



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 24-028*

For business meeting on May 17, 2024

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**Title**

Criminal Procedure: Racial Justice Act

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386; revise forms CR-187, CR-188, and HC-001

**Effective Date**

September 1, 2024

**Date of Report**

April 19, 2024

**Recommended by**

Appellate Advisory Committee  
Hon. Louis Mauro, Chair

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### Executive Summary

The Appellate Advisory Committee and the Criminal Law Advisory Committee recommend amending rules 4.551, 8.385, and 8.386 of the California Rules of Court and revising *Motion to Vacate Conviction or Sentence* (form CR-187), *Order on Motion to Vacate Conviction or Sentence* (form CR-188), and *Petition for Writ of Habeas Corpus* (form HC-001) to implement the Racial Justice Act, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin.

### Recommendation

The Appellate Advisory Committee and the Criminal Law Advisory Committee recommend that the Judicial Council, effective September 1, 2024:

1. Amend California Rules of Court, rule 4.551, to add provisions on appointment of counsel, judicial disqualification, and evidentiary hearings, and state reasons for denying a petition for

requests for relief under Penal Code sections 745 and 1473(e), and authorize an additional 60 days for the court to rule on an amended habeas corpus petition;

2. Amend California Rules of Court, rule 8.385 to add a provision on appointment of counsel;
3. Amend California Rules of Court, rule 8.386 to add a provision detailing when a court must hold an evidentiary hearing when a petition requests relief under Penal Code section 745;
4. Revise *Motion to Vacate Conviction or Sentence* (form CR-187) to allow a moving party to request relief under Penal Code sections 745 and 1473.7(a)(3);
5. Revise *Order on Motion to Vacate Conviction or Sentence* (form CR-188) to allow a court to grant or deny relief requested under Penal Code sections 745 and 1473.7(a)(3);
6. Revise *Petition for Writ of Habeas Corpus* (form HC-001) to allow a petitioner to request relief under Penal Code sections 745 and 1473(e); and
7. Make clarifying and technical changes to forms CR-187, CR-188, and HC-001.

The proposed amended rules and revised forms are attached at pages 15–37.

### **Relevant Previous Council Action**

Because these forms address a recent statutory procedure, there is no relevant previous council action on the Racial Justice Act.

Rule 4.551, Habeas corpus proceedings, establishes procedures for noncapital habeas corpus proceedings in the trial court. The rule was adopted by the Judicial Council effective January 1, 1982, as rule 260 and renumbered as rule 4.551 effective January 1, 2001. It was last revised for technical amendments effective January 22, 2019.

Rule 8.385, Proceedings after the petition is filed, establishes procedures for noncapital habeas corpus proceedings after a petition is filed in the Supreme Court or Court of Appeal. The rule was adopted by the Judicial Council effective January 1, 2009. It was last amended effective January 1, 2016.

Rule 8.386, Proceedings if the return is ordered to be filed in the reviewing court, established procedures for noncapital habeas corpus proceedings if the Supreme Court orders that the return to a petition be filed in the Supreme Court, or the Court of Appeal orders that the return be filed in the Court of Appeal. The rule was adopted effective January 1, 2009. It was last amended effective January 1, 2016.

*Motion to Vacate Conviction or Sentence* (form CR-187) and *Order on Motion to Vacate Conviction or Sentence* (form CR-188) address relief under Penal Code<sup>1</sup> sections 1016.5 and

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

1473.7. The forms were adopted by the Judicial Council effective January 1, 2018, and most recently revised effective September 21, 2022, to reflect amendments to section 1473.7(a)(1) and incorporate case law clarifying custody requirements, appointment of counsel, and timeliness in filing a motion.

*Petition for Writ of Habeas Corpus* (form HC-001) is used to petition a superior court, a Court of Appeal, or the Supreme Court for a writ of habeas corpus.<sup>2</sup> 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. (Cal. Rules of Court, rules 4.551(a)(1), 8.380(a).) Form HC-001 was most recently revised effective January 1, 2019, to update filing instructions, replace or add citations that are more recent or more on point for the propositions they support, add language relevant to successive petitions and repetitive claims to include the court in which the petition is filed, and add citations as authority for the procedural bars of successiveness and repetitiveness.

## **Analysis/Rationale**

### **California Racial Justice Act of 2020**

The California Racial Justice Act of 2020 (Assem. Bill 2542; Stats. 2020, ch. 317) enacted section 745, which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin and allows defendants to make claims for relief based on violations of this act. A violation is established if the defendant proves, by a preponderance of the evidence, that specified people involved in the case<sup>3</sup> exhibited bias or animus toward the defendant based on the defendant's race, ethnicity, or national origin; that, during trial, in court and during the proceedings, specified people involved in the case used discriminatory language or otherwise exhibited bias or animus toward the defendant because of the defendant's race, ethnicity, or national origin; that the defendant was charged or convicted of a more serious offense than similarly situated defendants of other races, nationalities, or national origins; or that a longer or more severe sentence was imposed on the defendant than on other similarly situated individuals.<sup>4</sup> This statute initially applied only prospectively to cases in which a judgment was entered on or after January 1, 2021. The act allowed defendants to file motions in the trial court for claims under section 745 or, if judgment had been entered, a petition for writ of habeas corpus or a motion to vacate a conviction or sentence under section 1473.7 (§ 745(b)). The act also added provisions to sections 1473 and 1473.7 specifically addressing claims raised under section 745 (§§ 1473(e) and 1473.7(a)(3)).

Two years later, Assembly Bill 256 (Stats. 2022, ch. 739) authorized retroactive relief, in phases, under section 745. Beginning on January 1, 2023, cases in which a petitioner was sentenced to death or facing actual or potential immigration consequences related to the conviction or

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<sup>2</sup> Note that rule 4.571 contains different requirements in death penalty–related habeas corpus proceedings.

<sup>3</sup> Specified people include the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or a juror.

<sup>4</sup> § 745(a).

sentence could seek retroactive relief. On January 1, 2024, the eligibility expanded to cases where petitioners are currently incarcerated “in the state prison or in a county jail pursuant to subdivision (h) of Section 1170,<sup>5</sup> or committed to the Division of Juvenile Justice for a juvenile disposition.” On January 1, 2025, the eligibility extends to felony convictions or juvenile dispositions resulting in a commitment to the Division of Juvenile Justice where judgment became final on or after January 1, 2015. Finally, on January 1, 2026, the eligibility extends to all felony convictions or juvenile dispositions resulting in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

Last year, Assembly Bill 1118 (Stats. 2023, ch. 464) further amended section 745(b) to authorize petitioners with a claim based on the trial record to raise the claim on direct appeal and to move to stay an appeal and request remand to the superior court to file a motion for relief under section 745(a). AB 1118 also eliminated the clause “if judgment has been imposed” before the clause authorizing the filing of a petition for writ of habeas corpus or a motion to vacate a conviction or sentence under section 1473.7.

The Judicial Council has rules of court that govern noncapital habeas corpus proceedings in both the superior courts (Cal. Rules of Court, rules 4.550–4.552) and appellate courts (Cal. Rules of Court, rules 8.380–8.388). The Judicial Council also has approved forms for a petition for writ of habeas corpus (form HC-001) and a motion and order to vacate a conviction or sentence under section 1473.7(a)(1) and (2) (forms CR-187 and CR-188). However, these rules and forms do not currently incorporate claims under section 745. 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 because they primarily impact the trial courts. The Appellate Advisory Committee led the development of the recommended amendments to rules 8.385 and 8.386 on petitions for writ of habeas corpus in the appellate courts. Both committees jointly developed the recommended revisions to form HC-001.

#### **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 identified differences between the general procedures for petitions for writ of habeas corpus established by this rule and the procedures established in section 1473(e) for petitions with claims under section 745(a):

- Generally, there is no requirement for a petition for writ of habeas corpus to include a request for appointed counsel; counsel is appointed if the court issues an order to show cause and the petitioner is unrepresented and desires but cannot afford counsel. (Cal. Rules of Court, rule 4.551(c)(2).) However, a petition for writ of habeas corpus with a claim under section 745(a) “shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the

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<sup>5</sup> Under section 1170(h), imprisonment for certain felonies is served in the county jail, with specified exceptions.

petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.” (§ 1473(e).)

- Currently, the rule of court does not address amending an undecided habeas corpus petition with a new claim. Section 1473(e) now authorizes a petitioner to amend a pending petition with a claim that the petitioner’s conviction or sentence violated section 745(a).
- Currently, the rule of court does not address disqualification of a judge. Section 745(b) requires disqualification if a claim under section 745(a) is based in whole or in part on conduct or statements by the judge.
- Generally, an evidentiary hearing is only required after the issuance of an order to show cause if the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the relief depends on the resolution of an issue of fact. (Cal. Rules of Court, rule 4.551(f).) However, if the court issues an order to show cause on a claim raised under section 745(a), the court must hold an evidentiary hearing, unless the state declines to show cause. Further, the defendant may appear remotely, and the court may conduct the hearing with remote technology unless counsel indicates the defendant’s presence in court is needed. (§ 1473(e).)
- Generally, any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for denial. (Cal. Rules of Court, rule 4.551(g).) But if the court determines that the petitioner has not established a prima facie showing of entitlement to relief for a claim under section 745(a), the court must include the factual and legal basis for its conclusion on the record or in a detailed written order. (*Ibid.*)

To reflect these distinctions, the committees recommend amending rule 4.551 to:

- Add new subdivision (a)(3) to state that a petition raising a claim under section 745(a) must include whether the petitioner requests appointment of counsel and whether the petitioner can afford counsel, and renumber existing subdivision (a)(3) as (a)(5);
- Add new subdivision (a)(4) to state that if a petitioner has an undecided habeas corpus petition pending in superior court, the petitioner may amend the existing petition with a claim that the petitioner’s conviction or sentence violated section 745(a), and renumber existing subdivision (a)(4) as (a)(8);
- Add new subdivision (a)(7) to state that if a petition raises a claim under section 745(a) that is based on conduct or statements by a judge, the judge must disqualify themselves from proceedings under section 745;
- Add new subdivision (d), Appointment of counsel, to incorporate existing language that upon issuing an order to show cause, a court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel, and add new paragraph (2) mirroring

the language of section 1473(e) to state that when a petition raises a claim under section 745(a) and requests appointment of counsel, the court must appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests that counsel be appointed, and that newly appointed counsel may amend a petition filed before their appointment;

- Renumber subdivision (f), Evidentiary hearing; when required, as subdivision (g) and add paragraph (2) as an exception applying when an order to show cause is issued for a claim raised under section 745(a) to state that the court must hold an evidentiary hearing unless the state declines to show cause, and allow for the use of remote technology as appropriate; and
- Renumber subdivision (g), Reasons for denial of petition, as subdivision (h) and add paragraph (2) as an exception applying to denials under section 745(a) to require the court to include the factual and legal basis for its conclusion on the record or in a detailed written order.

