successive or untimely because all non-RJA claims should have been included in the first instance. (See <i>In re Clark</i> (1993) 5 Cal.4th 750, 767-774 [describing habeas procedural bars, including successor petition bar as prohibiting the piecemeal presentation of claims].) Capitally sentenced petitioners have a statutory right to habeas counsel, and forfeiture of habeas claims if a successor or timeliness bar is imposed can jeopardize a federal court’s plenary review and ultimately lead to the petitioner’s execution.</p> <p>¹ The proposed HC-001 form invites this scenario. There is a substantial delay for the appointment of counsel for individuals sentenced to death in California. <i>People v. Wilson</i> (2024) 16 Cal.5th 874, 957. The proposed form, which allows for a petitioner to include non-RJA and RJA claims in one form, is an attractive vehicle to seek relief for individuals who have waited years, if not decades, for appointment of counsel.</p> <p>Critically, <i>Wilson</i> allows death-sentenced petitioners to file RJA-only claims separate from non-RJA claims and to seek the appointment of counsel for that specific purpose. While <i>Wilson</i> is clear that the two types of claims should be filed separately in cases involving a death judgment if the petitioner is still awaiting the appointment of “full-scope habeas corpus counsel,” the form, contrary to <i>Wilson</i>, invites inclusion of RJA and non-RJA claims. (See <i>Wilson, supra</i>, 16 Cal.5th at p. 962.) It is also the only</p>	<p>Please see responses below regarding specific suggestions related to this comment.</p>

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			<p>form available to a capitally sentenced person to request the appointment of counsel pursuant to <i>Wilson</i>.</p>	
			<p>c. We urge the Judicial Council to conspicuously note in the instructions that this form is not meant to be used by death-sentenced individuals. HC-001 is clearly designed for non-capital petitioners, for example, by including instructions suggesting that a petitioner could file an original habeas corpus petition in the superior, appellate courts and Supreme Court, whereas even under <i>Wilson</i>, capital habeas petitioners may only file their original petition in the superior court. Although the form is not designed for capital petitioners, the instructions do not make this limitation explicit, creating the risk of confusion and additional burdens on all California courts. The Appellate Advisory Committee and Criminal Law Advisory Committee previously declined to advise capital petitioners not to use form HC-001 on the grounds that such language might constitute legal advice. The Committees also noted that “[d]eath penalty-related habeas proceedings are governed by different statutes and rules of court,” and assumed that “petitioners are generally represented by counsel in these matters.” (See SPR24-028 Comments, <i>supra</i>, p. 12.) The Committees therefore appear to assume that counsel will file petitions for capitally sentenced people and advise their clients not to use HC-001. But 346 capitally sentenced people²— well over half of the state’s death row — are awaiting the appointment of habeas corpus counsel, and those individuals may use this form to press their cases forward.</p> <p>² See Habeas Corpus Resource Center, 4.561 Compliance: Persons Under Sentence of Death in California (last revised Nov. 14, 2025), <https://www.hcrc.ca.gov/4.561/HCRC_4.561-list.pdf>, p. 1.</p>	<p>Please see the response below.</p>
			<p>d. Thus, the form should include the following language in the instructions with the bold type for emphasis:</p>	<p>The committees agree that the form should include an instruction at the top</p>

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			<p>“Under the rules of court, form HC-001 must be used by self-represented petitioners filing for relief in noncapital habeas corpus proceedings (Cal. Rules of Court, rules 4.551(a)(1), 8.830(a)) but this form is not intended for use by self-represented petitioners with a judgment of death. Death penalty-related habeas proceedings are governed by different statutes and rules of court.”</p>	<p>of form HC-001 stating that it is intended for use by petitioners in noncapital habeas corpus proceedings. Because the form is not mandatory, the instruction “form HC-001 must be used” is inaccurate, and the committees decline to include that instruction.</p>
			<p>ii. The proposed forms add sections in which the petitioner can request discovery, but these sections are confusing.</p> <p>a. None of the three potential discovery statutes available to post-conviction petitioners/litigants — Penal Code sections 745(d), 1054.9, and 1473(e)(2) — require a petitioner to have a pending petition to request discovery. (See, e.g., 2025 amendments to section 1473(e)(2), adding “or in preparation to file a petition”; <i>In re Steele</i> (2004) 32 Cal.4th 682, 691 [section 1054.9 permits discovery without a pending petition].) By including a section on discovery (Part C, questions 6-8, page 9), the proposed form HC-001 creates a misimpression to pro per petitioners that in order to seek discovery they must plead habeas corpus claims. Including questions 6 through 8 in proposed form HC-001 may induce or otherwise suggest to pro per petitioners that they should improvidently plead claims that are still undeveloped to access discovery. Because a petitioner can access discovery without the filing of any legal claims, the inclusion of these questions suggests otherwise (that legal claims are necessary before a petitioner accesses discovery). We urge the Judicial Council to delete questions that inquire about a petitioner’s efforts to request discovery.</p>	<p>The committees agree in part, and will remove items 7 and 8, but will include instructions for the petitioner to attach documents in support of their claim, including any previous discovery, in item 2. In response to other comments, the committees will modify item 6 so that a petitioner may indicate that if they are not requesting discovery through the petition, they may request it after counsel is appointed if necessary. Additionally, the committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>b. The discovery section, questions 6-8 in Part C, creates additional problems:</p>	

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	Commenter	Position	Comment	Committee Response
			<p>1) The questions do not indicate whether they are meant to address discovery requests under sections 745(d) and 1473(e)(2) [RJA] or section 1054.9 [general habeas, which can include RJA]. The legal standards for each statute are different.</p>	<p>The committees will modify item 6 of HC-001 and item 5f of CR-187 to state that the discovery request is being made under Penal Code section 745(d).</p>
			<p>2) It is not clear whether checking “yes” on question 6 on page 9 in Part C means the petitioner is filing a motion for disclosure of data and records under section 745(d).</p>	<p>The committees will modify item 6 of HC-001 and item 5f of CR-187 to state that the discovery request is being made under Penal Code section 745(d).</p>
			<p>c. Questions 7 and 8 in Part C ask petitioners if they have made previous requests for discovery, which may be legally relevant under section 1054.9 but is not legally relevant or required under sections 745(d) and 1473(e)(2). Under section 1054.9(a), a petitioner must seek information from trial counsel first, but sections 745 and 1473(e)(2) contain no such requirement. This may create confusion for both petitioners and the courts about which discovery tool the petitioner is trying to invoke.</p>	<p>The committees agree in part, and will remove items 7 and 8, but will include instructions for the petitioner to attach documents in support of their claim, including any previous discovery, in item 2.</p>
			<p>d. By asking petitioners to describe previous discovery they have requested and received, question 7, the form may violate the work product privilege to the extent it suggests petitioners must describe the content of that discovery in any detail. To the extent a pro per petitioner details their efforts to request previous discovery, this also invites an adversarial position that a petitioner was dilatory or somehow delayed the presentation of claims if later assisted by counsel who raises new or additional claims in a subsequently filed habeas petition. This information – whether and to what extent a petitioner previously sought certain discovery – may not have otherwise been known to opposing counsel.</p>	<p>The committees agree in part, and will remove items 7 and 8, but will include instructions for the petitioner to attach documents in support of their claim, including any previous discovery, in item 2.</p>
			<p>e. Pro per petitioners may not know what “discovery” means. If the committees determine that any discovery questions are appropriate (and they may be appropriate if included in a separate form, see page 12 of</p>	<p>The committees decline to make the suggested change. The forms provide sufficient prompts for the petitioner to</p>

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			<p>this comment, <i>post</i>), the form should use plain, non-legal, English to explain the purpose of the questions. For example, the form HC-001 could ask whether the petitioner wants to ask either the prosecutor or the court to give them information or facts that would help them investigate and describe their claims. This explanation can offer examples of the types of information a petitioner may request, such as charging and sentencing information that includes the race of defendants and victims, police reports from their case, or court transcripts.</p>	<p>describe what they are seeking, and why.</p>
			<p>f. For these reasons, we urge the Judicial Council to delete questions that inquire about a petitioner’s efforts to request discovery.</p>	<p>The committees will remove items 7 and 8 but will include instructions for the petitioner to attach documents in support of their claim, including any previous discovery, in item 2. The committees will modify item 6 so that a petitioner may indicate that if they are not requesting discovery through the petition, they may request it after counsel is appointed if necessary.</p>
			<p>iii. The proposed form HC-001 asks petitioners to explain whether they are asking to amend a pending habeas petition at page 8, question 5, but this question also may sow confusion.</p> <p>a. This question may sow considerable confusion and cause problems for death-sentenced petitioners especially. Many people with death sentences have pending habeas petitions filed pursuant to <i>In re Morgan</i> (2010) 50 Cal.4th 932 to toll the federal habeas corpus statute of limitations after their automatic appeals are complete. The <i>Morgan</i> petition is not meant to be amended unless and until the death sentenced person receives their statutorily mandated capital habeas counsel and have received the benefit of a full capital habeas investigation. (<i>Morgan</i>, supra, 50 Cal.4th at p. 942.)</p>	<p>The question reflects Penal Code section 1473(e)(4), which states that if the petitioner has a habeas corpus petition pending in state court that has not yet been decided, they may amend the existing petition with a Racial Justice Act claim. In response to this comment, the committees will add to the instructions page that form HC-001 is</p>

