



# Judicial Council of California

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## INVITATION TO COMMENT

W24-01

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**Title**

Criminal Procedure: Racial Justice Act

**Action Requested**

Review and submit comments by January 19, 2024

**Proposed Rules, Forms, Standards, or Statutes**

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

**Proposed Effective Date**

September 1, 2024

**Proposed by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

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### Executive Summary and Origin

The Appellate Advisory Committee and the Criminal Law Advisory Committee propose amending rules 4.551, 8.385, and 8.386 of the California Rules of Court and revising *Petition for Writ of Habeas Corpus* (form HC-001), *Motion to Vacate Conviction or Sentence* (form CR-187), and *Order on Motion to Vacate Conviction or Sentence* (form CR-188) 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.

### Background

The Racial Justice Act of 2020 (Assem. Bill 2542; Stats. 2020, ch. 317) enacted Penal Code section 745,<sup>1</sup> 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. This legislation applied prospectively to cases in which a judgment was entered on or after January 1, 2021. The bill allowed defendants to file motions in the trial court

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

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

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(f)<sup>2</sup> and 1473.7(a)(3)).

Two years later, Assembly Bill 256 (Stats. 2022, ch. 739) made relief under section 745 apply retroactively to final judgments. This retroactive relief occurs in phases. 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 sentence could seek retroactive relief. On January 1, 2024, the eligibility expands to petitioners who are currently incarcerated “in the state prison or in a county jail pursuant to subdivision (h) of Section 1170,<sup>3</sup> or committed to the Division of Juvenile Justice for a juvenile disposition.” Finally, on January 1, 2025, and January 1, 2026, the eligibility extends to all felony convictions.

Section 745(b) was recently further amended effective January 1, 2024 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). (See Assem. Bill 1118 (Stats. 2023, ch. 464).) Additionally, AB 1118 eliminates 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 proposed amendments to rule 4.551 and revisions to forms CR-187 and CR-188 as they primarily impact the trial courts. The Appellate Advisory Committee led the development of the proposed amendments to rules 8.385 and 8.386 on petitions for writ of habeas corpus in the appellate courts. Both committees developed the proposed revisions to form HC-001.

## **The Proposal**

### **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 the following differences between the general procedures for petitions for writ of habeas corpus established by this rule and the procedures established by statute for petitions with claims under section 745(a) and propose the following amendments to

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<sup>2</sup> This will be relettered as subdivision (e) effective January 1, 2024 (See Sen. Bill 97 (Stats. 2023, ch. 381)).

<sup>3</sup> Under section 1170(h), imprisonment for certain felonies is served in the county jail, with specified exceptions.

rule 4.551.

- 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...” (§ 1473(f).) Rule 4.551 does not currently require that a petition for writ of habeas corpus include such a request, and 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).) To reflect these distinctions, the committees propose:
  - Revising subdivision (a) to add paragraph (3) to state that a postjudgment petition raising a claim under section 745(a) must include whether the petitioner requests appointment of counsel and whether the petitioner can afford counsel.
  - Adding new subdivision (d), Appointment of counsel, to incorporate, as paragraph (1), 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) on appointment of counsel when requested in a postjudgment petition raising a claim under section 745(a). In these instances, 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.
- If a petitioner with a claim under section 745(a) has an undecided habeas corpus petition pending in state court, the petitioner may amend the existing petition with a claim the petitioner’s conviction or sentence violated section 745(a). (*Ibid.*) Rule 4.551 does not currently address amending an undecided habeas corpus petition with a new claim, so the committees propose revising subdivision (a) to add paragraph (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 the petitioner’s conviction or sentence violated section 745(a).<sup>4</sup>
- If a claim under section 745(a) is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from further proceedings. (§ 745(b).) Rule 4.551 does not currently address disqualification of a judge, so the committees propose adding paragraph (7) to state that if a postjudgment 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.

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<sup>4</sup> The committees request specific comments on how amending an undecided habeas corpus petition to include a claim under section 745 impacts the 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)).

- 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. 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(f).) Rule 4.551 currently provides that 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).) The committees propose renumbering subdivision (f), Evidentiary hearing; when required, as subdivision (g) and adding paragraph (2) as an exception applying when an order to show cause is issued for a claim raised under Penal Code 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.
- 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.*) Rule 4.551 currently provides that 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).) The committees propose renumbering subdivision (g), Reasons for denial of petition, as subdivision (h) and adding 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.