In response to comments, the committees also recommend amending rule 4.551 to expand the time frame for a court to rule on an amended habeas corpus petition and add advisory committee comments on section 1473(e).

### **Rules 8.385 and 8.386, habeas proceedings on appeal**

Rule 8.385 establishes procedures for petitions for a writ of habeas corpus filed in the Supreme Court or Court of Appeal. Currently, rule 8.385(f) provides that when a return is ordered to be filed in the Supreme Court or the Court of Appeal, rule 8.386 applies and the “court in which the return is ordered filed must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.”

To reflect the Racial Justice Act’s appointment-of-counsel provision, the committees recommend that the appointment-of-counsel language from rule 8.385(f) be removed and that a new subdivision (g), Appointment of counsel, be added. Subdivision (g)(1) would contain the appointment-of-counsel language currently contained in subdivision (f), which applies when the reviewing court issues an order to show cause. Subdivision (g)(2) would apply where the petition raises a claim under section 745(a). As with the recommended amendments to rule 4.551, new subdivision (g)(2) would mirror the language of section 1473(e) requiring the reviewing court to appoint counsel where the petitioner requests and cannot afford counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests counsel be appointed.

Rule 8.386 establishes the procedures that apply when a return to a petition for writ of habeas corpus is ordered to be filed in the Supreme Court or the Court of Appeal. Subdivision (f) identifies when the reviewing court must hold an evidentiary hearing. The committees recommend that a new subdivision (f)(2) be added to reflect that if the reviewing court issues an

order to show cause on a claim raised under section 745(a), an evidentiary hearing must be held unless the state declines to show cause. Current subdivision (f)(2) would be renumbered as (f)(3).

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

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 claim under section 745(a). To implement requests for relief under section 745(a), the committees recommend revising form CR-187 to allow a moving party to (1) indicate the category of retroactivity the case falls under;<sup>6</sup> (2) indicate which violation under section 745(a) applies; (3) explain when the violation was discovered;<sup>7</sup> (4) indicate whether the claim is based on judicial conduct;<sup>8</sup> (5) request discovery;<sup>9</sup> and (6) request counsel and indicate if the moving party cannot afford counsel.<sup>10</sup>

The committees recommend revising form CR-188 to allow a court to make findings and grant or deny relief requested under section 745(a), such as granting or denying a request to waive personal appearance, finding whether the motion was filed following the time frames in section 745(j), finding whether the moving party filed with or without undue delay, deciding whether to grant or deny a motion for disclosure, and deciding whether to vacate the conviction or sentence. The committees also recommend technical changes throughout the form for consistency and clarity.

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

Under section 1473(e), a person may file a petition for writ of habeas corpus based on a claim under section 745(a). To implement requests for relief under section 745(a), the committees recommend revising form HC-001 to allow a petitioner to (1) indicate the category of retroactivity the case falls under;<sup>11</sup> (2) indicate which violation of section 745(a) applies; (3) request counsel and indicate if the petitioner cannot afford counsel;<sup>12</sup> (4) state whether the claim is based on judicial conduct;<sup>13</sup> (5) request permission to amend a pending petition for writ of habeas corpus;<sup>14</sup> (6) request discovery;<sup>15</sup> and (7) explain whether the claim is being raised for

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<sup>6</sup> See § 745(j).

<sup>7</sup> See § 1473.7(c).

<sup>8</sup> See § 745(b).

<sup>9</sup> See § 745(d).

<sup>10</sup> See *People v. Fryhaat* (2019) 35 Cal.App.5th 969, 983 (right to appointed counsel where an indigent party has set forth factual allegations stating a prima facie case for relief under section 1473.7).

<sup>11</sup> See § 745(j).

<sup>12</sup> See § 1473(e).

<sup>13</sup> See § 745(b).

<sup>14</sup> See § 1473(e).

<sup>15</sup> See § 745(d).

the first time or not.<sup>16</sup> The committees also recommend technical revisions to form HC-001 for consistency and clarity.

### **Policy implications**

The amendments to the rules and revisions to the forms recommended by the committees will implement legislative changes. Accordingly, the key policy implications are ensuring that council rules and forms correctly reflect the law. 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 to complete and understand for self-represented litigants.

### **Comments**

The proposal circulated for comment from December 8, 2023, to January 19, 2024. Twelve comments were received from two divisions of the Superior Court of Orange County, the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, the First District Appellate Project, the Office of the State Public Defender, the San Francisco Public Defender, the Orange County Bar Association, the Ella Baker Center for Human Rights, two appellate court staff attorneys, one attorney, and a member of the public. Five commenters agreed with the proposal and seven agreed if modified.

The committees appreciate the time taken 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 38–69.

### ***Time frame to rule on a petition***

Existing rules require a court to rule on a petition for writ of habeas corpus within 60 days (see Cal. Rules of Court, rule 4.551(a)(3)), but do not address the time frame to rule on an amended habeas corpus petition. The proposal asked for specific comments on whether amending an existing petition for writ of habeas corpus to include a claim under section 745, as proposed in rule 4.551, should impact the existing 60-day time frame, such as including an additional 30 days to make a ruling. Two commenters stated that additional time was needed for such rulings.

In discussing the comments, the committees agreed that courts would need an additional 60 days to rule on an amended petition adding a claim under section 745(a). Because the same rationale to allow additional time for a court ruling applies to any amended petition, the committees recommend adding a new provision to allow 60 days for a court to make a ruling when an unadjudicated petition is amended to add a claim under section 745(a) or is amended with leave of court.<sup>17</sup>

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<sup>16</sup> See § 1473(e).

<sup>17</sup> Amending an unadjudicated writ of habeas corpus petition requires leave of the court. (See *In re Clark* (1993) 5 Cal.4th 750.)



### ***Appointment of counsel***

As noted above, section 1473(e) provides that, when a petition for writ of habeas corpus includes a claim under section 745(a), “the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.” In developing this proposal, committee members held differing interpretations of when counsel should be appointed in a Racial Justice Act habeas proceeding: either upon issuance of an order to show cause, similar to appointment of counsel for other noncapital habeas proceedings,<sup>18</sup> or before the issuance of an order to show cause, based on “facts that would establish a violation of [section 745(a)].<sup>19</sup>” To accommodate both interpretations, the proposal included new subdivision (d), Appointment of counsel, in rule 4.551. Current language about appointment of counsel in existing subdivision (c), Order to show cause, was moved to the new subdivision, and a new paragraph (2) addressing petitions for writ of habeas corpus with a claim under section 745(a) was added, mirroring the language of section 1473(e).

The Office of the State Public Defender, joined by the First District Appellate Project, requests the committees adopt the interpretation that appointment of counsel occurs before an order to show cause is issued, under a different and lower threshold than is required for appointment of counsel in other types of noncapital habeas corpus proceedings.

There was significant discussion among members of the Criminal Law Advisory Committee about this issue. Although several members voted to adopt the interpretation that appointment of counsel occurs before the issuance of an order to show cause, a majority believed that the issue must be resolved by the courts and that, in the meantime, the proposed language accommodates both interpretations. The committees recommend that, to accommodate both interpretations, the new subdivision on appointment of counsel mirror the language of section 1473(e) as it did in the proposal circulated for comment. The committee will continue to monitor the issue.

The First District Appellate Project submitted comments expressing concern that the proposed new subdivision in rule 4.551(d) and 8.385(g), which addresses the two instances when a court *must* appoint counsel, could be misconstrued as limiting the power of those courts to appoint counsel in other circumstances. The committees believe that the proposed rules, as drafted, are sufficiently clear in that they only address when appointment of counsel is mandatory. The rules do not address, and are in no way intended to limit, any discretion or authority courts may have to appoint counsel in other situations.

### ***Adding provisions addressing habeas corpus practice generally***

The First District Appellate Project, joined by the Office of the State Public Defender, submitted a comment expressing concern that the rule amendments specific to claims under section 745,

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<sup>18</sup> Cal. Rules of Court, rule 4.551(c)(1), (2).

<sup>19</sup> § 1473(e).

such as amending petitions or judicial disqualification, could be misinterpreted as not applying to habeas corpus practice generally.

The committees discussed whether to extend these provisions to apply to all habeas proceedings but noted that determining what would be lawful and appropriate would be an entirely separate project, considering the complexities of habeas corpus practice and procedure. Therefore, the committees recommend adding an advisory committee comment to clarify that the revisions reflect the language in section 1473(e) and are not intended to limit a court's discretion and authority in habeas corpus proceedings that do not include claims under section 745.

### ***Definition of a prima facie showing***

When developing the proposal, the committees identified an unresolved legal issue: whether the definition of a “prima facie showing” in section 745(h)(2)<sup>20</sup> applies to petitions for writ of habeas corpus under section 1473(e).<sup>21</sup> As a result, the committees did not incorporate the definition from section 745(h)(2) into rule 4.551 and intend to monitor the issue.

The committees received three comments stating that under the rules of statutory construction, the definition of a “prima facie showing” should be the same in sections 745 and 1473. Additionally, two commenters requested that if the committees do not adopt this position, an advisory committee comment should be added to the rule noting that the issue is unresolved. The commenters noted that the rule, as currently drafted and without a clarifying advisory committee comment, would require the application of the definition of a prima facie showing in rule 4.551(c)(1) to claims raised under section 745.

Based on the comments received, the committees recommend adding an advisory committee comment stating that 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 subdivision (c)(1) of this rule (see *In re Marquez* (2007) 153 Cal.App.4th 1, 11) is unresolved.

### ***Evidentiary hearings in Supreme Court or Court of Appeal***

The Sixth District Court of Appeal submitted a comment expressing concern that proposed subdivision (f)(2) in rule 8.386 could be interpreted as requiring an appellate court to hold an evidentiary hearing on a petition raising a claim under section 745 even where (1) the superior court held an evidentiary hearing and denied relief and (2) no further factual development of the record was required. The comment contended this would be inconsistent with established

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<sup>20</sup> Section 745(h)(2) provides: “‘Prima facie showing’ means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of [section 745(a)] occurred. For purposes of this section, a ‘substantial likelihood’ requires more than a mere possibility, but less than a standard of more likely than not.” One appellate court has interpreted this standard as “less stringent” than the standard for a prima facie showing for a habeas corpus petition. (*Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 22.)