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				intended for petitioners in habeas proceedings who have not been sentenced to death.
			<p>b. The California Supreme Court held in <i>Wilson</i> that capital sentenced petitioners are permitted to file stand-alone RJA habeas petitions without risking a successor or timeliness bar. This question could lead courts to erroneously consider a pro per RJA-only petition as an amendment to the <i>Morgan</i> petition, putting their future non-RJA habeas claims at risk. Worse, if a petitioner checks this box and includes RJA and non-RJA claims as the form encourages, a petitioner potentially invites successor and / or timeliness bar litigation against subsequent non-RJA claims raised after appointment of counsel.</p>	The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.
			<p>c. This question again highlights the disconnect between habeas litigation for capital and non-capital defendants and supports our request for (1) language indicating the form is not meant to be used by capital sentenced clients and (2) a separate RJA habeas form for capital clients.</p>	Please see response above.
			<p>d. Question 10 on page 3, asking about other previous post-conviction litigation and citing to successor bar case law, raises the same concern. As explained above, some capital sentenced petitioners have filed placeholder petitions under <i>In re Morgan</i>, supra, but that fact will be irrelevant because a <i>Morgan</i> petition should not affect the availability of RJA habeas relief to a capital sentenced person. This question creates another point of confusion for any capital sentenced person who might attempt to use the form.</p>	In response to this comment, the committees will add to the instructions page that form HC-001 is intended for petitioners in habeas proceedings who have not been sentenced to death.
			<p>B. Proposed changes to Rule 4.551 As noted below, at page 15, some of the changes to Rule 4.551 do not adequately incorporate amendments to the RJA enacted by AB 1071, particularly regarding the appointment of counsel.</p>	

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			<p>In addition, the amendments to Rule 4.551 do not address the fact that capital sentenced petitioners are entitled to file limited RJA petitions under <i>People v. Wilson, supra</i>, 16 Cal.5th 874, 944. <i>Wilson</i> made clear that at least for limited RJA petitions filed in the superior court, capital sentenced petitioners would not be bound by the capital habeas procedure included at Rule 4.560 et seq. Although <i>Wilson</i> did not delineate which court rules would apply to RJA-only petitions in capital cases, its holding implies that Rule 4.551 would govern such petitions.</p> <p>We suggest instead that the committees amend Rule 4.551 to add the following language:</p> <p>“A capital habeas petitioner seeking the appointment of counsel for purposes of a petition filed under the Racial Justice Act as provided in <i>People v. Wilson</i> (2024) 16 Cal.5th 874, may file a brief pleading stating only:</p> <ol style="list-style-type: none">1. If the petitioner requests appointment of counsel2. If the petitioner cannot afford counsel3. The petition pleads a plausible allegation of a violation of subdivision (a) of Section 745.”	<p>Because this is beyond the scope of the proposal, the committees may consider the proposed rule amendment in the future as time and resources allow.</p>

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			<p>2. Would it be helpful to refer to petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient?</p> <p>We see no harm in this addition. We also suggest that the committees, in conjunction with the superior courts, devise a system by which the state’s capital post-conviction agencies, including CAP, HCRC and the Office of the State Public Defender, are notified when a capitally sentenced petitioner files an RJA petition.</p>	<p>The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel. The committees may consider the request for notification to capital postconviction agencies in the future as time and resources allow.</p>
			<p>3. Should the forms incorporate Penal Code section 1054.9’s provisions on certain discovery materials sought by certain petitioners and moving parties?</p> <p>No. Although we believe that RJA habeas petitioners should be permitted to use Penal Code sections 745(d), 1473(e)(2) and 1054.9 to seek discovery to support their RJA claims – and there is no case law to the contrary – sections 745 and 1054.9 have different legal standards that would require explanation before both avenues of discovery requests are included in Form HC-001. Furthermore, both statutes contemplate pre-petition discovery. Including discovery requests in Form HC-001 incorrectly suggests that a petitioner must have developed at least one habeas claim before seeking discovery.</p> <p>Conversely, including pre-petition discovery requests in a habeas form may lead inexperienced pro per petitioners to prematurely plead a habeas claim that may be meritless at the time of pleading, but that could have merit after full discovery. If the petition with that claim is denied before the petitioner finishes their investigation, that denial could lead to a successor petition bar.</p>	<p>The committees appreciate the comment.</p>

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W26-05

Criminal Procedure: Rule and Form Revisions Related to the Racial Justice Act (Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188)

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	Commenter	Position	Comment	Committee Response
			<p>A more appropriate vehicle would be a separate form for requesting pre-petition discovery. Such a form would be appropriate because: (1) neither statute requires a petitioner to have a pending petition to request and receive discovery; (2) a separate form for requesting discovery would not create the risk of prematurely filing an undeveloped or underdeveloped habeas claim; and (3) a separate form would make it easier to separate out 745(d) requests from those made under 1054.9 and to clearly delineate the different legal requirements.</p>	<p>The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>4. Should rules 4.551(d)(2) and 8.385(g)(1) state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings?</p> <p>No. The standard for appointment of counsel in RJA matters is lower than it is for non-RJA habeas proceedings and does not require issuance of an order to show cause. Under the amendments to section 1473(e)(5), the court must appoint counsel if the defendant pleads a plausible allegation of a violation of section 745(a). The uncodified legislative findings to Assembly Bill 1071 demonstrate that this change was made because courts have been holding petitioners to too high of a standard before appointing counsel: “The RJA’s threshold to secure counsel is extremely low, and yet courts have denied counsel to litigants raising RJA claims far more than they have appointed counsel. This bill clarifies that the court shall appoint counsel to all indigent postconviction litigants who allege a plausible claim of an RJA violation, and whenever the State Public Defender requests. The Legislature reaffirms that the threshold showing for appointment of counsel does not require a prima facie showing, as correctly held by <i>McIntosh v. Superior Court</i> (2025) 110 Cal.App.5th 33, and should be construed as a minimal pleading requirement.” (CA LEGIS 721 (2025), 2025 Cal. Legis. Serv. Ch. 721 (A.B. 1071) (WEST).)</p>	<p>The committees agree and will not modify the rules.</p>

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			<p>III. REQUEST FOR A SEPARATE DISCOVERY FORM</p> <p>As noted in our comments to Form HC-001, two current statutes permit post-conviction petitioners to seek discovery to support habeas petitions, Penal Code sections 1473(e)(2) (which incorporates section 745(d)) and 1054.9. Neither one requires the petitioner to have a pending habeas petition to seek discovery. Under section 1473(e)(2), as amended effective January 1, 2026, a defendant may seek RJA discovery “upon the prosecution of a petition [for writ of habeas corpus], <i>or in preparation to file a petition.</i>” (Pen. Code, § 1473, subd. (e)(2), bold and italics added). Under section 1054.9(a), a defendant may seek discovery “in preparation to file” a motion to vacate a judgment or a petition for writ of habeas corpus. (See also <i>Box v. Superior Court</i> (2022) 87 Cal.App.5th 60, 74 [no pending state habeas required for post-conviction discovery, and discovery may be sought to support a pending federal habeas petition].) As noted <i>ante</i>, we urge the committees to consider creating a separate form to request post-conviction discovery, both for RJA-specific claims and non-RJA claims, to avoid the possibility that a pro per petitioner will attempt to present insufficiently developed claims as part of their effort to obtain discovery and the concomitant possibility that the superior court will rule on the merits of the underdeveloped claims, potentially subjecting the petition to successor or timeliness bar litigation.</p>	<p>The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>IV. SPECIFIC COMMENTS AND REQUESTS FOR CAPITALLY SENTENCED PETITIONERS</p> <p>Although the invitation to comment does not mention capitally sentenced petitioners or how the form and rules might affect their specific concerns, we ask the committees to consider the likelihood that capitally sentenced petitioners will use this form to address concerns specific to that population.</p>	<p>The committees will include an instruction at the top of form HC-001 stating that the form is intended for use by petitioners in habeas corpus proceedings who have not been sentenced to death.</p>

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			<p>When the committees sought input on amendments to HC-001 in 2024, one or more stakeholders asked that Form HC-001 be modified because of the possibility that capital sentenced people would use the form, jeopardizing merits review of claims raised in future habeas petitions. In the committees’ published responses to the comments, the committees instructed that they did not need to address those concerns because HC-001 is not supposed to be used by capital sentenced petitioners. (See SPR24-028 Comments, <i>supra</i>, at p. 12.) Changes in the law, as well as in access to capital habeas counsel, lead us to urge the committees to make their response to this concern explicit in the instructions for using the form, particularly given the proposed changes to HC-001 form which appear to invite the presentation of non-RJA claims.</p> <p>First, since the committees adopted the 2024 version of HC-001, the California Supreme Court decided <i>People v. Wilson</i>, <i>supra</i>, 16 Cal.5th 874, 944, which held that capital sentenced petitioners may file limited RJA habeas petitions — even while their automatic appeals are pending — without incurring application of the Proposition 66 rules for capital habeas proceedings. The holding of <i>Wilson</i> therefore means that capital sentenced people may file what is in essence a non-capital habeas petition if the petition is limited to presenting only RJA claims. Form HC-001 should acknowledge the holding in <i>Wilson</i> and include language on the cover page stating that it is not meant to be used by capital sentenced petitioners. We also offer to work with the committees to create a form and instructions for <i>Wilson</i> petitions.</p> <p>Second, the expansion of Form HC-001 to provide a clearer roadmap for presenting RJA claims — with a section for non-RJA claims — makes it much more attractive to all habeas petitioners, capital or non-capital, to press all colorable claims (both RJA and non- RJA claims). Yet the California Supreme Court provided capital petitioners with clear direction in <i>Wilson</i> — that they should seek appointment of counsel to press their</p>	