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

There was significant discussion about when counsel should be appointed for a petition for writ of habeas corpus raising a claim under section 745(a). In noncapital petitions for writ of habeas corpus, the court must appoint counsel if an order to show cause is issued based on a prima facie showing that the petitioner is entitled to relief. (Cal. Rules of Court, rule 4.551(c)(1), (c)(2).) For a petition for writ of habeas corpus with a claim under section 745(a), section 1473(f) states that:

The petition shall state if the petitioner requests appointment of counsel and 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. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show.

One interpretation of the statutory language is that, unless the State Public Defender requests appointment, the court appoints counsel only if it issues an order to show cause, similar to appointment of counsel for other noncapital petitions for writ of habeas corpus.

Another interpretation, however, is that where a petition for writ of habeas corpus raises a claim under section 745(a), counsel must be appointed *before* an order to show cause is issued. Under this interpretation, the “facts that would establish a violation” standard of section 1473(f) is distinct from the prima facie showing that would be required for an order to show cause. Reinforcing this interpretation is the fact that the statute allows newly appointed counsel to amend a petition filed before their appointment and that this provision precedes the discussion of the prima facie showing required for issuance of an order to show cause.

Ultimately, the committees decided that both interpretations could be accommodated by creating a new appointment of counsel subdivision in the rule, proposed as rule 4.551(d). Current language about appointment of counsel in the existing “Order to show cause” section would be moved to the new subdivision, and a new paragraph (2) addressing petitions for writ of habeas corpus with a claim under section 745(a) would be added:

When a petition raises a claim under Penal Code section 745(a) and requests appointment of counsel, the court must also 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.

### **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, this proposal would remove the appointment of counsel language from rule 8.385(f) and add a new subdivision entitled “Appointment of counsel.” Subdivision (g)(1) would contain the appointment of counsel language currently contained in rule 8.385(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) and would require the reviewing court to appoint counsel where the petitioner requests counsel, 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. This provision would substantively mirror proposed rule 4.551(d)(2) discussed above.

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 propose amending subdivision (f)(2) 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. This provision substantively mirrors the language of proposed rule 4.551(g)(2) discussed above. Current rule 8.386(f)(2) would be renumbered as rule 8.386(f)(3).

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

Form HC-001 can be used to petition a superior court, a Court of Appeal, or the Supreme Court for a writ of habeas corpus.<sup>5</sup> Under the California Rules of Court, a self-represented person must use form HC-001 to petition any of these courts for a writ of habeas corpus, with exceptions for good cause. (Cal. Rules of Court, rules 4.551(a)(1), 8.380(a).) Form HC-001 is designed to provide the court with sufficient information to either issue an order to show cause, deny the petition, or request an informal response.

### ***Changes to implement the Racial Justice Act***

Under section 1473(f), a person may file a petition for writ of habeas corpus based on a claim under section 745(a). The committees propose the following revisions to form HC-001 to incorporate claims under section 745(a):

- Add a check box to indicate that the petition concerns “A violation of the Racial Justice Act under Penal Code section 745(a);” and
- Add new item 18 specifically relating to claims under section 745(a), including allowing a petitioner to (1) request counsel and indicate if they cannot afford counsel; and (2) request permission to amend a pending petition for writ of habeas corpus and include the court and case number of the pending petition. (§ 1473(f).)

Other subitems in item 18 are discussed in detail below.

*Successive or abusive claims:* Section 1473(f) states that “A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.”

The committees discussed whether existing items on form HC-001 that address successive or abusive petitions would allow a petitioner with a claim under section 745(a) to sufficiently explain why the petition should not be deemed successive or abusive. The committees view is that existing items 7 (whether the case was directly appealed, what issues were raised, and the result), 10, and 11<sup>6</sup> (regarding whether any other petition, application, or motion regarding the conviction, commitment, or issue was filed, what issues were raised, and the result) apply to

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<sup>5</sup> Note that rule 4.571 contains different requirements in death penalty-related habeas corpus proceedings.

<sup>6</sup> Items 10 and 11 on form HC-001 have been renumbered as items 11 and 12 on the proposed form.

petitions raising claims under section 745(a) and could determine whether the same or similar issues were previously raised. In addition, the committees propose revising item 14 to allow petitioners to explain any delay in the discovering or presenting of the claims for relief and to add a citation to section 1473(f).