<sup>21</sup> When considering whether the petitioner in a noncapital habeas corpus proceeding has made a prima facie showing of entitlement to relief, the court takes the petitioner’s factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if the factual allegations were proved. If so, the court must issue an order to show cause. (Cal. Rules of Court, rule 4.551(c)(1).)

practice in these cases, where the appellate court would independently review what transpired in the superior court evidentiary hearing, without holding a new hearing. The comment recommended that an advisory committee comment be adopted recognizing that this established procedure is not impacted by the proposed rule.

The committees do not recommend adding an advisory committee comment on this point. The committees note that proposed subdivision (f)(2) only applies to petitions that raise a claim under section 745(a). Existing practice on other petitions would be unaffected. As for petitions that raise a claim under section 745(a), the proposed rule simply incorporates the statutory language.

#### ***Addressing AB 1118 in title 8 of rules of court***

Under AB 1118, when a criminal defendant claims a violation of section 745(a) that is based on the trial record, the defendant may either raise that claim on direct appeal or move to have the appeal stayed and request remand to file a motion for relief in the superior court. The committees asked for specific comment on whether the habeas rules in title 8 of the rules of court should be amended to address this statute.

A comment received from the Orange County Bar Association stated that in cases where an indigent defendant's appeal has been stayed to permit a motion for relief to be filed in the superior court, clarification is needed as to whether the defendant's appellate attorney or trial attorney was responsible for bringing the motion. The committees recommend that no further clarification be added to the rules on this point. The statute does not specify which attorney representing the defendant will be responsible for bringing the motion before the superior court, and the committees envision that this determination would need to be made on a case-by-case basis after discussion between the defendant and the attorneys involved.

#### ***"Judgment is not final" check box***

A claim under section 745(a) may be filed at any time in "all cases in which judgment is not final." While a prejudgment request for relief will be filed as a motion in the trial court, a judgment that is "not final" can also be a case where judgment was imposed but an appeal is pending. In that circumstance, it could be appropriate for a person to seek relief through postconviction procedures. For these reasons, the committee decided to include the check box in the postconviction forms as well and asked for specific comment on whether to delete or modify the language.

Three commenters requested the check box remain but be modified to be simpler and easier to understand. One commenter recommended replacing "Judgment is not final" in form HC-001 with "You are in criminal custody and an appeal is pending," and another commenter requested citations to authority for a more complete definition of what constitutes a "final judgment."

The committees agreed that "Judgment is not final" was a difficult concept to understand and discussed replacing it with "An appeal is pending." However, there was some discussion about other possible situations where a judgment is not final, but an appeal is not pending. To be as accurate as possible while being more explanatory, the committees recommend adding "(for

example, because an appeal is pending)” to the “Judgment is not final” check boxes on forms CR-187 and HC-001.

### ***Death penalty–related habeas corpus proceedings***

The committees circulated a version of form HC-001 that included a check box indicating that the petitioner was eligible to file for relief due to a judgment of death.<sup>22</sup> Before circulation, a group of defense counsel requested form HC-001 include (1) an advisement that persons sentenced to death should not use the form and should consult with an attorney about rights under the Racial Justice Act, and (2) a general advisement regarding the importance of filing a timely petition that includes all issues or claims the petitioner is aware of at the time of filing. The committees were sympathetic to the concerns the advisements sought to address but were cautious about providing legal advice and therefore did not add the advisements.

In response to a request for specific comments on whether there should be separate rules and forms for death penalty–related habeas corpus proceedings with Racial Justice Act claims, two commenters responded affirmatively but did not provide extensive comments. The committees will continue to monitor issues related to Racial Justice Act claims in such proceedings.

The committees recommend deleting the check box on form HC-001 indicating that the petitioner is eligible to file for relief due to a judgment of death. 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 it 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, and petitioners are generally represented by counsel in these matters.

### ***Check box for requesting relief on or after January 1, 2026***

The committees circulated versions of forms CR-187 and HC-001 that included a check box stating that the person is seeking relief on or after January 1, 2026, for a felony conviction, though the forms are anticipated to go into effect on September 1, 2024. The proposal contained a request for specific comment about whether this could be confusing for self-represented litigants, and if it should be deleted and reintroduced with an effective date of January 1, 2026.

Two commenters thought it would be helpful to delete and reintroduce the check box, with one of the commenters suggesting that the current language should also be modified to be clearer. One commenter thought the language was sufficiently clear and did not have to be reintroduced.

The committees recommend keeping the check boxes for persons eligible to seek relief on or after January 1, 2026. The committees were concerned that further revisions adding the check boxes back in could potentially not be ready for use by January 1, 2026, and also thought the

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<sup>22</sup> § 745(j)(2).

item served an educational function by informing people of when they are eligible to file for relief.

### ***Request for counsel***

The committees requested specific comments on whether to revise the request for counsel on form HC-001 to separate the request from a declaration of indigency and whether to require the petitioner to include a financial statement. A commenter noted that it is difficult for persons in custody to obtain records from their certified trust accounts and that it was sufficient at this stage to declare indigency under penalty of perjury.

The committees agree with the comments and recommend revising the request for counsel on form HC-001 to separate the request from a statement of indigency, but do not recommend requiring a financial statement.

### ***Check boxes to indicate grounds for relief and to request discovery***

Three commenters requested revision of form HC-001 to include check boxes for a petitioner to indicate the grounds for a violation of section 745(a) and to request discovery, similar to proposed items on form CR-187. In response, the committees recommend adding check boxes to form HC-001 indicating the grounds for a violation of section 745(a) and a request for discovery. The committees did not originally add the Racial Justice Act–specific check boxes because form HC-001 is for broad use and does not include any other issue-specific check boxes. However, the committees agree that including the grounds for a violation of section 745(a) and the request for disclosure of evidence would be useful for self-represented petitioners. Additionally, if the appellate courts hold that appointment of counsel in a Racial Justice Act proceeding happens before issuance of an order to show cause, the forms would be appropriately set up for courts to consider those requests.

### **Alternatives considered**

The committees developed this proposal in anticipation of a significant increase in the number of requests for postconviction relief due to the retroactive applicability of relief under section 745 and did not consider the alternative of no action. Initially, the committees considered developing separate forms for relief under section 745. Upon further discussion, however, the committees decided to propose revisions to existing forms so they could cover claims under section 745. In the habeas context, there is significant overlap between the information needed for a claim under section 745 and other claims, and having one form would allow a petitioner to raise multiple claims on a single petition for writ of habeas corpus rather than submit separate petitions when seeking to raise both section 745 and other claims for relief. The committees also thought fewer forms would be easier for self-represented petitioners to manage.

### **Fiscal and Operational Impacts**

The fiscal and operational impacts of this proposal are largely attributable to legislation. The proposal aims to mitigate workload burdens by making the retroactive application of relief under section 745 more efficient, consistent, and easier to navigate for self-represented litigants and the

courts. Expected costs include training, case management system updates, and the production of new forms.

### **Attachments and Links**

1. Cal. Rules of Court, rules 4.551, 8.385, and 8.386, at pages 15–19
2. Forms CR-187, CR-188, and HC-001, at pages 20–37
3. Chart of comments, at pages 38–69
4. Link A: Penal Code section 745,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=745.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=745.&lawCode=PEN)
5. Link B: Penal Code section 1473,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1473.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.&lawCode=PEN)
6. Link C: Penal Code section 1473.7,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.7.&lawCode=PEN)

Rules 4.551, 8.385, and 8.386 of the California Rules of Court are amended, effective September 1, 2024, to read:

**Rule 4.551. Habeas corpus proceedings**

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

- (1) Except as provided in (2), the petition must be on the *Petition for Writ of Habeas Corpus* (form HC-001).
- (2) For good cause, a court may also accept for filing a petition that does not comply with (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in the *Petition for Writ of Habeas Corpus* (form HC-001), including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.
- (3) If a petition raises a claim under Penal Code section 745(a), the petition must include whether the petitioner requests appointment of counsel and whether the petitioner can afford counsel.
- (4) If a petitioner has an unadjudicated habeas corpus petition pending in the superior court, the petitioner may amend the existing petition with a claim the petitioner's conviction or sentence was in violation of Penal Code section 745(a).
- ~~(3)(5)~~
  - (A) On filing, the clerk of the court must immediately deliver the petition to the presiding judge or ~~his or her~~ their designee. The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.
  - (B) When an unadjudicated habeas corpus petition is amended to include a claim under section 745, or otherwise amended with leave of court, the time to rule on a petition for writ of habeas corpus is extended to 60 days from the date the amended petition was filed.
- ~~(B)(6)~~ If the court fails to rule on the petition (or amended petition) within 60 days of its filing, the petitioner may file a notice and request for ruling.
  - ~~(i)(A)~~ The petitioner's notice and request for ruling must include a declaration stating the date on which any the petition or amended petition was filed, and the date of the notice and request for ruling, and indicating the fact that the petitioner has not received a ruling on the petition. A copy of the original (and the amended) petition must be attached to the notice and request for ruling.
  - ~~(ii)(B)~~ If the presiding judge or his or her their designee determines that the notice is complete and the court has failed to rule, the presiding judge or his or her their designee must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and

request for ruling. If the judge assigned by the presiding judge rules on the petition before the date the petition is calendared for decision, the matter may be taken off calendar.

(7) If a petition raises a claim under Penal Code section 745(a) that is based on conduct or statements by a judge, the judge must disqualify themselves from proceedings under section 745.

(4)(8) For the purposes of (a)(3)(5), the court rules on the petition by:

(A) Issuing an order to show cause under (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under (b).

(5)(9) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under (b).

**(b) Informal response**

\* \* \*

**(c) Order to show cause**

(1) The court must issue an order to show cause if the petitioner has made a prima facie showing that ~~he or she~~ the petitioner is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if ~~his or her~~ the petitioner's factual allegations were proved. If so, the court must issue an order to show cause.

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

(3)(2) An order to show cause is a determination that the petitioner has made a showing that ~~he or she~~ they may be entitled to relief. It does not grant the relief sought in the petition.

**(d) Appointment of counsel**

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

(2) When a petition raises a claim under Penal Code section 745(a) and requests appointment of counsel, the court must appoint counsel if the petitioner cannot afford



counsel and either the petition alleges facts that would establish a violation of section 745(a) or the State Public Defender requests that counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

**~~(d)~~(e) Return**

\* \* \*

**~~(e)~~(f) Denial**

\* \* \*

**~~(f)~~(g) Evidentiary hearing; when required**

- (1) Except as provided in (2), within 30 days after the filing of any denial or, if none is filed, after the expiration of the time for filing a denial, the court must either grant or deny the relief sought by the petition or order an evidentiary hearing. An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact. The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.
- (2) If the court issues an order to show cause on a claim raised under Penal Code section 745(a), the court must hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing with remote technology, unless counsel indicates the defendant's presence in court is needed.