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			<p>RJA claims and that other habeas claims should be raised by “full-scope habeas corpus counsel” when such counsel is appointed. The proposed Form HC-001, which suggests one should plead both types of claims therein, contradicts <i>Wilson’s</i> guidance for capitally sentenced people; at the same time, it increases the risk that capitally sentenced people will use the form to pursue their RJA and non-RJA habeas claims.</p> <p>Third, as of early 2024, capitally sentenced people are no longer housed only at San Quentin or on death row at Central California Women’s Facility. They have been transferred to CDCR institutions throughout the state and are integrated into units and programming with non-capitally sentenced people. This means they are interacting regularly with non-capitally sentenced individuals who will have access to HC-001 and who will be using it. This new reality increases the likelihood that people with death sentences will use HC-001 because of increased exposure and access to this pro per litigation tool.</p> <p>Fourth, in spite of the committees’ assessment in 2024 that Form HC-001 is not supposed to be used by capitally sentenced people, see SPR24-028 Comments, <i>supra</i>, at p. 12, nothing on Form HC-001 makes that limitation clear. Nor is there any guarantee that all capitally sentenced petitioners, many of whom have intellectual disabilities or cognitive impairments, and/or live with mental illness, will fill out the form in a way that will alert judges and court staff that they are capitally sentenced. As a result, it could be far too easy for a pro per capitally sentenced petitioner to file a Form HC-001 with premature and undeveloped non-RJA claims and have a superior court deny it on the merits without realizing the petitioner is capitally sentenced and affording the petitioner their statutory right to counsel. This, in turn, could end up triggering an argument from opposing counsel for a successor or timeliness bar when the capitally sentenced person’s statutory right to counsel is fulfilled and a more fulsome petition is filed, even if the</p>	

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			<p>petitioner has meritorious unpled claims that could prevent the state from executing them.</p> <p>These concerns lead us to request that the committees create a separate habeas corpus form solely for capitally sentenced people to present their RJA-only claims, as authorized by <i>Wilson</i>.</p> <p>The above-described simple safeguards to Form HC-001 could help steer capital litigants from improvidently filing non-RJA habeas claims and jeopardizing their statutory right to a full habeas investigation and petition.</p>	<p>Approving a new separate form for capitally sentenced petitioners to present Racial Justice Act claims is outside the scope of this proposal. The committees may consider whether to recommend approving such a form in the future as time and resources allow.</p>
2.	<p>California Lawyers Association, Litigation Section, Committee on Appellate Courts by Julia C. Shear Kushner, Chair, Committee on Appellate Courts, Litigation Section California Lawyers Association; Saul Bercovitch, Chief Governmental Affairs</p>	NI	<p>The Committee on Appellate Courts (CAC) of the California Lawyers Association’s Litigation Section submits this response to the Invitation to Comment on W26-05. Established in 2018, the California Lawyers Association is a nonprofit, voluntary organization with approximately 44,000 members. It is dedicated to the professional advancement of attorneys practicing in the State of California. The CAC consists of over twenty experienced appellate practitioners and court staff, drawn from a wide range of practice areas.</p> <p>This proposal would amend the rules and some forms related to the Racial Justice Act (RJA). The CAC submits several comments that would make the form more understandable and usable for pro per litigants, practitioners and court staff alike.</p>	<p>Please see the committees’ responses to specific suggestions below.</p>

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	Officer, California Lawyers Association		<p>Clarification of When to Use HC-001 vs. CR-187</p> <p>It appears that the HC-001 <i>Petition for Writ of Habeas Corpus</i> form is intended for use by those in custody and the CR-187 <i>Motion to Vacate a Conviction or Sentence</i> form is intended for use by those no longer in custody. The instructions do not disclose this. We recommend making clear in the instructions on both forms that filers should use HC-001 if they are in custody and use CR-187 if they are no longer in custody or on probation or parole. This will prevent people from filing the wrong form or possibly filing both forms simultaneously to seek relief.</p>	<p>The committees decline the suggestion. HC-001 asks about the petitioner’s custody status in item 2, and CR-187, item 5 also indicates that the Moving Party is not in criminal custody.</p>
			<p>Urging Reconsideration of the Number of Copies of HC-001 Needed by the Supreme Court</p> <p>The instructions in HC-001 indicate that filers in the Supreme Court should file ten copies of the petition. The bottom of the HC-001 proposed form says, “Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and the Court of Appeal.”</p> <p>Highlighting this ten paper copy requirement brings up the point that the Judicial Council should consider updating the paper filing rules for petitioners not represented by an attorney. While Rule of Court, rule 8.380(c) still requires the filing of ten copies of a HC-001 petition, CAC members who practice criminal appeals are aware that since COVID-19 and the advent of TrueFiling, the Supreme Court staff no longer desires submission of multiple copies of paper documents from pro per litigants. Furthermore, it can be a barrier to access to justice to require incarcerated clients to pay the cost to copy and mail numerous copies of legal documents.</p>	<p>Amending rule 8.380(c) is outside the scope of this proposal. The committees may consider whether to recommend reducing the number of copies required to be furnished to the Supreme Court and Court of Appeal in the future as time and resources allow.</p>

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			<p>Rules 4.511(d)(2) and 8.385(g)(1) The Invitation to Comment specifically asked whether Rules 4.511(d)(2) and 8.385(g)(1) should state that the general rule requiring appointment of counsel upon issuance of an order to show cause in traditional habeas proceedings applies in all cases including RJA proceedings. The CAC responds, “no.” According to the statute and caselaw, the standard for appointment of counsel in traditional habeas proceedings and RJA are not the same, so the rules should not say that they are. Traditionally, counsel is appointed for indigent defendants in habeas proceedings once the prima facie standard has been met and an order to show cause issued. (See <i>People v. Duvall</i> (1995) 9 Cal.4th 464, 474–475.) Under RJA, in contrast, a petitioner may be entitled to counsel before an order to show cause issues. (<i>McIntosh v. Superior Court</i> (2025) 110 Cal.App.5th 33, 46 [“The trial court . . . erred when it denied counsel on the ground that McIntosh failed to meet the prima facie showing that is required to obtain an OSC.”].)</p>	<p>The committees agree and will not modify the rules.</p>
			<p>The proposed rules should clearly show that the triggers for the appointment of counsel in a RJA claim are different than the triggers for appointing counsel in a traditional habeas proceeding. In the latest legislation concerning the RJA—the findings and declarations of Assembly Bill 1071—the Legislature lamented that “courts have imposed on RJA petitioners higher burdens than the Legislature intended to meet the thresholds to secure counsel and discovery. The RJA’s threshold to secure counsel is extremely low, and yet courts have denied counsel to litigants raising RJA claims far more than they have appointed counsel.” (Assem. Bill No. 1071 (2025–2026 Reg. Sess.) § 1(b).) In light of the historical failure of courts to properly appoint counsel when legally appropriate, CAC supports including the word “plausible” in the proposed amendments to the rules on pages 11–13 of the Invitation to Comment in order to have the rules match the lower standard in the current version of Penal Code section 1473 as updated with AB 1071.</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p>

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			<p>(See Pen. Code, § 1473, subd. (e)(5), as amended by Stats. 2025, ch. 721, § 3, eff. Jan. 1, 2026 [. . . the court shall appoint counsel if the petitioner cannot afford counsel and either the petition pleads a plausible allegation of a violation of subdivision (a) of Section 745 or . . .].)</p> <p>Proposed Rule 4.551(d)(1)(B): The petition pleads a plausible allegation of alleges facts that would establish a violation of section 745(a). This inquiry is limited to the facial sufficiency of the allegations of the petition alone.</p> <p>Proposed Rule 8.385(g)(2)(B): The petition pleads a plausible allegation of alleges facts that would establish a violation of section 745(a). This inquiry is limited to the facial sufficiency of the allegations of the petition alone.</p>	
3.	Garrick Byers	NI	<p>This is a technical comment on “Invitation to Comment W26-05” that proposes to amend Cal. Rules of Court, rules 4.551 and 8.385 and revise three related forms.</p> <p>On page 2 of W26-05, the third paragraph states that several listed amendments were made by Assembly Bill 1071 (Stats. 2025, ch. 721) (AB 1071; see Link A to the proposal.) This is only partly correct. AB 1071 is an important bill that did pass, and did contain the amendments listed.</p> <p>But AB 1071 was double-jointed with, and technically chaptered out by, Senate Bill 734 (Stats. 2025, ch. 784) (SB 734; see Link B to the proposal).</p>	<p>The committees appreciate the comment.</p> <p>The committees appreciate the comment and will note this in the Judicial Council report.</p>

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			<p>See section 5, subdivisions (a), (b), and (c), of AB 1071; and section 6, subdivisions (a), (b), and (c), of SB 734.</p> <p>The California Legislative Information web site’s “California Law” menu item shows this correctly at the entries for Penal Code section 745, 1473, and 1473.7. For each of these three Penal Code sections, at the bottom, in parenthesis, the most recent amendment is listed as having been made by SB 734 (and AB 1071 is, properly, not listed at all). See, Penal Code section 745, at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=745.&lawCode=PEN; see Penal Code section 1473 at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.&lawCode=PEN; and see Penal Code section 1473.7 at https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN. (Each section last accessed on Jan. 7, 2026.)</p>	
4.	Office of the State Public Defender by Galit Lipa, State Public Defender; Christina A. Spaulding, Chief Deputy State Public Defender; Caneel C. Fraser, Director, Indigent Defense Improvement Division; Brooke L. McCarthy, Racial Justice Act Attorney	NI	<p>The Office of the State Public Defender (OSPD) submits these comments in response to the Invitation to Comment W26-05. Our comments focus on ensuring that the appropriate standards for appointment of counsel are communicated and increasing clarity in the areas of law that have recently changed through Assembly Bill 1071.</p> <p>Since the Racial Justice Act (RJA) was enacted in 2020, OSPD has provided numerous trainings on the RJA, filed several amicus briefs concerning the proper interpretation of the statute, and has continued to actively litigate RJA issues in our own cases. OSPD also actively tracks litigation statewide from trial courts through the California Supreme Court to ensure a thorough understanding of how litigation is unfolding and the barriers facing indigent defense providers, pro per petitioners and the courts.</p>	Please see the committees’ responses to specific suggestions below.