The committees also propose including a question in item 18e for the petitioner to indicate if they are raising this claim for the first time. If the petitioner is raising the claim again, the item directs the petitioner to state whether the claim is being raised again because of evidence that could not have previously been known to the petitioner.

*Disqualification of judge:* Section 745(b) states that, “If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.” The committee discussed whether this was intended to apply to a petition for writ of habeas corpus as well and concluded that it would not make sense to limit disqualification only to motions, and therefore propose including item 18b, for the petitioner to indicate if there is potential judicial conflict and if so, to identify the judge.

*Retroactivity and timeliness of the petition:* Section 745(j) added a phased-in retroactive application for claims under section 745(a). Petitioners may file at any time if a judgment is not final, and then as follows:

- On or after January 1, 2023, for a petition for writ of habeas corpus where the petitioner is sentenced to death or a motion to vacate a sentence or conviction under section 1473.7 due to potential or actual immigration consequences related to the sentence or conviction;
- On or after January 1, 2024, for a petition for writ of habeas corpus where the petitioner is currently serving a felony sentence in a state prison or in a county jail under section 1170(h);
- On or after January 1, 2025, for a petition for writ of habeas corpus or a motion to vacate a conviction or sentence under section 1473.7 for a felony conviction where judgment became final on or after January 1, 2015; or
- On or after January 1, 2026 for a petition for writ of habeas corpus or a motion to vacate a conviction or sentence under section 1473.7 for all felony convictions.

(§ 745(j).)

The committees propose adding corresponding check boxes for petitioners to indicate the timeliness of the petition under section 745(j) (see item 18):

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.
- (2)  You were sentenced to death.
- (3)  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.
- (4)  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
- (5)  This petition is filed on or after January 1, 2026, and judgment is for a felony conviction.

The committees considered deleting the “judgment is not final” check box, since a motion in the trial court is appropriate for a case pending without judgment. However, the committees opted to include the check box in the proposal, as “judgment is not final” could also apply to cases where judgment was imposed but is currently being appealed.<sup>7</sup> Additionally, there was discussion of whether the amendments to section 745(b) by AB 1118 eliminating the clause “when judgment is imposed” before the clause authorizing the filing of a petition for writ of habeas corpus could be construed as allowing pre-judgment petitions for writ of habeas corpus for section 745(a) relief.<sup>8</sup> In light of these issues, the committees seek specific comments on whether the “judgment is not final” check box should be deleted or modified. Additionally, as discussed in the Alternatives Considered section, the committees also seek specific comments on whether item 18(a)(2), a check box indicating that the petitioner was sentenced to death, should be deleted due to the procedural distinctions of death penalty-related habeas proceedings.

The committees propose the following technical revisions to form HC-001 for consistency and clarity:

- Replace the reference to a CDC number to a CDCR number;
- Add criminal sentence to the instructions and item 11, as an example of what can be challenged in a petition;
- Update the citations about the rules of court requiring use of the form on page 1 to include rule 4.551;
- Add new item 2b for a petitioner to indicate if they are on supervised release;
- Revise item 3 to refer to supervised release;
- Replace “ground” and “grounds” with “claim” and “claims” for consistency throughout the form;
- Renumber item 8 as item 7, and renumber subsequent items;
- Add “all issues raised” to items 7, 8, and 12;
- Add a question requesting the case number or opinion citation to items 12a and 12b, and reorder sub-items for consistency with items 7 and 8; and

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<sup>7</sup> Where a conviction has been entered and a sentence imposed, but an appeal is pending, the judgment is not yet final. (See *People v. Shabazz*, 237 Cal.App.4th 303, 312.)

<sup>8</sup> Conversely, the committees note that section 1473(f) states that a petition for writ of habeas corpus is appropriate after “judgment has been entered.”

- Add a note at the bottom of the form to alert petitioners to use an additional page for any answer on the petition that requires more space.

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

*Motion to Vacate a Conviction or Sentence* (form CR-187) allows a petitioner to file a motion for relief under sections 1016.5, 1473.7(a)(1), and 1473.7(a)(2), and *Order on Motion to Vacate Conviction or Sentence* (form CR-188) allows a court to grant or deny the requested relief.