**~~(g)~~(h) Reasons for denial of petition**

- (1) Except as provided in (2), any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient.
- (2) If the court determines that the petitioner has not established a prima facie showing of entitlement to relief for a claim raised under Penal Code section 745(a), the court must state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

**~~(h)~~(i) Extending or shortening time**

\* \* \*

Advisory Committee Comment

1 The court must appoint counsel on the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th  
2 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The Court of Appeal has held that  
3 under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus  
4 proceeding challenging the underlying conviction. (*Charlton v. Superior Court* (1979) 93 Cal.App.3d  
5 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if  
6 there is no public defender 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 section  
9 1473(e) is the same as in section 745(h)(2) or defined in subdivision (c)(1) of this rule (see *In re Marquez*  
10 (2007) 153 Cal.App.4th 1, 11) is unresolved.

11  
12 **Subdivision (a)(4) and (7).** The committee’s revisions reflect the language in section 1473(e) and are not  
13 intended to limit a court’s discretion and authority in habeas corpus proceedings that do not include  
14 claims under section 745.

### 15 16 17 **Rule 8.385. Proceedings after the petition is filed**

18  
19 **(a)–(e) \* \* \***

#### 20 21 **(f) Return to the reviewing court**

22  
23 If the return is ordered to be filed in the Supreme Court or the Court of Appeal, rule 8.386  
24 applies, ~~and the court in which the return is ordered filed must appoint counsel for any~~  
25 ~~unrepresented petitioner who desires but cannot afford counsel.~~

#### 26 27 **(g) Appointment of counsel**

28  
29 (1) If the return is ordered to be filed in the Supreme Court or the Court of Appeal, the  
30 court in which the return is ordered filed must appoint counsel for any unrepresented  
31 petitioner who desires but cannot afford counsel.

32  
33 (2) When a petition raises a claim under Penal Code section 745(a) and requests  
34 appointment of counsel, the court must appoint counsel if the petitioner cannot afford  
35 counsel and either the petition alleges facts that would establish a violation of section  
36 745(a) or the State Public Defender requests that counsel be appointed. Newly  
37 appointed counsel may amend a petition filed before their appointment.

### 38 39 **Advisory Committee Comment**

40  
41 \* \* \*

### 42 43 44 45 **Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court**

46  
47 **(a)–(e) \* \* \***

1   **(f)   Evidentiary hearing ordered by the reviewing court**  
2

3       (1)   An evidentiary hearing is required if, after considering the verified petition, the  
4            return, any traverse, any affidavits or declarations under penalty of perjury, and  
5            matters of which judicial notice may be taken, the court finds there is a reasonable  
6            likelihood that the petitioner may be entitled to relief and the petitioner's entitlement  
7            to relief depends on the resolution of an issue of fact.  
8

9       (2)   If the court issues an order to show cause on a claim raised under Penal Code section  
10           745(a), the court must hold an evidentiary hearing unless the state declines to show  
11           cause. The defendant may appear remotely, and the court may conduct the hearing  
12           with remote technology, unless counsel indicates the defendant's presence in court is  
13           needed.  
14

15       ~~(2)~~(3) The court may appoint a referee to conduct the hearing and make recommended  
16           findings of fact.  
17

18   **(g)   \* \* \***  
19

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> Not approved by the Judicial Council 03/06/2024
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	<b>FOR COURT USE ONLY</b> 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.
- **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.

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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.

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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?

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CASE NUMBER:

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. **GROUND 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 Penal Code section 745(a), 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) ☐ This motion is filed **on or after** January 1, 2025, and judgment became final for a felony conviction on or after January 1, 2015; **or**
- (4) ☐ This motion is filed **on or after** January 1, 2026, and judgment is for a felony conviction.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

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5. b. **GROUND FOR RELIEF: Moving Party requests relief based on the following (choose all that apply):**

- (1) ☐ 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.
- (2) ☐ 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.)
- (3) ☐ The Moving Party was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins 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.
- (4) ☐ The Moving Party received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
- (a) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share the Moving Party's race, ethnicity, or national origin than on others in that county; *and/or*
- (b) ☐ 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.

c. **Discovery of Violation**

The Moving Party learned of the grounds described in item 5b above on or about (date): \_\_\_\_\_

d. **Supporting Facts**

CAUTION: You must state facts, not conclusions. A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

- e. ☐ Judicial Conflict. The motion is based on a statement or conduct by a judge (*check if applicable*).  
The judge's name is:

- f. ☐ **Motion for Disclosure.** The Moving Party is requesting disclosure of evidence relevant to a potential violation of Penal Code section 745(a) (*check if applicable*).

(1) The type of records or information sought is described as follows:

(2) The reason the records or information are needed is as follows:



PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

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**6. ☐ REQUEST FOR COUNSEL (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 981)**

- 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 [www.courts.ca.gov/forms](http://www.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):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by the</b> <b>Judicial Council</b> <b>03/06/2024</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:		
<b>ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Pen. Code, § 1016.5  <input type="checkbox"/> Pen. Code, § 1473.7(a)(2)         </div> <div> <input type="checkbox"/> Pen. Code, § 1473.7(a)(1)  <input type="checkbox"/> <b>Pen. Code, § 1473.7(a)(3)</b> </div> </div>		<b>FOR COURT USE ONLY</b>  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.

CASE NUMBER:

DEFENDANT:

**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. Time Frames**

- (1) ☐ The court finds that the motion **was filed in accordance with the time frames** in Penal Code section 745(j).
- (2) ☐ The court finds that the motion **was filed prematurely under the time frames** in Penal Code section 745(j) and **dismisses** the motion after a hearing.

**c. 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 Penal Code section 745(a).
- (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 Penal Code section 745(a), and **dismisses the motion** after a hearing.

**d. Motion for Disclosure**

- (1) ☐ The court grants the Moving Party's request for the following records or information relevant to a potential Penal Code section 745(a) violation:
- (2) ☐ The court denies the Moving Party's request for disclosure of records or information.

CASE NUMBER:

DEFENDANT:

5. e. **Vacatur of Conviction or Sentence**(1) The court finds the following violations of section 745(a) 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 Penal Code section 745(a) 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 Penal Code section 745(a):(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. e. (3) ☐ The court **grants** the Moving Party's request to vacate the sentence based on a violation of Penal Code section 745(a) 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 Penal Code section 745(a).

(5) The court's basis for the ruling:

Date:

\_\_\_\_\_  
(JUDICIAL OFFICER)

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

CDCR or ID Number: \_\_\_\_\_

**DRAFT**  
 Not approved by  
 the Judicial Council  
 03/06/2024

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner

v.

Respondent

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.

- Read the entire form *before* answering any questions.
- 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.

Approved by the Judicial Council of California for use under rules 4.551 (as amended January 1, 2024) 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.

**This petition concerns:**

- ☐ A conviction ☐ Parole ☐ A violation of the Racial Justice Act under Penal Code section 745(a)
- ☐ A sentence ☐ Credits
- ☐ Jail or prison conditions ☐ Prison discipline
- ☐ Other (specify): \_\_\_\_\_

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

*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? ☐ Yes ☐ No *If yes, state the attorney's name and address:*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. What was the LAST plea you entered? (Check one):

☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: \_\_\_\_\_

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

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

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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

[illegible][illegible]

7. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No 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? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:  
\_\_\_\_\_  
\_\_\_\_\_
8. Did you seek review in the California Supreme Court? ☐ Yes ☐ No 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. 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.)*
11. 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.)  
☐ Yes If yes, continue with number 12. ☐ No If no, skip to number 14.

12. 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) \_\_\_\_\_

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. 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).)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

15. Are you presently represented by counsel? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

16. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☐ No If yes, explain:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

18. Answer the following questions if you are raising a claim of violation of the Racial Justice Act under Penal Code section 745(a):

a. Indicate which of the following apply to the case in which you are making a claim for violation of Penal Code section 745(a) (check all that apply):

- (1) ☐ Judgment is not final (for example, because an appeal is pending),
- (2) ☐ You are currently serving a sentence in the state prison or county jail under Penal Code 1170(h) for the felony conviction in which you are raising a Racial Justice Act claim,
- (3) ☐ This petition is filed **on or after** January 1, 2025, and judgment became final for a felony conviction on or after January 1, 2015, or
- (4) ☐ This petition is filed **on or after** January 1, 2026, and judgment is for a felony conviction.

b. I request relief based on the following (choose all that apply):

- (1) ☐ The judge, an attorney, a law enforcement officer, an expert, or a juror in the case exhibited bias or animus toward me because of my race, ethnicity, or national origin.
- (2) ☐ During in-court trial proceedings, the judge, an attorney, a law enforcement officer, an expert, or a juror used racially discriminatory language about my 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.)
- (3) ☐ I was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins 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 my race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- (4) ☐ I received a longer or more severe sentence compared to similarly situated individuals convicted of the same offense **and**:
  - (a) ☐ longer or more severe sentences were more frequently imposed for the same offense on defendants who share my race, ethnicity, or national origin than on others in that county; **and/or**
  - (b) ☐ 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.

c. Is your claim based on a statement or conduct by a judge? ☐ Yes ☐ No

If yes, please state the judge's name:

d. Do you want appointed counsel? ☐ Yes ☐ No

If yes, can you afford to hire counsel? ☐ Yes ☐ No

e. Do you request permission to amend a pending petition for writ of habeas corpus with this claim? ☐ Yes ☐ No

- (1) If yes, in what court is your petition pending? \_\_\_\_\_
- (2) If yes, what is the case number of your pending petition? \_\_\_\_\_

f. Do you request disclosure of evidence relevant to a potential violation of Penal Code section 745(a)? ☐ Yes ☐ No

(1) ☐ The type of records or information sought is described as follows:

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(2) ☐ The reason the records or information are needed is as follows:

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g. Are you raising this claim for the first time? ☐ Yes ☐ No

If no, are you raising it again because of new evidence that could not have been previously known to you?