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			<p>As a statewide appellate defense organization, OSPD has a particular interest in ensuring that the RJA is implemented broadly, as the Legislature intended, to eradicate racial disparities in the criminal legal system. (Stats. 2020, ch. 317, § 2, subd. (i).) OSPD is also uniquely situated to comment on the RJA’s appointment of counsel provision and standards since the Legislature has empowered the agency to request counsel for an indigent petitioner. (Stats. 202, ch. 739, § 3, subd. (e).) Therefore, our comments focus on references to and explanations of Penal Code¹ section 1473, subdivision (e)’s appointment of counsel provision and practical feedback regarding section 745, subdivision (d)’s disclosure provision in post-conviction cases.</p> <p>¹Undesignated statutory references are to the Penal Code.</p> <p>In the two years since the JCC last issued an invitation to comment on RJA habeas forms, (See Off. of the State Public Defender, Com. on Jud. Council of Cal. Invitation to Comment W24-01 (Jan. 19, 2024) <https://perma.cc/A3FT-SLV5> scores of potentially meritorious RJA petitions have been rejected, without counsel ever being appointed, because lower courts erroneously required petitioners to establish a prima facie case for counsel to be appointed. Countless hours of judicial time and resources have been wasted, particularly at the California Supreme Court, as pro per litigants sought relief by filing new petitions in higher courts, seeking appointment of counsel.² Pro per litigants have also been left in limbo filing petitions and discovery requests, and confusing the two, when their minimal allegations – without the evidentiary support they sought under subdivision (d) – were sufficient for counsel.</p> <p>² OSPD consistently took the position that it was not practical or appropriate for it to review every pro per habeas petition to request counsel pursuant to section 1473, subdivision (e). Instead, we urged the courts to apply the RJA’s low standard for appointment of counsel to obviate the need for OSPD’s intervention.</p>	

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			<p>But most recently in <i>McIntosh v. Superior Court</i> (2025) 110 Cal.App.5th 33 (<i>McIntosh</i>), it was correctly established that an RJA petitioner need not establish a prima facie case to have counsel appointed. The Legislature also stepped in, by enacting AB 1071, to clarify that courts had been setting too high a bar for the appointment of counsel. The Legislature affirmed that statewide statistics demonstrating racial disparities are sufficient for the appointment of counsel and expressed concern that judicial misinterpretations of the RJA were resulting in its “silent evisceration.” (Stats. 2025, ch. 721, § 1, subd. (i).)</p> <p>Our recommendations below are intended to prevent further confusion and delay that thwarts the Legislature’s intent to confront the legacy of racial bias in California’s criminal legal system.</p>	
			<p>Appointment of Counsel</p> <p><u>Recommendation #1</u> – OSPD recommends that proposed rules 4.551(d)(1)(B) and 8.385(g)(2)(B) are amended to read as follows:</p> <p>Rule 4.551(d)(1)(B) The petition alleges facts that would establish <u>pleads a plausible allegation of</u> a violation of section 745(a). This inquiry is limited to the facial sufficiency of the allegations of the petition alone.</p> <p>Rule 8.385(g)(2)(B) The petition alleges facts that would establish <u>pleads a plausible allegation of</u> a violation of section 745(a). This inquiry is limited to the facial sufficiency of the allegations of the petition alone.</p> <p>The proposed rules and court forms use outdated language that does not reflect the changes made in AB 1071. The above change would ensure</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p>

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			<p>that courts are relying on the most recent statutory language when determining whether to appoint counsel.</p> <p>We acknowledge that the Legislature relied on <i>McIntosh</i> when affirming that a prima facie showing is not required for an RJA petitioner to be appointed counsel. <i>McIntosh</i>, in explaining its holding, stated that a petitioner need only “allege[] facts that would establish a violation of the RJA.” (<i>McIntosh, supra</i>, 110 Cal.App.5th at p. 46.) This references language that the Legislature has since deleted from the statute. In AB 1071, the Legislature used different, less ambiguous language to underscore the minimal pleading requirement. Thus, <i>McIntosh</i> should not be relied on to explain the threshold showing for appointment of counsel.³</p> <p>³ <i>McIntosh</i> also explicitly confined its holding to whether a prima facie showing was required. (<i>McIntosh, supra</i>, 110 Cal.App.5th at p. 46.) The court did not explain what it would mean to allege facts that would establish a violation as required under the old statutory language.</p> <p>Rather, the forms should reflect the plain language of the statute which now requires counsel be appointed to any litigant who “pleads a plausible allegation of a violation of subdivision (a).” (Stats. 2025, ch. 721, § 3, subd. (e)(5).) This is notably different language from the prior statutory language considered in <i>McIntosh</i>.</p>	
			<p><u>Recommendation #2</u> – OSPD recommends the following revisions to the Advisory Committee Comments for proposed rules 4.551(d)(1)(B) on page 12 and 8.385(g)(2)(B) on page 13:</p> <p>Subdivision (d). The standard set out in section (1)(B) is <u>to be construed as a minimal pleading requirement</u> consistent with <i>McIntosh v. Superior Court</i> (2025) 110 Cal.App.5th 33, as</p>	<p>The committees agree with the suggested modification and will incorporate it into the advisory committee comments on the rules.</p>

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			<p>indicated in the Legislature’s statement of intent in Assembly Bill 1071 (Stats. 2025, ch. 721).</p> <p>Subdivision (g). The standard set out in section (2)(B) is <u>to be construed as a minimal pleading requirement</u> consistent with McIntosh v. Superior Court (2025) 110 Cal.App.5th 33, as indicated in the Legislature’s statement of intent in Assembly Bill 1071 (Stats. 2025, ch. 721).</p> <p>These revisions direct courts to the Legislature’s stated intent consistent with the statutory language adopted in the statute.</p>	
			<p>Post-Conviction Discovery (§ 745, subd. (d) & § 1054.9)</p> <p><u>Recommendation #3</u> – OSPD recommends the Committee create a separate form for section 745, subdivision (d) and section 1054.9 discovery requests.</p> <p>Including section 745, subdivision (d) requests in the HC-001 form creates the impression that an individual needs to file the entirety of a petition to receive (d) disclosures. The statute is clear that a petition is not required. Section 1473, subdivision (e)(2) now states that a litigant “may file a motion for relevant evidence under subdivision (d) of Section 745 . . . in preparation to file a petition.”</p> <p>The inclusion of the discovery requests within HC-001 risks individuals facing successor bars when they would otherwise only be requesting evidence under subdivision (d). Under the current form, courts will be receiving requests for counsel, discovery, and a petition all at once, resulting in more orders than necessary when an individual is solely requesting discovery. Furthermore, the inclusion of subdivision (d) requests gives the impression that an individual needs to make such requests before being appointed counsel. This is an erroneous impression</p>	<p>The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>

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			<p>when most pro per individuals will not need discovery to meet the low threshold for appointment of counsel. The RJA contemplates that counsel will be appointed upon this minimal showing and be able to assist with discovery and then amend the petition.</p> <p>To avoid unnecessary discovery litigation by pro per individuals and to ensure individuals do not face erroneous successor bars, OSPD recommends a separate form for post-conviction discovery requests. A separate form could also differentiate between subdivision (d) disclosures and post-conviction discovery pursuant to section 1054.9. Considering the rapid expansion of section 1054.9, it is likely that pro per individuals will begin using both of these post-conviction procedures to receive evidence in preparation to file their habeas petitions. However, the two statutes have different showings required, and neither requires the filing of a petition.</p> <p>At the very least, the Committee should include a notice in the instructions that pro per individuals <i>may</i> file a standalone (d) request before filing a HC-001 but that discovery prior to requesting counsel is not required by the statute.</p>	<p>The committees decline to include a notice in the instructions because they may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>Part C, Item 9</p> <p><u>Recommendation #4</u> – OSPD recommends Item 9 of Part C be modified to include a change in law as a justification for filing a subsequent RJA claim:</p> <p>9) Are you raising this claim for the first time?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p>The committees agree with the modification and will incorporate it into the form.</p>

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Criminal Procedure: Rule and Form Revisions Related to the Racial Justice Act (Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188)

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	Commenter	Position	Comment	Committee Response
			<p>If you are not raising this claim for the first time, are you raising it again because of a change in law?</p> <p>a. Yes, please list the statute or case law development:</p> <p>If you are not raising this claim for the first time no, are you raising it again because of new evidence that could not have been previously known to you?</p> <p>As the Committee is aware, the legal landscape of the RJA is changing rapidly. Many of the basic terms and thresholds in the statute have not been litigated and do not have a published appellate case to inform the trial courts. This would allow litigants to quickly identify for the court that a prior claim was adjudicated under now outdated or overruled law.</p>	
			<p>Concurrence Regarding Capital Concerns</p> <p><u>Recommendation #5</u> – For the reasons stated in their comments, we agree with the counterproposal by the California Appellate Project-San Francisco (CAP) and the Habeas Corpus Resource Center (HCRC) that, because HC-001 was never intended to be used in capital cases, there should be separate form for capital sentenced individuals to file a standalone RJA petition pursuant to <i>People v. Wilson</i> (2024) 16 Cal.5th 874. We would welcome the opportunity to assist in developing such a form.</p> <p>We also agree with the suggestion that the committees, in conjunction with the superior courts, devise a system by which the state’s capital post-conviction agencies, including CAP, HCRC and/or OSPD, are notified when a capital sentenced petitioner files an RJA petition.</p>	<p>The committees may consider the request for notification to capital postconviction agencies in the future as time and resources allow.</p>

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W26-05**Criminal Procedure: Rule and Form Revisions Related to the Racial Justice Act (Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188)**

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	Commenter	Position	Comment	Committee Response
			OSPD thanks the Committee for its work on this important topic and for its consideration of our comments. Please do not hesitate to contact us if there are any questions.	
5.	Orange County Bar Association by Shirin Forootan, President	A	<p><u>Q: Does the proposal appropriately address the stated purpose?</u></p> <p>Yes.</p>	The committees appreciate the comments.
			<p><u>Q: Would it be helpful to refer to petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient?</u></p> <p>It would be helpful to list counsel.</p>	The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel.
			<p><u>Q: Should the forms incorporate Penal Code section 1054.9’s provision on certain discovery materials sought by certain petitioners and moving parties?</u></p> <p>No. Information sought by a Petitioner relevant to a RJA data claim is in the exclusive possession of the People.</p>	The committees will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.
			<p><u>Q: Should rules 4.551(d)(2) and 8.385(g)(1) state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings?</u></p> <p>No. That language is unnecessary.</p>	The committee agrees with the comment and have not included it in the recommended rules.