***Changes to implement the Racial Justice Act in form CR-187***

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). The committees propose adding new item 5 to form CR-187 to incorporate claims under section 745(a).<sup>9</sup>

*Retroactivity and timeliness of the petition:* Section 745(j) added a phased-in retroactive application for claims under section 745(a).<sup>10</sup> Item 5a proposes corresponding check boxes for a moving party to indicate the timeliness of the petition under section 745(j). As discussed earlier in the proposal, the committees seek specific comments on whether the “judgment is not final” check box should be deleted or modified.

*Filed without undue delay:* The motion must be “filed without undue delay from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section or Section 745.” (§ 1473.7(c).) To incorporate these standards, the committees propose adding item 5c, discovery of violation, and 5d, supporting facts, for the moving party to provide the date the party learned of the grounds for relief and to describe the facts of their grounds for relief and why they did not bring a motion sooner.

*Additional claims under section 745:*

- Item 5b allows a moving party to indicate the grounds for relief under section 745(a).
- Item 5e allows a moving party to indicate if there is potential judicial conflict, and if so, to identify the judge (see § 745(b)).
- Item 5f allows a moving party to request a motion for disclosure, and describe the records or information needed and why they are needed (see § 745(d)).

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<sup>9</sup> Existing items 6-8, renumbered in this proposal as items 7-9, are also made applicable to motions for relief under section 745(a). These items allow a moving party to request: a hearing without their personal presence (§ 1473.7(d)), the court to vacate the conviction or sentence (§ 1473.7(e)(1)), and the withdrawal of a previously entered guilty or nolo contendere plea (§ 1473.7(e)(3)).

<sup>10</sup> Relief under section 745 applies to all judgments that are not final, and a motion to vacate a sentence or conviction under section 1473.7 may be filed as follows: (1) on or after January 1, 2023, due to potential or actual immigration consequences related to the sentence or conviction; (2) on or after January 1, 2025, for a felony conviction where judgment became final on or after January 1, 2015; (3) on or after January 1, 2026 for all felony convictions (§ 745(j).)

*Appointed counsel:* Effective September 21, 2022, form CR-187 was amended to add a request for counsel. This addition was based on *People v. Fryhaat* (2019) 35 Cal.App.5th 969, which held that there is a right to appointed counsel where an indigent moving party has set forth factual allegations stating a prima facie case for relief under section 1473.7. *Fryhaat* involved a motion for relief under section 1473.7(a)(1) claiming prejudicial error based on the moving party's inability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.

*Fryhaat* was decided before claims under section 745(a) were added to section 1473.7. The committees discussed whether the appointment of counsel request on form CR-187 should be limited to claims in 1473.7 that existed when *Fryhaat* was decided. However, the *Fryhaat* opinion implies broader applicability:

In light of the fact writs of habeas corpus and writs of coram nobis, and likely section 1016.5 motions to vacate, require court-appointed counsel for an indigent petitioner or moving party who has established a prima facie case for entitlement to relief, and given a section 1473.7 motion was intended to fill the gap left by the foregoing procedural avenues for relief, interpreting section 1473.7 to also provide for court-appointed counsel where an indigent moving party has adequately set forth factual allegations stating a prima facie case for entitlement to relief would best effectuate the legislative intent in enacting section 1473.7.

(*Id.* at § 983.)

Therefore, the committees propose that the appointment of counsel item on form CR-187 include claims under section 745(a).

### ***Changes to implement the Racial Justice Act in form CR-188***

The committees propose the following revisions to incorporate claims under section 745(a) into the order form CR-188:

- Add a check box to indicate the order is for a motion to vacate a conviction or sentence under section 1473.7(a)(3);
- Add a new item 5 for the judicial officer to order or deny relief requested under section 1473.7(a)(3) including options for the judicial officer to:
  - Grant or deny a request to waive personal appearance;
  - Find whether the motion was timely under section 745(j);
  - Find whether the motion was filed with undue delay;
  - Grant or deny a motion for disclosure;
  - Indicate which, if any, violations of section 745(a) occurred;

- Grant or deny the Moving Party’s request to vacate the conviction or sentence, indicate the relevant remedies granted on the form or refer to a minute order, and describe the basis for the ruling; and
- Make formatting and wording changes including adding headings and separating options to grant and deny into two labeled choices, and bolding keywords.

## **Alternatives Considered**

The committees decided to develop this proposal in anticipation of a significant increase in the number of requests for postjudgment relief due to the retroactive applicability of relief under section 745.