(1) ☐ Yes (explain):

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(2) ☐ No (explain):

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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)

**W24-01****Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Iyana Doherty, Courtroom Operations Supervisor <i>Superior Court of California-Orange County</i>	A	<p><i>Does the proposal appropriately address the stated purpose?</i> Yes</p> <p><i>Are the rules and forms written in a way that would be understandable to self-represented litigants?</i> Yes with a few modifications. The word “final” can be misinterpreted and recommend section 18, line 5(b) be updated to include a line field to include judge’s name</p> <p><i>Does the proposal appropriately consider changes made to section 745 by AB 1118 (Stats. 2023, ch. 464)</i> Yes</p> <p><i>How should amending an existing petition for writ of habeas corpus to include a claim under section 745 impact the existing 60-day timeframe for a court to rule on a petition for writ of habeas corpus (see Cal. Rules of Court, rule 4.551(a)(3))?</i> Some petitions may raise multiple claims and would require extensive research that could possibly go past the 60-day timeframe.</p> <p><i>Is it appropriate to include references on forms HC-001 and CR-187 to claims for relief under section 745 in cases in which judgments are not final? Should this language be deleted or modified?</i></p>	<p>The committees appreciate the comments.</p> <p>The committees agree, in part, and will modify the “judgment is not final” checkboxes to add “for example, because an appeal is pending.”</p> <p>The final version of the form will have a fillable section for the judge’s name.</p> <p>The committees agree and recommend extending the timeframe to an additional 60 days from the date an amended petition is filed.</p>

**W24-01****Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)**

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Response
			<p>Yes, it is appropriate to include however, the language needs to be clearer as self-represented litigants may misinterpret the meaning of “judgments are not final.”</p> <p><i>Should the committees consider rule amendments relating to the Racial Justice Act and death penalty-related habeas corpus proceedings?</i> Yes</p> <p><i>Should form HC-001 be limited to non-capital cases?</i> No</p> <p><i>Is it confusing for self-represented litigants to include items 18(a)(5) on form HC-001 and item 5(a)(4) on form CR-187, which both indicate that on or after January 1, 2026, relief may be sought for any felony conviction?</i> Yes.</p> <p><i>Should these items be deleted and reintroduced in a future form proposal, effective January 1, 2026?</i> Yes, the items should be deleted. Also, recommend deleting and reintroducing in a future form proposal item 18(a)(4) on form HC-001 and item 5(a)(3) on form CR-187.</p>	<p>The committee agrees, in part, and will modify the “judgment is not final” checkboxes to add “for example, because an appeal is pending.”</p> <p>The committees intend to monitor issues around claims for relief under section 745 in the context of death penalty-related habeas proceedings. The committees will delete the checkbox for petitioners seeking relief due to a judgment of death since form HC-001 is intended to be used in noncapital cases (see Cal. Rules of Court, rule 4.551(a), 8.830(a)).</p> <p>The committees recommend keeping the checkboxes in to ensure that this option is available on January 1, 2026, and to serve an educational function informing people of when they are eligible to file for relief.</p> <p>Item 18(a)(4) on form HC-001 and item 5(a)(3) on form CR-187 are requests for relief filed on or after January 1, 2025 for judgments that became final for a felony conviction on or after January 1, 2015. Because it is anticipated that these forms will be effective September 1, 2024, the committees prefer to keep these items rather than delete and reintroduce them as it would be difficult to update the forms in such a short span of time.</p>

**W24-01****Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>Should item 18(c) on form HC-001 requesting appointment of counsel be revised to (1) separate the request for counsel from a declaration of indigency, and (2) require the petitioner to include a financial statement to indicate that the petitioner cannot afford counsel, similar to item 6 on form CR-187?</i></p> <p>(1) There is no need to separate. (2) Yes, additional verbiage needed to have petitioner include financial statement.</p> <p><i>Under AB 1118, when a defendant has a claim alleging a violation of Penal Code section 745 that is based on the trial record, the defendant may either raise that claim on direct appeal or may move to stay his appeal and request remand to file a motion in the superior court. Should the criminal appeal rules in Title 8 of the Rules of Court be amended to address this provision?</i></p> <p>Yes, it is noted item 7 on the form HC-001 addresses the appeal but it is not mentioned on form CR-187.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>Yes, in relation to appointment of counsel. If declared on form, it could reduce the amount of hearings needed to appoint/address counsel.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of</i></p>	<p>Based on other comments received, the committees will modify this item to separate the request for counsel from the showing of indigency. Due to the difficulties of obtaining certified trust accounts for petitioners in prison, the committees will not require the petitioner to include a financial statement.</p> <p>The committees believe section 745(b) is sufficiently clear and does not require any amendments to Title 8 of the Rules of Court to implement its provisions.</p>



**W24-01**

Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Response
			<p><i>training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Minimal impact to case processing staff. Procedure updates communication will need to be provided to staff.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes</p>	
2.	<p>Danielle Harris Managing Attorney, The Freedom Project <i>San Francisco Public Defender</i></p>	A	<p>On 4.551(a)(4)'s issue re amending a pending, undecided habeas petition: We suggest adding a provision that says where an RJA habeas filed and there is already a pending, undecided habeas petition pending, the two petitions may be consolidated and the original one thus deemed "amended."</p>	The committees believe the proposed language is sufficient and declines the recommendation.
3.	<p>Galit Lipa, State Public Defender Christina A. Spaulding, Chief Deputy State Public Defender Erik Levin, Supervising Deputy State Public Defender <i>Office of the State Public Defender</i></p> <p><i>Joinder of the First District Appellate Project (FDAP) in these comments.</i></p>	AM	<p>The Office of the State Public Defender (OSPD) submits these comments in response to Invitation to Comment W24-01. Our comments focus on the appointment of counsel and the proposed revisions to form HC-001.</p> <p>Since the RJA was enacted in 2020, OSPD has provided numerous trainings on the RJA, has filed amicus briefs in several cases concerning the proper interpretation of the statute, including <i>People v. Lashon</i> (2023) 93 Cal.App.5th 136, review granted Nov. 15, 2023, S282159, <i>Finley v. Superior Court</i> (2023) 95 Cal.App.5th 12,</p>	The committees appreciate the comments.

## W24-01

Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Response
			<p><i>Young v. Superior Court</i> (2022) 79 Cal.App.5th 138, <i>Harris v. Superior Court</i> (B313302) review den. July 1, 2021, S269619, and <i>Flores v. Superior Court</i> (G060445) review den. Nov. 10, 2021, S270692, and is actively litigating RJA issues in a number of our own cases.</p> <p>OSPD is concerned with ensuring that the Racial Justice Act (RJA) is implemented broadly, as the Legislature intended, to eradicate racial disparities in the criminal legal system. (Stats. 2020, ch. 317, § 2, subd. (i).)</p> <p>To implement the RJA, the Legislature added a provision to Penal Code section 1473<sup>1</sup>—now subdivision (e)<sup>2</sup>—for the appointment of counsel for people who file a petition for habeas corpus alleging violations of the RJA:</p> <p style="padding-left: 40px;">The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel <i>and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed.</i></p> <p>(§ 1473, subd. (e), italics added; see also Proposed Rule 4.551(d)(2).) Because the Legislature gave the State Public Defender authority to request appointment of counsel for</p>	

## W24-01

Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)

All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Response
			<p>RJA petitioners, OSPD has a particular interest in how this provision is applied.</p> <p><sup>1</sup> All citations are to the Penal Code unless otherwise indicated.</p> <p><sup>2</sup> This is the numbering as of January 1, 2024. (Sen. Bill 97 (Stats 2023, ch. 381).)</p> <p>Respecting the appointment of counsel, the advisory committees note that there are two possible interpretations of section 1473, subdivision (e): first, “that unless the State Public Defender requests appointment, the court appoints counsel only if it issues an order to show cause, similar to the appointment of counsel for other noncapital petitions for the writ of habeas corpus.” (Invitation to Comment, W24-01, p. 5.) Alternatively, section 1473, subdivision (e) sets a standard for the appointment of counsel that “is distinct from the prima facie showing that would be required for an order to show cause” and requires counsel to be appointed before the court decides whether to issue an order to show cause. (<i>Ibid.</i>) The advisory committees decided not to resolve this dispute but to “accommodate[]” both positions. (<i>Ibid.</i>)</p> <p>OSPD submits that the second interpretation is correct, as a matter of statutory construction and California Supreme Court precedent. We urge the committees to reject the notion that, unless the State Public Defender requests the appointment of counsel, RJA petitioners are</p>	<p>The committees believe this issue must be resolved by the courts and that in the meantime, both interpretations can be accommodated under the proposed language.</p>

## W24-01

Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)

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	Commenter	Position	Comment	Committee Response
			<p>entitled to counsel only after an order to show cause is issued.</p> <p>The showing required for the appointment of counsel under section 1473, subdivision (e) is similar to that in former section 1170.95. A petitioner must make a facially sufficient allegation that a violation of the RJA occurred in their case. If they do so, “[n]ewly appointed counsel may amend a petition filed before their appointment.” (§ 1473, subd. (e).) Then, “[t]he court . . . shall determine if the petitioner has made a prima facie showing of entitlement to relief” and, if so, “issue an order to show cause . . . and hold an evidentiary hearing.” (<i>Ibid.</i>)</p> <p>The structure of the statute thus reinforces that the Legislature intended for petitioners, upon filing a complying petition, to have the assistance of counsel to develop and present their claims to the court before the court rules on the merits of the petition. (Cf. <i>People v. Lewis</i> (2021) 11 Cal.5th 952, 966 [addressing structure of former section 1170.95]; see also Invitation to Comment, W24-01, p.5 [noting that provision allowing newly appointed counsel to amend the habeas petition underscores that appointment of counsel does not require a prima facie case].)</p> <p>As in the context of former section 1170.95, the threshold for appointment of counsel should not become a barrier to relief. The Supreme Court stressed in <i>People v. Lewis</i>, <i>supra</i>, 11 Cal.5th at</p>	

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			<p>p. 966, that it was contrary to the remedial intent of the statute, and short-sighted, to create a two-step process whereby many petitions were rejected, without counsel ever being appointed, only to have that determination reversed on appeal:</p> <p style="padding-left: 40px;">“[E]ven assuming the practice leads to short-term efficiencies, those savings are a false economy that shifts work from trial counsel to appellate counsel and from the trial courts to the appellate courts.” [citation] Leaving it to an appellate court to review a summary denial, on an underdeveloped record, arguably places a greater strain on judicial resources than appointing counsel from the outset.</p> <p>(<i>Id.</i> at pp. 969-970, quoting <i>People v. Tarkington</i> 49 Cal.App.5th 892, 925 (dis. opn. of Lavin, J.), review granted, then dismissed and remanded S263219 (Nov. 20, 2021), in light of <i>People v. Lewis</i>.) As the high court recognized, both petitioners and the courts benefit if counsel is appointed at the earliest opportunity, to help develop and present the claim to the trial court in the first instance. (<i>Lewis</i>, supra, at p. 970.) Lewis’s holding was subsequently codified by Senate Bill 775. (Stats. 2021, ch. 551, § 1, subd. (b).)</p> <p>These considerations are even more significant in the context of the RJA. For example,</p>	