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	Commenter	Position	Comment	Committee Response
6.	Orange County Public Defender by Adam Vining, Assistant Public Defender	N	<p>Updates forms to comply with change in the law from AB 1071.</p> <p>1) Amends Rule 4.551 re required showing and appointment of counsel for habeas in Superior Court</p> <p>2) Amends Rule 8.385 re required showing and appointment of counsel in COA and CSC</p> <p>3) Breaks pro-per habeas corpus petition (HC-001) into 3 parts. (A for all; B for non-RJA; C for RJA)</p> <p style="padding-left: 20px;">a. Adds questions about previous attempts to obtain discovery/information.</p> <p style="padding-left: 20px;">b. Adds language about serving implicated law enforcement</p> <p>4) Modifications to CR-187 Petition to Vacate Conviction or Sentence (PC 1473.7)</p> <p>5) Minor modifications to CR-188 Order on Motion to Vacate</p>	No response needed.
			<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>No. The proposed HC-001 and CR-187 forms are not appropriate because they comingle a 745(a) claim with a 745(d) request to obtain the information needed to make a 745(a) prima facie showing. The form as proposed invites the paradoxical situation, which AB 1071 notes and intends to correct, where the court can deny the petition as insufficient on its face because the petitioner has not yet been provided the discovery needed to support the claim.</p>	Please see responses below.
			<p>The <i>other</i> RJA form being proposed in W26-07 (Juvenile Law: Update to Racial Justice Act Forms; JV-720), is more appropriate. It asks “are you asking the court to appoint an attorney to represent you” (p 1, item 2) and then gives an option to wait to request discovery until after an attorney is appointed (p 2, item 5(b).) At p. 2, item 4, it states “You are not expected to have access to all facts or evidence at this time. After the court</p>	The committees agree and will modify item 6 of HC-001 to track form JV-720, item 2.

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	Commenter	Position	Comment	Committee Response
			<p>appoints counsel or grants discovery, you will have an opportunity to amend this statement of facts.”</p>	
			<p>When a discovery request is made, HC-001 and CR-187 should instruct the court to appoint counsel and defer ruling on 745(a). Alternatively, the 745(d) discovery motion could be on a separate form. The form should also instruct that appointed counsel can amend the petition and discovery request.</p>	<p>The committees decline to modify the forms as suggested, as appointment of counsel is based on whether the petitioner or moving party meets the legal standards set out in Penal Code section 1473(e)(5) and <i>People v. Gutierrez</i> (2025) 113 Cal.App.5th 906.</p> <p>The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>The proposed subdivision (c)(2) of Rule 4.551 is incomplete. It instructs a court as to the “substantial likelihood” standard but fails to define that substantial likelihood “requires more than a mere possibility, but less than a standard of more likely than not.” (745(h)(2).)</p>	<p>The committees believe the amended rule is sufficient, as the substantial likelihood standard is defined in statute.</p>
			<p>The proposed subdivision (d)(1)(B) of Rule 4.551 is wrong. It says the standard for appointment of counsel is “alleges facts that would establish a violation of Section 745(a).” As stated in the Invitation to Comment at the bottom of page 2, counsel must be appointed if the petitioner “pleads a plausible allegation” of 745(a). (see also 1473(e)(5).) As stated in the Invitation to Comment at the top of page 3 citing <i>McIntosh</i>, this is a minimal pleading requirement that is less than a prima facie showing. 4.551(d)(1)(B) should read: The petition pleads a plausible allegation of section 745(a).</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p>

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	Commenter	Position	Comment	Committee Response
			<p>The proposed subdivision (d)(2) of Rule 8.385 is incomplete. It instructs a court as to the “substantial likelihood” standard but fails to define that substantial likelihood “requires more than a mere possibility, but less than a standard of more likely than not.” (745(h)(2).)</p>	<p>The committees believe the amended rule is sufficient, as the substantial likelihood standard is defined in statute.</p>
			<p>The proposed subdivision (g)(2)(B) of Rule 8.385 is wrong. It says the standard for appointment of counsel is “alleges facts that would establish a violation of Section 745(a).” As stated in the Invitation to Comment at the bottom of page 2, counsel must be appointed if the petitioner “pleads a plausible allegation” of 745(a). (citing § 1473(e)(5).) As stated in the Invitation to Comment at the top of page 3 citing <i>McIntosh</i>, this is a minimal pleading requirement that is less than a prima facie showing. 8.385(g)(2)(B) should read: The petition pleads a plausible allegation of section 745(a).</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p>
			<p>Q: Should the forms incorporate Penal Code section 1054.9’s provisions on certain discovery materials sought by certain petitioners and moving parties?</p> <p>No. Information sought by a Petitioner relevant to a RJA data claim is in the exclusive possession of the People (or the court).</p> <p>Moreover, the RJA makes no reference to 1054.9. Nor does it impose any requirement “to obtain discovery materials from trial counsel.”</p> <p>(See <i>In re Montgomery</i> (2024) 104 Cal.App.5th 1062 at fn.1 (rev. granted 12/11/24) (distinguishing a section 745(d) request from a section 1054.9 request); contra <i>People v. Serrano</i> (2024) 106 Cal.App.5th 276.)</p>	<p>The committees will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
7.	Ricardo D. Garcia, Los Angeles County Public Defender	N	<p>I am writing to provide comments on the proposed revisions to Rule 4.551 and forms HC-001, CR-187, and CR-188. While I appreciate the effort to implement the legislative changes required by AB 1071, I have several concerns regarding the proposed structure of the forms and the</p>	

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	Commenter	Position	Comment	Committee Response
			<p>potential for procedural barriers that may undermine the intent of the Racial Justice Act (RJA).</p> <p>Penal Code 1054.9 provision I strongly oppose the inclusion of Penal Code section 1054.9 provisions regarding discovery materials. The current standard for RJA discovery is already established under Penal Code section 745, subdivision (d), and through case law, such as <i>Young v. Superior Court</i> (2022) 79 Cal.App.5th 138, which requires a “plausible case” based on specific factors.</p> <p>Incorporating the more restrictive requirements of section 1054.9—such as asking whether a petitioner first attempted to obtain materials from trial counsel—risks giving the court too much discretion to deny requests. This contradicts the legislative findings in AB 1071, which aim to prevent the “silent evisceration” of the Act’s goals by ensuring broad access to relevant evidence. Including these provisions would create a procedural barrier that the Legislature never intended, potentially allowing courts to misconstrue the statute to the detriment of the petitioner.</p>	<p>The committees will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>Necessity of Separating Discovery Motions from Habeas Petitions:</p> <p>The proposed revisions to form HC-001 keep discovery requests and habeas claims together on a single form. I believe these should be separate. AB 1071 and the amended Penal Code section 745, subdivision (d), explicitly clarify that a post-conviction client can file a discovery motion “in preparation for filing a petition for writ of habeas corpus.” By combining these two distinct legal actions into one form, the Council risks causing administrative confusion among the courts. Separation is necessary to reflect the petitioner’s right to obtain evidence before they are required to meet the pleading standards for a full habeas petition.</p>	<p>The committees will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>

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	Commenter	Position	Comment	Committee Response
			<p>Irrelevance of Previous Counsel Status for Appointment of Counsel</p> <p>Proposed form HC-001 (Part C, Item 4a) asks if the petitioner was represented by court-appointed or private counsel in the original case. This question is irrelevant and should be removed. Under Penal Code section 1473, subdivision (e)(5), the court must appoint counsel if a petitioner pleads a “plausible allegation” of an RJA violation and is currently indigent.</p> <p>The determination for the appointment of counsel should be based solely on the petitioner’s financial status at the time the petition is filed and the “facial sufficiency of the allegations.” Inquiring about past representation may lead courts to make improper assumptions about a petitioner’s current ability to afford counsel, which has no bearing on their statutory right to RJA-related legal assistance.</p> <p>Thank you for your consideration of these comments as you work to ensure the RJA remains an effective tool for eradicating racial bias in the California justice system.</p>	<p>Item 4c is intended to assist courts by providing information on prior appointed counsel, not as a basis for granting or denying a current request for counsel. The committees recommend reordering item 4 so that item 4c is renumbered as item 4a, item 4a as item 4b, and item 4b as item 4c. Additionally, the committees will modify current items 4a and 4b as suggested.</p>
8.	San Francisco Public Defender by Danielle Harris, Managing Attorney, The Freedom Project	N	<p>Updates forms to comply with change in the law from AB 1071.</p> <ol style="list-style-type: none"> 1. Amends Rule 4.551 re required showing and appointment of counsel for habeas in Superior Court 2. Amends Rule 8.385 re required showing and appointment of counsel in COA and CSC 3. Breaks pro-per habeas corpus petition (HC-001) into 3 parts. (A for all; B for non-RJA; C for RJA) <ul style="list-style-type: none"> • Adds questions about previous attempts to obtain discovery/information. • Adds language about serving implicated law enforcement 	No response needed.

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			<p>4. Modifications to CR-187 Petition to Vacate Conviction or Sentence (PC 1473.7)</p> <p>5. Minor modifications to CR-188 Order on Motion to Vacate</p> <p><u>Q: Does the proposal appropriately address the stated purpose?</u> No, for several reasons explained below.</p> <p>1. The proposal wrongly blends PC 745 subdivisions (a) and (d). The proposed HC-001 and CR-187 forms are not appropriate because they comingle a Penal Code¹ section 745(a) claim with a 745(d) request to obtain discovery. The form as proposed invites the paradoxical situation - - which Assembly Bill 1071 notes and intends to correct -- where the court can deny the petition as insufficient on its face because the petitioner has not yet been provided the discovery needed to support the claim.</p> <p style="text-align: center;"><u>¹All statutory references are to the Penal Code.</u></p> <p>The <i>other</i> RJA form being proposed in W26-07 (Juvenile Law: Update to Racial Justice Act Forms; JV-720) appropriately avoids this issue. It asks “are you asking the court to appoint an attorney to represent you” (p 1, item 2) and then gives an option to wait to request discovery until after an attorney is appointed (p 2, item 5(b).) At p.2, item 4, it states “You are not expected to have access to all facts or evidence at this time. After the court appoints counsel or grants discovery, you will have an opportunity to amend this statement of facts.”</p> <p>When a PC 745(d) discovery request is made, HC-001 and CR-187 should instruct the court to appoint counsel and defer ruling under 745(a). Alternatively, the 745(d) discovery motion could be on a separate form. Either form should also instruct that appointed counsel can amend the petition and discovery request.</p>	<p></p> <p>The committees agree and will modify item 6 of HC-001 to model form JV-720.</p> <p>The committees decline to modify the forms as suggested, as appointment of counsel is based on whether the petitioner or moving party meets the legal standards set out in Penal Code</p>

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				<p>section 1473(e)(5) and <i>People v. Gutierrez</i> (2025) 113 Cal.App.5th 906.</p> <p>The committees may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
			<p>2. Rules 4.551 and 8.385 should define the RJA habeas standard, as distinct from the general habeas standard.</p> <p>Proposed Rule 4.551(c)(2) is incomplete. It instructs a court as to the “substantial likelihood” standard but fails to define that substantial likelihood “requires more than a mere possibility, but less than a standard of more likely than not.” (§ 745(h)(2).)</p> <p>Proposed subdivision Rule 8.385(d)(2) is similarly incomplete. It instructs a court as to the “substantial likelihood” standard but fails to define that substantial likelihood “requires more than a mere possibility, but less than a standard of more likely than not.” (§ 745(h)(2).)</p>	<p>The committees believe the amended rule is sufficient, as the substantial likelihood standard is defined in statute.</p>
			<p>3. Rule 4.551 and 8.385 references to the appointment of counsel standard must align with RJA case law.</p> <p>Proposed Rule 4.55 (d)(1)(B) of is wrong. It says the standard for appointment of counsel is “alleges facts that <i>would establish</i>² a violation of Section 745(a).” As stated in the Invitation to Comment at the bottom of page 2, counsel must be appointed if the petitioner “pleads a plausible allegation” of 745(a). (See also 1473(e)(5).) As stated in the Invitation to Comment at the top of page 3 citing <i>McIntosh</i>, this is a minimal pleading requirement that is less than a prima facie showing. Rule 4.551(d)(1)(B)</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p>

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	Commenter	Position	Comment	Committee Response
			<p>should read: <u>The petition pleads a plausible allegation of a violation of section 745(a).</u></p> <p>² Italics added.</p> <p>Proposed Rule 8.385 (g)(2)(B) of is similarly wrong in saying the standard for appointment of counsel is “alleges facts that would establish a violation of Section 745(a).” For the same reason, under <i>McIntosh</i>, this is a minimal pleading requirement that is less than a prima facie showing. Rule 8.385(g)(2)(B) should read: <u>The petition pleads a plausible allegation of a violation of section 745(a).</u></p> <p>Additionally, the first sentence to the Advisory Committee Comment is confusing as written. The new language should instead read: “<u>Except for claims raising a violation of Penal Code section 745(a) where a lesser appointment of counsel standard applies as addressed in subdivision (d)(1), . . .</u>”</p>	<p>The committees agree and will modify the rules to track the updated statutory language.</p> <p>The committees decline the modification because they believe the current language is clear.</p>
			<p><u>Q: Would it be helpful to refer to petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient.</u></p> <p>It would be helpful to notify and serve petitioner <i>and</i> counsel for petitioner with any informal response and attachments. Additionally, if an unrepresented petitioner has requested counsel and the court requests informal response, Rule 4.551(b) should specify that the court should appoint counsel at that time. Given limited access to mail in prison and complete inaccess to email notifications, it is unreasonable to expect an unrepresented, imprisoned petitioner to file a reply within 15 days of informal response. Indeed, prison mail makes it uncertain a</p>	<p>The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel.</p> <p>Specifying a time frame for the court to appoint counsel is beyond the scope of this proposal. The committees may consider this suggestion in the future as time and resources allow.</p>

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			<p>petitioner will even receive the informal response within the 15-day period.</p> <p>At minimum, subdivision (d)(1) should state, “A court that requests informal briefing under subdivision (b)(1) of this Rule should consider simultaneous appointment of counsel.” And the Advisory Committee Comment should read:</p> <p style="padding-left: 40px;">Subdivision (b). As in other cases, when considering a petition raising a claim under Penal Code section 745(a), the court may request an informal response by the People <u>and should consider simultaneously appointing counsel for an unrepresented petitioner.</u></p> <p><u>Q: Should the forms incorporate Penal Code section 1054.9’s provisions on certain discovery materials sought by certain petitioners and moving parties?</u></p> <p>No. Information sought by a Petitioner relevant to a RJA data claim is in the exclusive possession of the People or the court. Moreover, the RJA makes no reference to 1054.9, nor does it impose any requirement “to obtain discovery materials from trial counsel.” (See <i>In re Montgomery</i> (2024) 104 Cal.App.5th 1062, n.1 (rev. granted 12/11/24) (distinguishing § 745(d) request from § 1054.9 request); contra <i>People v. Serrano</i> (2024) 106 Cal.App.5th 276.)</p>	<p>The committees will modify the advisory committee comments to add: In addition, for claims under Penal Code section 745(a), the court should consider simultaneously appointing counsel for an unrepresented petitioner under the standards of section 1473(e)(5).</p> <p>The committees will not include requests for discovery under Penal Code section 1054.9 in form HC-001 because they may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>
9.	Superior Court of Los Angeles County by Stephanie Kuo	AM	<p>The following comments are representative of the Superior Court of California, County of Los Angeles, and do not represent or promote the viewpoint of any particular officer or employee.</p> <p>In response to the Judicial Council of California’s Invitation to Comment “W26-05 Criminal Procedure: Rule and Form Revisions Related to the</p>	The committees appreciate the comments.

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			<p>Racial Justice Act,” the Superior Court of California, County of Los Angeles (Court), agrees with the proposal and its stated purpose.</p> <p>The Court supports the notion that it would be helpful to refer petitioner’s counsel as an additional party to notify and serve with information and filings related to informal response in rule 4.551(b)(2).</p> <p>The Court also agrees that the form should incorporate Penal Code section 1054.9’s provision on certain discovery materials.</p> <p>The Court also agrees that rules 4.551(d)(2) and 8.385(g)(1) should state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings. This aligns with legislative findings clarifying that appointment of counsel does not require a prima facie showing and should be treated as a minimal pleading requirement.</p> <p>As the Racial Justice Act pertains to misdemeanors, the proposed rule changes are expected to affect the Appellate Division, but not the modifications to the form. It is important to note that a different habeas form is utilized for misdemeanors.</p> <p>The proposal would not provide cost savings but would not incur significant costs for the Court.</p>	<p>The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel.</p> <p>The committees agree with the commenters who expressed a contrary opinion and thus will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p> <p>The committees agree with the commenters who expressed a contrary opinion and thus decline to make this revision.</p> <p>No response needed.</p> <p>No response needed.</p>

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			Implementation would be minimal and two months is sufficient time for implementation. Management and judicial assistants would need to be trained on the changes. The Operations Division would also need to monitor the impact of the anticipated increase in workload and assess appropriate staffing resources.	No response needed.
			The proposal should work well for courts of different sizes.	No response needed.
10.	Superior Court of Orange County by Nevely Herrera, Operations Analyst I	AM	<p>• Does the proposal appropriately address the stated purpose? The proposal appropriately addresses the stated purpose, as indicated.</p> <p>Would it be helpful to refer to petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient?</p> <p>Yes, it would be helpful. Adding petitioner’s counsel as an additional party to notify and serve would prevent potential delays caused when counsel does not receive the informal response material. Recommend adding language “must be served on the petitioner and, if represented, petitioner’s counsel.”</p> <p>Should the forms incorporate Penal Code section 1054.9’s provisions on certain discovery materials sought by certain petitioners and moving parties?</p> <p>Yes, AB 1036 amends PC 1054.9 to broaden the definition and expand access of discovery materials in a post-conviction proceeding. It would be beneficial to add a separate item to the forms for discovery materials as defined by provisions of 1054.9 and provide examples of said discovery items.</p>	<p>The committees appreciate the comments.</p> <p>The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel.</p> <p>The committees agree with the commenters who expressed a contrary opinion and thus will not include requests for discovery under Penal Code section 1054.9 in form HC-001 but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future as time and resources allow.</p>

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W26-05

Criminal Procedure: Rule and Form Revisions Related to the Racial Justice Act (Amend Cal. Rules of Court, rules 4.551 and 8.385; revise forms HC-001, CR-187, and CR-188)

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	Commenter	Position	Comment	Committee Response
			<p>Should rules 4.551(d)(2) and 8.385(g)(1) state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings?</p> <p>Yes, given that there is a right to court appointed counsel, and it would potentially eliminate setting of a hearing to determine appointment of counsel.</p>	<p>The committees agree with the commenters who expressed a contrary opinion and thus decline to make this revision.</p>
			<p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>Minimal. If approved, ambiguity would be removed which would hence improve document processing. Additionally, by including the general rule requiring appointment of counsel proposal would provide cost savings in not having to prepare an unnecessary hearing.</p>	<p>No response needed.</p>
			<p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Implementation would entail a review of any local form(s), procedures, and docket codes. Identified updates would be distributed to staff appropriately.</p>	<p>No response needed.</p>
			<p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p>	<p>No response needed.</p>