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			<p>establishing violations of section 745 subdivisions (a)(3) and (4) may require complex statistical evidence that a pro se petitioner, particularly one who is incarcerated, is ill-equipped to develop. The statute contemplates that, to develop such claims, petitioners may request information pursuant to section 745, subdivision (d), and it may be necessary to retain an expert to analyze the data. The assistance of counsel is vital even at the preliminary stages of developing these claims.</p> <p>To avoid having petitions dismissed prematurely, the standard forms should be designed to make it as easy as possible for pro se petitioners to meet the requirements for the appointment of counsel.</p> <p>OSPD agrees with the decision to have a single habeas form (Invitation to Comment, W24-01, p.11.) but suggests that a separate section be devoted to RJA claims, to make it easier for courts to determine whether the petition is facially sufficient and thus facilitate the appointment of counsel.</p> <p>The proposed form already has a separate section (number 18) devoted to alleged violations of the RJA, including a box for petitioners to check if they are requesting counsel. OSPD suggests that another subsection be added here, similar to the check boxes used in form CR-187, “5.b. GROUNDS FOR RELIEF,” followed by a space for the petitioner</p>	<p>The committees agree, in part, and will add checkboxes to item 18 for the petitioner to indicate the grounds for relief under section 745(a). Item 6 on HC-001 should be used for the petitioner to set out supporting facts.</p>

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			<p>to set out supporting facts. This would allow petitioners to more readily identify which section(s) of the RJA they are alleging were violated and to provide the necessary supporting information.</p> <p>If courts appoint counsel for any indigent petitioner who requests it and files a facially sufficient petition, OSPD does not anticipate that it will be necessary for the State Public Defender to intercede to request appointment of counsel. The minor proposed modification to the proposed HC-001 form would make it easier for petitioners to meet the standard for appointment of counsel and for courts to determine if they have done so.</p> <p><u>Joinder of the First District Appellate Project (FDAP) in these comments.</u> As stated in its separately submitted comment letter in response to Invitation W24-01, FDAP fully joins in OSPD's comments on these proposed rules.</p> <p><u>OSPD's Joinder in FDAP's separate comment letters.</u> FDAP is submitting a separate comment letter addressing distinct aspects of the proposed rules included in W24-01 as well as a letter addressing rule changes included in W24-02. OSPD fully joins in FDAP's separate comment letters on W24-01 and W24-02.</p>	
4.	Heather MacKay <i>Attorney</i> <i>Law Office of Heather MacKay</i>	AM	1. On HC-001:	The committees appreciate the comments.

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Item 18(a)(1) - Suggest revising this language from “the judgment is not final” to “you are in criminal custody and an appeal is pending.” Only people in criminal custody (which includes both incarceration and supervised release such as parole or post-release community supervision) may file a petition for writ of habeas corpus. (PC 1473(a).) A person whose judgment is not final but who is not in criminal custody would instead have to file a motion under PC 1473.7(a). Also, pro se defendants may not know when their judgment is or is not final, so saying that an appeal is pending may help them better understand the non-finality requirement.</p> <p>Item 18 (a)(4) and (a)(5) should include language that “you are in criminal custody” because a person must still be in criminal custody to file a habeas corpus petition. People who meet the criteria currently included in (a)(4) and (a)(5) but who are not in custody must file a motion under PC 1473.7(a).</p>	<p>The committees agree, in part, and will modify the “judgment is not final” checkbox in both HC-001 and CR-187 to add “for example, because an appeal is pending.</p> <p>The committees prefer to keep item 18(a) of HC-001 to address when a petitioner can file for relief since custodial status is addressed in item 2.</p>
5.	Marina Meyere Managing Attorney <i>California Court of Appeal, Sixth Appellate District</i>	AM	<p>A. Proposed Rule 8.386(f)(2) – Evidentiary hearing ordered by the reviewing court.</p> <p>The proposed rule mirrors the language of proposed rule 4.551(g)(2) applicable to the superior courts, but we believe it fails to account for a significant distinction in habeas corpus procedure at the appellate court level. As currently formulated, the proposed rule would appear to require an appellate court to</p>	<p>The committees appreciate the comments.</p> <p>The committees decline to make the recommended change. The proposed rule mirrors the statutory language contained in Penal Code section 1473(e).</p>



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			<p>conduct an evidentiary hearing whenever it issues an order to show cause returnable in the reviewing court. However, the proposed rule fails to account for the situation where the superior court has already conducted an evidentiary hearing on the claim and has denied habeas corpus relief. In this situation, the petitioner must file a new original habeas corpus petition in the appellate court. (In re Clark (1993) 5 Cal.4th 750, 767, fn. 7; see also Robinson v. Lewis (2020) 9 Cal.5th 883, 895-896.) When the superior court denies habeas corpus relief after conducting an evidentiary hearing, the established habeas corpus procedure in this limited context is for the appellate court to conduct independent review of what transpired at the superior court evidentiary hearing. (<i>In re Hochberg</i> (1970) 2 Cal.3d 870, 874, fn. 2, 876; see also <i>In re Resendiz</i> (2001) 25 Cal.4th 230, 249.) The appellate court may issue an order to show cause returnable before itself in this situation, but there may not be any need for further development of the factual record. The proposed rule could be interpreted as requiring a second evidentiary hearing regardless.</p> <p>We believe the proposed rule should be clarified or an advisory committee comment should be added recognizing that this established procedure is not impacted by the proposed rule.</p> <p>B. Request for Specific Comment – <i>Should the committees consider rule amendments relating</i></p>	

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			<p><i>to the Racial Justice Act and death penalty-related habeas corpus proceedings? Should form HC-001 be limited to non-capital cases?</i></p> <p>This court continues to get submissions from self-represented litigants sentenced to death even after the enactment of Proposition 66. The habeas corpus form HC-001 makes it easier to discern the nature of the claims and whether the matter properly belongs in this court. Recognizing the impact of Proposition 66 and the added requirements specific to death-penalty related habeas corpus petitions, the committees may want to develop a specific habeas corpus form for such claims. Regardless, we believe form HC-001 or a new form to be developed by the committees should be required for all self-represented litigants seeking habeas corpus relief.</p>	<p>The committees intend to monitor issues around claims for relief under section 745 in the context of death penalty-related habeas proceedings. The committees will delete the checkbox for petitioners seeking relief due to a judgment of death since form HC-001 is intended to be used in noncapital cases (see Cal. Rules of Court, rule 4.551(a), 8.830(a)).</p>
6.	The Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	<p>The proposal generally addresses the statutory requirements.</p> <p><i>Feedback on specific comment: Is it confusing for self-represented litigants to include items 18(a)(5) on form HC-001 and item 5(a)(4) on form CR-187, which both indicate that on or after January 1, 2026, relief may be sought for any felony conviction? Should these items be deleted and reintroduced in a future form proposal, effective January 1, 2026?</i></p>	The committees appreciate the comments.

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			The subcommittee recommends keeping the items on the forms rather than pursuing amendments later. It reads pretty clearly that those options on the forms wouldn't be applicable until later on.	The committees agree with the recommendation.
7.	J. Bradley O'Connell, Assistant Director Lauren Dodge, Staff Attorney Deborah Rodriguez, Staff Attorney <i>First District Appellate Project</i>  <i>Joinder of Office of State Public Defender (OSPD) in these comments.</i>	AM	<p>The First District Appellate Project (FDAP) submits these comments on the proposed Racial Justice Act (RJA) Rules pursuant to Invitation to Comment W24-01. FDAP is the contract-administrator for indigent defense appeals in the First District pursuant to Rule 8.300(e).</p> <p>FDAP has been actively engaged with implementation of the RJA since its enactment in 2020 and through its subsequent amendments. FDAP recognizes the importance of the RJA and the rules promulgated for its application to vindication of criminal defendants' fundamental rights to assurance that their pretrial proceedings, trials, sentencings, and appeals are not tainted by racial bias. FDAP staff and panel attorneys have litigated RJA issues in pending appeals. Additionally, FDAP has sponsored and otherwise participated in RJA training programs for both trial and appellate practitioners. FDAP appreciates this opportunity to comment on the proposed rules for superior court and appellate habeas petitions raising RJA claims.</p> <p>• <u>Rule 4.551. General</u>. Current rule 4.551 is not exhaustive and does not cover all aspects of</p>	The committees appreciate the comments.

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			<p>superior court habeas corpus practice. Several of the new RJA-specific provisions are common sense clarifications and are consistent with existing habeas corpus practices (even though some of those common habeas practices are not currently codified in the Rules of Court). However, as reflected in our individual comments below, several of these proposed clarifications and additions refer specifically to petitions raising RJA claims. Under traditional statutory (and rule) construction tenets, the proposed additions could create the misleading impression that they apply <i>only</i> to habeas petitions raising RJA claims, rather than to habeas corpus practice generally. “[W]hen the drafters of a statute” – or a rule – “have employed a term in one place and omitted it in another, it should not be inferred where it has been excluded.” (<i>People v. Woodhead</i> (1987) 43 Cal.3d 1002, 1010.)</p> <p>• <u>Rule 4.551(a)(4). Amendment of pending petition to add RJA claim.</u> Although not explicitly addressed in existing Rule 4.551, habeas courts currently allow amendments of pending habeas petitions either to add new claims or to supplement or modify the allegations of the original claims. For example, in the course of discovery and other investigation of the originally pleaded claims, counsel may discover facts supporting additional claims (e.g., newly-discovered evidence, suppression of evidence, etc.). However, by referring to amendment of habeas</p>	<p>The committees will add an advisory committee comment that the revisions reflect the language in section 1473(e) and are not intended to limit a court’s discretion and authority in habeas corpus proceedings that do not include claims under section 745.</p>

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			<p>petitions only in the context of adding RJA claims to already-pending petitions, the proposed provision may create the misleading impression that this is the <i>only</i> context in which amendment of a habeas petition is permissible.</p> <p>• <u>Rule 4.551(a)(9). Disqualification of judge.</u> This provision presents a similar risk of misconstruction. By requiring judicial disqualification only where the habeas petition raises an RJA claim based on a judge’s conduct or statements, the provision implies that a habeas petition raising some other form of judicial misconduct does not trigger similar disqualification requirements. Similar judicial disqualification standards should apply to all habeas petitions which raise claims of judicial bias or judicial misconduct, whether those claims arise under the RJA, constitutional provisions, or other statutory provisions. We do not suggest that all petitions raising claims of judicial <i>error</i> should trigger potential disqualification of a judge. However, RJA and non-RJA claims raising claims of judicial bias, partiality, or misconduct should be governed by similar disqualification standards and procedures.</p> <p>• <u>Rule 4.551(c)(1). Prima facie standard for RJA habeas claims.</u> As stated in the Invitation to Comment (p. 12): “The issue of whether the definition of a prima facie showing in section 745(h)(2) applies to petitions for writ of habeas corpus under section 1473(f) remains undecided</p>	<p>See response above.</p>