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	Commenter	Position	Comment	Committee Response
			Due to minimal anticipated impact, two months would be sufficient time for implementation.	
			How well would this proposal work in courts of different sizes? N/A	No response needed.
11.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the stated purpose? A: Yes.</p> <p>Q: Would it be helpful to refer to petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response in rule 4.551(b)(2), or is the existing reference to notifying and serving the petitioner sufficient? A: It would be helpful to reference petitioner’s counsel as an additional party to notify and serve with information and filings related to an informal response.</p> <p>Q: Should the forms incorporate Penal Code section 1054.9’s provisions on certain discovery materials sought by certain petitioners and moving parties? A: Yes.</p> <p>Q: Should rules 4.551(d)(2) and 8.385(g)(1) state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings?</p>	<p>The committees appreciate the comments.</p> <p>The committees will modify rule 4.551(b)(2) to refer to petitioner’s counsel.</p> <p>The committees agree with the commenters who expressed a contrary opinion and thus will not include requests for discovery under Penal Code section 1054.9 in form HC-001, but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future, based on other comments received.</p>

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	Commenter	Position	Comment	Committee Response
			<p>A: Yes.</p> <p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: What would the implementation requirements be for courts for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? A: Revising internal procedures and training judges and staff.</p> <p>Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? A: It appears that the proposal would work for courts of all sizes.</p>	<p>The committees agree with the commenters who expressed a contrary opinion and thus decline to make this revision.</p> <p>No response needed.</p> <p>No response needed.</p> <p>No response needed.</p> <p>No response needed.</p>
12.	TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	AM	<p>The Racial Justice Act prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin. To implement recent legislation related to the Racial Justice Act (RJA) and address urgent issues identified by courts on existing court forms implementing the Act, the Appellate Advisory Committee and the Criminal Law Advisory Committee propose amending two rules of court and revising three forms.</p> <p>The proposed rule changes and form changes meet their stated purpose. Specifically:</p>	<p>The committees appreciate the comments.</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Rule 4.551 is amended as to habeas corpus proceedings in noncapital cases to implement changes from AB 1071, including: <ul style="list-style-type: none"> ○ Adding the ability to issue an order to show cause when the petitioner has made a prima facie showing of a RJA claim; ○ Adding a provision to address appointment of counsel for RJA claims; ○ Adding a provision that states that in RJA claims, appointment of counsel if limited to the facial sufficiency of the allegations of the petition alone; and ○ Adding two advisory committee comments and removing another advisory comment based on statutory direction. 	
			<p>Rule 8.385 is amended as to petitions for a writ of habeas corpus filed in the Supreme Court or Court of Appeal to implement changes from AB 1071, including similar changes as to orders to show cause, the prima facie standard, appointment of counsel and advisory committee comments as discussed above.</p>	No response needed.
			<p>Form HC-001 (Petition for Writ of Habeas Corpus), which can be filed in a superior court, Court of Appeal, or the Supreme Court, is amended to:</p> <ul style="list-style-type: none"> ○ Add an instruction to page 1 to incorporate service requirements of law enforcement in certain situations as required by SB 734; and ○ Reorganize HC-001 to clearly differentiate between RJA and other claims and make other changes consistent with legislation. 	No response needed.

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	Commenter	Position	Comment	Committee Response
			Form CR 187 (Motion to Vacate Conviction or Sentence) and CR-188 (Order on Motion to Vacate Conviction or Sentence) modifies the form to be consistent with recent statutory changes and adds a citation to a recent appellate court decision regarding requesting counsel.	
			In response to the ITC's request for specific comments, JRS supports the notion that it would be helpful to refer petitioner's counsel as an additional party to notify and serve with information and filings related to informal response in rule 4.551(b)(2).	The committees will modify rule 4.551(b)(2) to refer to petitioner's counsel.
			JRS agrees that the form should incorporate Penal Code section 1054.9's provision on certain discovery materials.	The committees agree with the commenters who expressed a contrary opinion and thus will not include requests for discovery under Penal Code section 1054.9 in form HC-001, but may consider developing a separate form for Racial Justice Act discovery requests under Penal Code sections 745(d) and 1054.9 in the future, based on other comments received.
			JRS also agrees that rules 4.551(d)(2) and 8.385(g)(1) should state that the general rule requiring appointment of counsel upon issuance of an order to show cause applies in all cases, including Racial Justice Act proceedings. This aligns with legislative findings clarifying that appointment of counsel does not require a prima facie showing and should be treated as a minimal pleading requirement.	The committees agree with the commenters who expressed a contrary opinion and thus decline to make this revision

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	Commenter	Position	Comment	Committee Response
			<p>The proposal would not provide cost savings but would not incur significant costs for the trial courts.</p> <p>Implementation would be minimal and two months is sufficient time for implementation.</p> <p>The proposal should work well for courts of different sizes.</p>	No response needed.
13.	The Paper Prisons Initiative of UC Berkeley by Colleen Chien, Professor, Berkeley Law School; Alonzo Harvey, Paper Prisons Expert and Advisor to the Paper Prisons Initiative	NI	<p>The Paper Prisons Initiative of UC Berkeley and based at Berkeley Law is a research initiative that uses data, research, and empathy to bridge the gap between eligibility and delivery of relief from the criminal justice system. We appreciate this opportunity to comment on Judicial Form W26-05, proposed by Hon. Allison Danner and Hon. Lisa Rodriguez.</p> <p>We provide the attached comment based on two capacities. First, our impacted expert advisor Alonzo Harvey has provided a testimony based on his own experiences being incarcerated and a leader in the formerly incarcerated student movement, about the merits of the form - in its simplicity, clarity and - and also the reality that the data to actually fill the form as part of a pattern of disparity of claim is generally glaringly unavailable to the pro se defendants who might use them, due to lack of access to the internet and other sources of information. His testimony calls for greater access to data resources like the Paper Prisons Racial Justice Act Tool so that pro se individuals may evaluate their claims and the court can determine whether counsel should be appointed. Please see Mr. Harvey’s attached declaration, “The RJA Is a Lifeline But Only If People Inside Can Access the Tools to Use It.”</p> <p>Second, we are the creators of the Paper Prisons Racial Justice Act Tool (rja.paperprisons.org), which provides summary data representing the raw numbers, rates per population, and disparity gaps by race of adults in the California criminal justice system using data provided by the California</p>	<p>The committees appreciate the comments.</p> <p>[Appendix A/Appendix B omitted from chart; they were considered in full by the committees.]</p>

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			<p>Department of Justice as well as by the Census Department. Access the Census data here. (See <i>Proving Actionable Racial Disparity Under the California Racial Justice Act</i>, 76 UC L. Journal 1 (2023); see also <i>The Paper Prisons Racial Justice Act Data Tool</i>, 29 Berkeley J. Crim. L. 29 (2024). and visit rja.paperprisons.org) In this capacity, we regularly interact with pro se defendants and their loved ones seeking to use our data to evaluate whether or not their case fits a broader pattern of racial disparity. Our correspondees range from the 18-year old daughter to lifers who have “noone” (sic) still to help them in their cases, which they insist they are currently wrongfully incarcerated in connection with. (see attached presentation Appendix A: Chien Presentation to the Appellate Judicial Institute) While we did not have time to ask our correspondees for their opinion of the form, we note that three problems beset this population: (1) lack of understanding of the legal standard, (2) lack of understanding of data and how it applies in the legal context, and (3) lack of access to data. Your form makes considerable progress in advancing the first, we try to advance (3) through our tool. But (3) is difficult when there isn’t access to the internet and data archives within prisons and neither of us can accomplish (2). We in particular have been humbled that, despite our efforts, our correspondees still struggle to understand how data works and can be leveraged to determine the viability of their claims, in habeas cases, for freedom. So in the Appendix B: RJA Letters we provide examples of the letters we have received, to provide a glimpse of the people who most will benefit from your new form, but may still face access to justice obstacles in realizing the promise of the law, to a much lesser degree than litigants with resources. Lacking time to redact Appendix B we ask that you do not share this document beyond what is required; we will give you a redacted copy in time. The pictures we provide with permission, because our correspondees have asked us to share their stories more broadly in hopes that they will be able to access the law.</p>	

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	Commenter	Position	Comment	Committee Response
			<p>The RJA Is a Lifeline But Only If People Inside Can Access the Tools to Use It</p> <p>As a formerly incarcerated advocate and member of the Paper Prisons team, I’ve seen exactly where the justice system fails the people trapped inside it. I’ve worked on Racial Justice Act (RJA) teams, and one truth is clear: incarcerated individuals cannot fight racial bias in their cases without access to the very tools required to understand the law. Most people inside do not have updated law books, working tablets, internet access, or guidance. Without these basic resources, even the strongest reforms become empty promises.</p> <p>When I talk about the RJA and why access to legal tools matters, I’m not speaking from theory, I’m speaking from lived experience. During my incarceration, I’ve sat in cells with men trying to fight for their lives with nothing but outdated books, broken systems, and pure determination. I’ve watched people struggle to challenge racial bias when the very tools they need are behind a wall they can’t climb.</p> <p>I remember my cellmate, who was a lifer, was known throughout the prison as the “Johnny Cochran of the prison.” Under his bunk, he kept thousands of legal documents stacked in boxes and folders because the prison library had no filing system. He built his own library by hand. He spent years sorting paperwork, researching cases, analyzing sentencing charts, and helping others. But brilliance doesn’t replace access. No matter how dedicated he was, he was working in a system designed without the tools he needed.</p> <p>Imagine someone like him with access to the Paper Prisons’ RJA Tool. Instead of sorting through mountains of paper, he could quickly search for statistical comparisons, identify disparities, and find patterns across cases. Instead of guessing what documents to request or how to frame a</p>	<p>While technological access for individuals in custody is outside the Judicial Council’s rulemaking authority, the committees appreciate the comments.</p>