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			<p>by the courts. As a result, <i>both committees declined to incorporate the definition in section 745(h)(2) into rule 4.551</i>. The committees intend to track and monitor the issue.” (Emphasis added.)</p> <p>We submit that under long-established rules of statutory construction, the term “prima facie” as used in Penal Code sections 745 and 1437(f) must be construed to have the same meaning. Both those provisions employing “prima facie” standards were added to the statutory scheme by the Racial Justice Act of 2020. “[W]hen a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts or portions of the law.” (<i>Stillwell v. State Bar</i> (1946) 29 Cal.2d 119, 123; <i>People v. McKay</i> (2002) 27 Cal.4th 601, 621.) When a legislature “uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that [the legislature] intended that text to have the same meaning in both statutes.” (<i>Smith v. City of Jackson</i> (2005) 544 U.S. 228, 233.)</p> <p>In view of these statutory construction principles, it appears evident that the Legislature intended that the term “prima facie case” have the identical meaning for both the remedial procedures authorized by the RJA – a motion or a habeas corpus petition. Consequently, we do not believe that any additional judicial</p>	

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			<p>clarification is necessary to confirm that the section 745 “prima facie” standard applies equally to the similarly-phrased “prima facie” standard for RJA habeas petitions under section 1437(f).</p> <p>Case law has already established that the prima facie showing required to establish an RJA violation is lower than the prima facie burden ordinarily required for a habeas corpus petition. (<i>Finley v. Superior Court</i> (2023) 95 Cal.App.5th 12.) While the <i>Finley</i> court considered a motion made pursuant to section 745, its reasoning is equally applicable to section 1473(f), which was added to the statutory scheme by the same RJA legislation. As <i>Finley</i> reasoned, imposing a “heavy burden” at the prima facie stage in an RJA case would be contrary to the Act’s structure and purpose. By enacting the RJA, the Legislature intended “to depart from the discriminatory purpose paradigm in federal equal protection law,” a standard that was ““nearly impossible to establish.”” (<i>Finley</i>, at p. 22.)</p> <p>However, if the advisory committees decline to take a position on the applicability of this relaxed prima facie case standard to RJA habeas petitions (as suggested on p. 12), <i>we request that the committees include an advisory note to Rule 4.551 acknowledging that the issue is undecided.</i> The inclusion of such an advisory note could flag the possibility that the prima facie showing for an RJA violation under</p>	<p>The committees will add an advisory committee comment that the issue of whether the prima facie showing for a petition for writ of habeas corpus under section 1473(e) is defined under section 745(h)(2) or in subdivision (c)(1) is unresolved.</p>

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			<p>section 1437(f) may be lesser than the showing required for other habeas claims. Indeed, in the absence of such a note explicitly identifying the question as unresolved, Rule 4.551, as currently drafted, would <i>require</i> application of the general habeas definition of “prima facie” to RJA violations brought under section 1473(f). (See Rule 4.551(c)(1) [“the court takes petitioner’s factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved.”]) An advisory note to this effect would put the courts and practitioners on notice that this lower prima facie burden (a “substantial likelihood” that an RJA violation occurred) may apply to an RJA violation raised through a habeas petition pursuant to section 1437(f), as well as to one raised via a motion under section 745.</p> <p>• <u>Rule 4.551(d). Appointment of counsel.</u> Current Rule 4.551(c)(2) provides that a court “must” appoint counsel upon issuing an order to show cause on a habeas petition. That rule implements the California Supreme Court’s holdings that appointment of counsel is mandatory under due process principles whenever a court finds that a habeas corpus or other post-conviction petition states a prima facie case for relief. (<i>In re Clark</i> (1993) 5 Cal.4th 750, 780.) (See Advisory Committee Comment to current Rule.) Proposed Rule 4.551(d)(1) restates current rule 4.551(c)(2) as to habeas petitions generally. Proposed rule</p>	



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			<p>4.551(d)(2) addresses the distinct circumstances under which the superior court must appoint counsel on a habeas petition raising an RJA claim. (As noted at the end of this letter, FDAP joins in the separate comment letter being filed by the Office of the State Public Defender regarding appointment of counsel on RJA habeas petitions, and we will not elaborate on that subject in this letter.)</p> <p>We note, however, that while appointment of counsel is mandatory under the circumstances addressed in proposed Rule 4.551(d), <i>habeas courts also possess inherent discretion to appoint counsel under other circumstances</i>. Habeas courts commonly appoint counsel for pro. per. petitioners where the court believes that the claims may have potential merit but the pro. per. pleadings are insufficiently developed for the court to determine whether they state a prima facie case. Frequently, the assistance of counsel may be necessary to conduct an investigation in order to develop a sufficient factual showing to state a prima facie case. To avoid any incorrect impression that appointment of counsel is permissible only under the mandatory-appointment circumstances stated in proposed Rule 4.551(d)(1)-(d)(2), we suggest that the Judicial Council add a provision recognizing courts' inherent authority to order discretionary appointments for good cause and in the interest of justice under other circumstances. Alternatively, the Judicial</p>	<p>The committees agree that rule 4.551(d) only lists the circumstances when a court reviewing a habeas petition must appoint counsel. The rule does not address, and is not intended to limit, any discretion or authority courts may have to appoint counsel in other situations. The committees, however, believe that the rule as drafted is sufficiently clear on this point and therefore decline to make the suggested change.</p>

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			<p>Council could add an Advisory Comment to that effect.</p> <p>We do not believe that it is necessary for the rule to identify all potential circumstances that may warrant a discretionary appointment of counsel prior to issuance of an Order to Show Cause (OSC). Instead, consistent with current practices, it would be preferable for the rule (or an Advisory Comment) simply to recognize courts’ discretion to make such discretionary appointments in the interests of justice prior to a finding that a pro. per. petition alleges facts that would establish a section 745(a) violation (as to an RJA claim) or that it states a prima facie case requiring issuance of an OSC (as to non-RJA habeas claims).</p> <p>• <u>Rule 4.551(d). Amendment of petition after counsel’s appointment.</u> Rule 4.551(d)(2) (the provision specific to RJA petitions) provides that “[n]ewly appointed counsel may amend a petition filed before their appointment.” However, there is no corresponding provision in Rule 4.551(d)(1), which may imply that there is no similar allowance for newly appointed counsel to amend a non-RJA petition. The circumstances supporting a post-appointment amendment of a habeas petition – the inability of pro. per. petitioners to articulate and amplify their pleadings effectively and to investigate and provide factual support for their allegations – apply equally to non-RJA petitions. Accordingly, we suggest that the Judicial</p>	

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			<p>Council modify this provision in a way that clarifies that this allowance for post-appointment amendments applies equally to RJA and non-RJA petitions. For instance, the Judicial Council could move this provision to a new subdivision (d)(3), thus clarifying that it applies to appointments under both (d)(1) and (d)(2).</p> <p>• <u>Rule 8.385(g). Appointment of counsel on appellate habeas petitions.</u> Like proposed Rule 4.551(d), Rule 8.385(g) implements the due process principle requiring appointment of counsel upon a finding that a post-conviction petition states a prima facie case. And subdivision (g)(2) gives effect to the statutory provision also requiring appointment on an RJA habeas petition upon the recommendation of the State Public Defender. As with rule 4.551(d), it would be desirable to supplement the rule to avoid any implication that these are the <i>only</i> circumstances under which appellate courts may appoint habeas counsel. Appellate courts, in the exercise of discretion, often find good cause to appoint habeas counsel for pro. per. petitioners at an early stage of the proceeding prior to issuance of an order to show cause or of a determination that the petition states a prima facie case. Indeed, the undersigned appellate attorneys are familiar with numerous instances of such pre-OSC habeas appointments in the First District alone.</p>	<p>The committees will add an advisory committee comment that the revisions reflect the language in section 1473(e) and are not intended to limit a court's discretion and authority in habeas corpus proceedings that do not include claims under section 745.</p> <p>The committees agree that rule 8.385(g) only lists the circumstances when a court reviewing a habeas petition must appoint counsel. The rule does not address, and is not intended to limit, any discretion or authority courts may have to appoint counsel in other situations. The committees, however, believe that the rule as drafted is sufficiently clear on this point and therefore decline to make the suggested change.</p>

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			<p><u>Joinder of Office of State Public Defender (OSPD) in these comments.</u> As stated in its separately submitted comment letter in response to Invitation W24-01, <b>the OSPD fully joins in FDAP's comments on these proposed rules.</b></p> <p><u>FDAP's Joinder in OSPD's separate comment letter.</u> OSPD is submitting a separate comment letter addressing distinct aspects of the proposed rules included in W24-01. <b>FDAP fully joins in OSPD's separate comment letter on W24-01.</b></p>	
8.	Susan Rocha Pro Per Litigant <i>Los Angeles County resident</i>	A	*Old outdated laws and codes need to be reviewed and changed and/or corrected.	The committees appreciate the comment.
9.	Katie Tobias Operations Analyst <i>Orange County Superior Court, Lamoreaux Justice Center</i>	A	<p>*</p> <p><i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal appropriately addresses the stated purpose.</p> <p><i>Are the rules and forms written in a way that would be understandable to self-represented litigants?</i> Yes, the rules and forms are written in a way that would be understandable to self-represented litigants.</p> <p><i>Does the proposal appropriately consider changes made to section 745 by AB 1118 (Stats. 2023, ch. 464)?</i> Yes, the proposal appropriately considers changes made to section 745 by AB 1118.</p>	The committees appreciate the comment.