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	Commenter	Position	Comment	Committee Response
			<p>claim, he could follow guided prompts and build stronger arguments. The tool would narrow down information instantly, something that currently takes years inside.</p> <p>This is exactly why Paper Prisons' RJA Tool is so important. It helps people evaluate their potential RJA claims, compare their situations to known disparities, and understand what evidence they need to gather. It organizes information in a way that is clear, structured, and user-friendly, something rare in a legal system that often feels intentionally confusing. But here's the problem, people inside don't have access to it. Without internet access, updated libraries, or computers, a tool that could save someone decades of time becomes unreachable.</p> <p>That's why the new RJA Form itself is such a major breakthrough. It is simple, direct, and actually readable, designed for the reality that many incarcerated people read at a 6th–8th grade level and lack formal legal training. The form embeds the law directly into each question, allowing people to understand what they are claiming as they fill it out. Part C breaks down every type of RJA violation, from discriminatory remarks to harsher charging decisions to racial sentencing patterns, and then asks the petitioner to explain their situation in their own words. That structure is intentional. It gives people clarity and empowers even jailhouse lawyers to confidently guide others, almost like an attorney-client roadmap. But even the best-designed form can't overcome reality inside California prisons. Law libraries at places like Salinas Valley, Ironwood, and Centinela are outdated, disorganized, and lacking basic resources. Books are often missing, decades out of date, or scattered with no system at all. There's no access to statistics, no digital databases, and no updated case law. Yet the legal system expects incarcerated people to produce detailed evidence about racial disparities in charging and sentencing, something nearly impossible with broken libraries and no internet.</p>	

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	Commenter	Position	Comment	Committee Response
			<p>If California is serious about rehabilitation and justice, it must allow incarcerated people access to this RJA Tool on tablets or computers in the law library. It should be as accessible as a dictionary. Giving people access to legal technology wouldn't only help individuals; it would make the entire system more fair and reduce wrongful or excessive sentences. It would help people understand their rights, speed up appeals, and give them real clarity.</p> <p>Right now, the RJA form and the RJA Tool represent hope, hope on paper, and hope on a screen. But hope means nothing without access. People inside deserve better than outdated books and broken systems. They deserve tools that match the promises of the law. They deserve the ability to compare cases, gather evidence, and file meaningful claims without spending years buried under paperwork. They deserve a justice system they can actually navigate, not one built to hold them back. The Racial Justice Act was created to correct racial inequities. The next step is making sure people inside have the technology and resources to actually use it. Until then, justice will continue to exist only in theory, not in practice.</p>	
14.	University of San Francisco Racial Justice Clinic and Ella Baker Center for Human Rights by Belle Yan, Assistant Professor and Supervising Attorney, University of San Francisco Racial Justice Clinic; Morgan Zamora, Prison Advocacy	N	<p>I. General Comment Several aspects of the proposed revisions—particularly those affecting appointment of counsel, pleading standards, and discovery under the Racial Justice Act (RJA)—do not adequately implement the Legislature's intent and, in some instances, risk perpetuating barriers AB 1071 was expressly enacted to eliminate.</p> <p>II. Proposed HC-001, Part C, Item 4 (Appointment of Counsel) Does Not Appropriately Address the Stated Purpose</p> <p>The proposed amendments to HC-001, Part C, Item 4 are intended to assist courts in making indigency determinations for purposes of appointing counsel. However, the structure and phrasing of Item 4</p>	Please see the committees' responses to specific suggestions below.

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	Commenter	Position	Comment	Committee Response
	<p>Manager, Ella Baker Center for Human Rights</p>		<p>introduce ambiguities that risk confusing petitioners and undermining the reliability of indigency determinations.</p> <p>As revised, HC-001, Part C, Item 4 asks: (a) Do you want appointed counsel? (b) If yes, can you afford to hire counsel? (c) Were you represented by appointed counsel in this case (at the trial court and/or on appeal)?</p> <p>The nested conditional phrasing in subdivision (b) is unnecessary and potentially misleading. A self-represented petitioner could reasonably interpret the “If yes” construction to mean: “If you want appointed counsel, do you have some ability to contribute financially toward it?” This misinterpretation could lead petitioners to believe that requesting appointed counsel requires acknowledging partial financial capacity, thereby prompting inaccurate responses that do not reflect actual financial circumstances. This ambiguity could be eliminated through clearer language. Subdivision (a) should explicitly reference “appointed counsel at no cost to you,” and subdivision (b) should eliminate the conditional clause “If yes” and simply ask “Can you afford to hire and pay for your own attorney?” or employ declarative phrasing such as “I cannot afford to hire a private attorney.” The conditional clause serves no functional purpose and creates interpretive risk that undermines the form’s stated purpose.</p> <p>Subdivision (c)’s inquiry into prior appointed counsel serves no purpose as an indicator of present financial capacity. Prior representation—whether appointed or retained—may reflect circumstances that no longer exist, including temporary financial support, family assistance, or conditions from several years earlier. Because indigency determinations must rest on present ability to retain counsel, reliance on prior</p>	

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			<p>appointment of counsel as a proxy for current indigency is both under-inclusive and over-inclusive. Additionally, petitioners may reasonably construe this question as dispositive of their eligibility, which could result in petitioners incorrectly believing they are ineligible for appointed counsel based solely on prior representation. This risk is compounded by the form’s failure to provide any mechanism for petitioners to contextualize or explain changed circumstances, while inviting courts to give this factor significant weight when making indigency determinations.</p> <p>Recommendation: HC-001, Part C, Item 4 should proceed in a linear and logically coherent manner: first determining whether appointed counsel is sought, then directly inquiring into present ability to afford counsel without conditional phrasing or nested questions. If the prior representation question in subdivision (c) is retained, the form should include (1) explicit language clarifying that prior representation is one non-determinative factor among many, and (2) adequate space for petitioners to explain material changes in their financial circumstances since prior representation. Absent such modifications, Item 4 creates substantial risk of undermining the accuracy and fairness of indigency determinations.</p>	<p>Item 4c is intended to assist courts by providing information on prior appointed counsel, not as a basis for granting or denying a current request for counsel. The committees recommend reordering item 4 so that item 4c is renumbered as item 4a, item 4a as item 4b, and item 4b as item 4c. Additionally, the committees will modify current items 4a and 4b as suggested.</p>
			<p>III. Proposed HC-001 and CR-187 Forms Inappropriately Commingle a § 745(a) Claim with a § 745(d) Request to Obtain Information Needed to Make a 745(a) Claim</p> <p>The proposed revisions to HC-001 and CR-187 improperly conflate a prima facie claim under Penal Code section 745(a) with a discovery request under section 745(d) that is necessary to develop such a claim. This structure creates a procedural contradiction: petitioners are required to plead facts sufficient to support a claim while simultaneously seeking access to the very information needed to do so.</p>	

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			<p>This framework invites the precise outcome AB 1071 sought to prevent—denial of claims as facially insufficient due to lack of discovery not yet provided. As the Legislature recognized, meaningful access to discovery is a prerequisite to developing and supporting potential RJA claims; otherwise, petitioners are placed in the untenable position of having claims rejected for want of inaccessible evidence. (AB 1071, subd. (b).)</p> <p>By contrast, proposed juvenile RJA form JV-720 (W26-07) adopts a more coherent structure. It expressly acknowledges that petitioners are not expected to possess all facts or evidence at the outset and contemplates amendment after counsel is appointed or discovery is granted. This approach better reflects the realities of RJA litigation.</p> <p>Recommendation: HC-001 and CR-187 should adopt a similar framework to proposed form W26-07. When discovery under section 745(d) is requested, the forms should instruct courts to appoint counsel and defer ruling on the sufficiency of a section 745(a) claim until discovery is provided. Alternatively, discovery requests should be addressed on a separate form. In all events, the forms should clearly state that appointed counsel may amend the petition and discovery request.</p>	<p>The committees agree, in part, and will modify item 6a of form HC-001 so that a petitioner may indicate that if they are not requesting discovery through the petition, they may request it after counsel is appointed if necessary. The committees decline to modify the forms as suggested, as appointment of counsel is based on whether the petitioner or moving party meets the legal standards set out in Penal Code section 1473(e)(5) and <i>People v. Gutierrez</i> (2025) 113 Cal.App.5th 906.</p> <p>The committees may consider developing a separate form for Racial Justice Act discovery requests under</p>

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				Penal Code sections 745(d) and 1054.9 in the future, and time and resources allow.
			<p>IV. Proposed Rule 4.551(c)(2) and Proposed Rule 8.385(d)(2) Are Incomplete</p> <p>Proposed subdivisions 4.551(c)(2) and 8.385(d)(2) reference the “substantial likelihood” standard without defining it. Penal Code section 745(h)(2) expressly defines “substantial likelihood” as requiring more than a mere possibility but less than a “more likely than not” showing.</p> <p>Recommendation: Rule 4.551(c)(2) and Rule 8.385(d)(2) should include the 745(h)(2) statutory definition of “substantial likelihood” to ensure uniform application.</p>	The committees believe the amended rule is sufficient, as the substantial likelihood standard is defined in statute.
			<p>V. Rule 4.551(d)(1)(B) and Rule 8.385(g)(2)(B) State the Wrong Standard for Appointment of Counsel</p> <p>Proposed subdivisions 4.551(d)(1)(B) and 8.385(g)(2)(B) incorrectly state that appointment of counsel requires allegations that would <i>establish</i> a violation of section 745(a). As explained in the Invitation to Comment and reflected in Penal Code section 1473(e)(5), appointment of counsel is required where the petition pleads a plausible allegation of a section 745(a) violation—a minimal pleading standard that is less than a prima facie showing. (See <i>McIntosh v. Superior Court</i> (2025) 110 Cal.App.5th 33.)</p> <p>Recommendation: These provisions should be revised to state: “<i>The petition pleads a plausible allegation of section 745(a).</i>”</p>	The committees agree and will modify the rules to track the updated statutory language.

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