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>How should amending an existing petition for writ of habeas corpus to include a claim under section 745 impact the existing 60-day timeframe for a court to rule on a petition for writ of habeas corpus (see Cal. Rules of Court, rule 4.551(a)(3))?</i></p> <p>Additional time should be given for the court to rule on the petition for writ of habeas corpus if it is being amended to include a claim under section 745. As well as extending time in case of a judge recusal as to 745(a).</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i></p> <p>The proposal does not appear to provide cost savings.</p> <p><i>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?</i></p> <p>Provide an information update to Case Processing staff, Courtroom staff, and Judicial Officers.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes, as it pertains to Juvenile.</p>	<p>The committee agrees and recommends extending the timeframe to an additional 60 days from the date the amended petition is filed. The committee declines, at this time, to extend the time for a ruling due to judicial disqualification.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>How well would this proposal work in courts of different sizes?</i></p> <p>Our court is a large court, and this could work for Orange County</p>	
10.	<p>Mike Thompson Attorney <i>California Court of Appeal, Third Appellate District</i></p>	AM	<p><u>Revisions to Rule 4.551:</u></p> <p>1. Although section 1473, subd. (f) does not explicitly cross-reference section 745’s definition of a “prima facie” showing, it does so implicitly by incorporating section 745 by reference. Further, effective Jan. 1, 2024, section 745 will allow a defendant to raise a claim by motion under section 745 or by petition for writ of habeas corpus. It cannot be the law that the standard for relief depends on which method is used to raise the claim. Thus, it must be true that the prima facie showing for purposes of a habeas corpus petition is the same showing required under section 745. For these reasons, I would urge the Committee to incorporate the prima facie definition into the rule.</p> <p><u>Revisions to Form HC-001:</u></p> <p>1. I would retain the check box for “judgment is not final” in Item 18 as it causes no harm and may facilitate implementation of the phased-in retroactivity of claims under section 745(j).</p> <p>2. Regarding the comment (at p. 8 of the Invitation to Comment) that AB 1118 could be construed as allowing pre-judgment petitions for writ of habeas corpus for section 745(a) relief, such a construction would be contrary to the</p>	<p>The committees appreciate the comment.</p> <p>The committees will add an advisory committee comment that the issue of whether the prima facie showing for a petition for writ of habeas corpus under section 1473(e) is defined under section 745(h)(2) or in subdivision (c)(1) is unresolved.</p> <p>The committee will retain the checkboxes.</p> <p>No response needed.</p>

**W24-01**

Criminal Procedure: Racial Justice Act (amend Cal. Rules of Court, rules 4.551, 8.385, and 8.386)

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			<p>well-established rule that habeas relief ordinarily cannot serve as a substitute for appeal. (<i>In re Terry</i> (1971) 4 Cal.3d 911, 927.) Such a drastic change in the law should not be presumed by implication.</p> <p>3. Footnote 8 of the Invitation to Comment provides: “[S]ection 1473(f) states that a petition for writ of habeas corpus is appropriate after ‘judgment has been entered.’ ” This is not technically correct. Section 1473, subd. (f) provides: “Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, <i>if that section applies based on the date of judgment as provided in subdivision (k) of Section 745.</i>” (§ 1473, subd. (f), italics added.) Presumably, this language was intended to be a reference to section 745, <i>subdivision (j)</i>, consistent with the changes in AB 256. However, it appears that SB 467 erroneously included a reference to subdivision (k). As a result, if construed literally, section 1473, subd. (f) states that a habeas petition based on a violation of section 745 may only be prosecuted after judgment if the judgment was entered before January 1, 2021, and the petition is based on a violation of section 745, subs. (a)(1) or (2). As a result of this apparent drafting error, there is an ambiguity in the law that will need to be resolved by the Legislature or the courts.</p>	<p>The committee appreciates the correction.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>4. I would include in new Item 18, Form HC-001, a checklist identical to that proposed as new Item 5.b in Form CR-187. Such a checklist would help avoid confusion as to the basis (or bases) for the claim.</p> <p><u>Revisions to Form CR-187:</u>            1. Item 5.d should be amended to include the cautionary language that a movant “must state facts, not conclusions,” as currently included in Item 3.b in Form CR-187 and Item 6.a in Form HC-001.</p>	<p>The committees agree and will add checkboxes to item 18 for the petitioner to indicate the grounds for relief under section 745(a).</p> <p>The committees agree and will add similar language to item 5d of CR-187.</p>
11.	Christina Zabat-Fran, President <i>Orange County Bar Association</i>	AM	The Council requested comments on whether the criminal appeal rules in Title 8 should be amended to address the provision allowing a defendant to request a stay of appeal to file a motion in the trial court. For indigent defendants, clarity is needed in the procedures regarding which lawyer is responsible for bringing the motion during the stay. Is it the appellate lawyer? Or the trial lawyer?	<p>The committees appreciate the comment.</p> <p>The committees decline to make the suggested change. Penal Code section 745(b) does not specify which attorney representing the petitioner on appeal has responsibility for bringing the motion before the superior court. The committees envision that determining which attorney will file the motion will require discussion between the defendant and defendant’s attorneys and will necessarily depend on the circumstances of a given case.</p> <p>The committees also believe section 745(b) is sufficiently clear and does not require any amendments to Title 8 of the Rules of Court to implement it.</p>
12.	Morgan Zamora Prison Advocacy Coordinator	AM	The numbered comments that follow correspond to the bullet point Requests for Specific	The committees appreciate the comment.



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	Macio Lindsay Inside Policy Fellow <i>Ella Baker Center for Human Rights</i>		<p>Comments listed on Page 13 of the Invitation to Comment, W24-01.</p> <p>2. There is an expectation that self-represented litigants will understand the named rules and forms. However, self-represented litigants may not understand what constitutes a “final judgment” and will consider any available post-conviction avenue for relief, such as PC § 745, to mean their judgment is not yet final. Litigants will benefit from forms HC-001 and CR-187, including either a full definition of the legal term “final judgment” or a citation to case law, a statute, or a rule regarding a more complete definition of what constitutes a “final judgment.” For example, items 6(b), 9, 10(a), 11, and 14 on form HC-001 cite relevant case law that litigants can reference to better understand what certain language in the form means contextually.</p> <p>4. An amendment to an existing writ of habeas corpus petition that includes a claim under PC § 745 should trigger a 30-day extension of time for the court to rule on the amended petition. In consideration of this proposition, section 745 amendments to the existing writ of habeas corpus petitions will occur at various times within the 60-day timeframe for the court to rule on the petition. A 30-day extension of time beyond the original 60-day deadline should provide courts with more sufficient time to review the section 745 claim. Accordingly, Cal. Rules of Court, rule 4.551(a) should be</p>	<p>The committees agree in part, and will modify the “judgment is not final” checkboxes to add “for example, because an appeal is pending.”</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>amended to include the following language:            “When an existing writ of habeas corpus petition is amended to include a claim under section 745, the time to rule on the petition for writ of habeas corpus shall be extended for 30 days, beyond the expiration of the original 60-day time period.”</p> <p>5. Regarding claims for relief under section 745, the language referencing judgments that are not final are appropriate on forms HC-001 and CR-187, although many self-represented litigants will not understand what constitutes a “final judgment.” A full definition of the legal term or citation to relevant case law, statute, or rule will be a helpful reference to self-represented litigants as to what constitutes a final judgment. For example, items 6(b), 9, 10(a), 11, and 14 on form HC-001 cite relevant case law that litigants can reference to better understand what certain language in the form means contextually.</p> <p>7. It will be confusing to self-represented litigants to include item 18(a)(5) on form HC-001 and item 5(a)(4) on form CR-187, which indicate that on or after January 1, 2026, relief may be sought for any felony convictions. It is likely that litigants may interpret this language to mean that relief may not be sought for those currently serving a sentence for a felony conviction until 2026 which is incorrect. Both items referenced above should be either deleted from the form or amended to include a more</p>	<p>The committees agree, in part, and recommend extending the timeframe to an additional 60 days from the date the amended petition is filed.</p> <p>The committees agree in part, and will modify the “judgment is not final” checkboxes to add “for example, because an appeal is pending.”</p> <p>The committees recommend keeping the checkboxes in to ensure that this option is available on January 1, 2026, and also to serve an educational function informing people of when they are eligible to file for relief.</p>

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			<p>clear explanation of the timeline for the tiered implementation of the Racial Justice Act and at which points certain individuals become eligible to seek relief.</p> <p>8. As currently proposed, item 18(c) on form HC-001 will be confusing to self-represented litigants. To provide clarity, this item should be revised to include the following two questions and each question should be followed by “yes” or “no” check boxes: the first question, “Do you want appointed counsel?” and the second question, “Can you afford private counsel?” Separating the two questions will more clearly state section 1473 appointment of counsel criteria.</p> <p>Additionally, a requirement for self-represented litigants to include a financial statement is unnecessary and will be a timely and burdensome task, particularly, if a certified trust account statement must also be provided. The process for self-represented litigants incarcerated in California state prison to obtain these documents is as follows: first, the self-represented litigant must submit a request to the institution litigation coordinator to process and forward to the institution trust account department; second, accounting prepares and transmits the certified trust account statement to the litigant’s correctional counselor (CCI); third, the self-represented litigant must sign a receipt and seal the certified trust account statement and</p>	<p>The committees agree and will modify this item to separate the request for counsel from the showing of indigency.</p> <p>The committees appreciate this information and will not require a financial statement.</p>

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			<p>section 745 habeas corpus petition with postage attached, and present these documents to the CCI; and fourth, the CCI delivers the legal mail to the institution's mailroom, where it is then logged and the legal documents mailed to the court. In anticipation of the significant number of post-judgment petitions for relief, securing a financial statement with a certified trust account statement will be a timely and burdensome task for litigants and institutional staff. Creating circumstances where thousands of self-represented litigants will have to go through this process will unnecessarily expend institutional resources and create backlogs in processing that further prolong access to justice. A check box asking the self-represented litigant if they can afford counsel, along with the verified signature under penalty of perjury included on form HC-001 is adequate to meet section 1473 appointment of counsel criteria.</p> <p>9. Clarity is important and any rule that is not explicitly in alignment with section 745 should be amended to alleviate ambiguity.</p> <p>In addition to the above Specific Comments, Mr. Lindsey and myself would like to suggest the following additional comments which may provide further clarity and equity for the currently incarcerated populations that will make use of this form:</p> <ul style="list-style-type: none"> <li>• Items 5(b) through (f)(2) and item 6 on form CR-187 provide relevant information that</li> </ul>	

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			<p>should also be included in item 18 on form HC-001. The following three reasons support this proposition: first, to provide self-represented litigants a check box option of the available grounds for the section 745 violations under which they are seeking relief; second, to alert the court of the specific section 745 violation the litigant is asserting, and third, to alert the court if the litigant is requesting discovery. The amendment of item 18 on form HC-001 to incorporate items 5(b) through (f)(2) and item 6 on form CR-187 will be helpful to both self-represented litigants and the court by increasing consistency in the documentation of these claims.</p> <ul style="list-style-type: none"><li>• Amendments to rule 4.551 are needed to reflect gender neutral pronouns as to increase inclusivity and representation of transgender, non-binary, and gender non-conforming individuals. References to “his” and “her” should be changed to “their” in subsections (a)(6)(B) and (c)(1)(2) of rule 4.551 as well as in any other location where these exclusionary descriptors are used.</li></ul>	<p>The committees agree, in part, and will add checkboxes to item 18 for the petitioner to indicate the grounds for relief under section 745(a) and a request for disclosure.</p> <p>The committees agree with the suggestion and will revise the rule to reflect gender neutral pronouns.</p>