### ***Separate forms***

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 having fewer forms would be easier for self-represented petitioners to use.

### ***Guidance on what forms to use***

The committees considered adding information about which forms to use postjudgment. It is not clear whether the amendments to section 745(b) under AB 1118 eliminating the clause “when judgment is imposed” before the clause authorizing the filing of a petition for writ of habeas corpus or motion to vacate a conviction or sentence under section 1473.7 could be construed as allowing postjudgment claims to now also be filed as motions in the trial court, and pre-judgment claims to be filed as habeas petitions. The committees believe this issue needs to be clarified by the courts.

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

Section 745(c) states that “[i]f a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of [section 745(a)], the trial court shall hold a hearing.” A prima facie showing is defined in section 745(h)(2) as facts produced by the defendant that, if true, establish that there is a substantial likelihood that a violation of section 745(a) occurred. For purposes of section 745, a “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not. (§ 745(h)(2).)

Section 1473(f), relating to petitions for a writ of habeas corpus raising a claim under section 745(a), also refers to a prima facie showing but does not include a definition of this term or a cross-reference to section 745’s definition.

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 by the courts. As a result, both committees declined to incorporate the definition in section 745(h)(2) into rule 4.551. The committees intend to track and monitor the issue.

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

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. However, the committees seek specific comments on whether to consider rule amendments relating to the Racial Justice Act and death penalty-related habeas corpus proceedings and whether to limit the use of HC-001 to non-capital cases. The committees note that the rules for death penalty-related habeas corpus proceedings do not provide for using form HC-001 and that some of the requirements for such proceedings established by Proposition 66,<sup>11</sup> such as for appointment of counsel, are different than for other habeas proceedings.

### ***Relief as of January 1, 2026***

As of January 1, 2026, persons with a judgment for any felony conviction may seek relief under section 745. (§ 745(j)(5).) While form HC-001 and CR-187 are intended to be effective September 1, 2024, they currently include a check box for this category. As the committees anticipate the use of these forms by many self-represented litigants, the committees seek specific comments on whether to exclude this category until January 1, 2026, and at that time, whether the retroactivity check boxes should be further revised to include one catch-all check box regarding felony convictions.

### **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.

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<sup>11</sup> Proposition 66, the Death Penalty Reform and Savings Act of 2016, was approved by California voters on November 8, 2016. The act made a variety of changes to the statutes relating to review of death penalty cases in the California courts, many of which were focused on reducing the time spent on this review. Among other provisions, Proposition 66 effected several changes to the procedures for filing, hearing, and making decisions on death penalty-related habeas corpus petitions.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are the rules and forms written in a way that would be understandable to self-represented litigants?
- Does the proposal appropriately consider changes made to section 745 by AB 1118 (Stats. 2023, ch. 464)?
- 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))?
- 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?
- Should the committees consider rule amendments relating to the Racial Justice Act and death penalty-related habeas corpus proceedings? Should form HC-001 be limited to non-capital cases?
- 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 re-introduced in a future form proposal, effective January 1, 2026?
- 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?
- 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?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Cal. Rules of Court, rules 4.551, 8.385, and 8.386, at pages 15–19
2. Forms HC-001, CR-187, and CR-188, at pages 20–36
3. 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)
4. 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)
5. 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 would be 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 postjudgment 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 undecided 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).
- ~~(5)~~ (5)
  - (A) On filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.
- ~~(6)~~ (6) If the court fails to rule on the 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 the petition was filed and the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.
  - (ii) (B) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge or his or her 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 postjudgment 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)(35), 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 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 factual allegations were proved. If so, the court must issue an order to show cause.
- (2) An order to show cause is a determination that the petitioner has made a showing that he or she 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 postjudgment 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**

If an order to show cause is issued as provided in (c), the respondent may, within 30 days thereafter, file a return. Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding. The return must comply with Penal Code section 1480 and must be served on the petitioner.

**(e) (f) Denial**

\* \* \*

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

(1) Except as provided in (2), Wwithin 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**

The court must appoint counsel on the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus

proceeding challenging the underlying conviction. (*Charlton v. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if there is no public defender available, for indigents in criminal proceedings.

**Rule 8.385. Proceedings after the petition is filed**

(a)–(e) \* \* \*

**(f) Return to the reviewing court**

If the 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.~~

**(g) Appointment of counsel**

- (1) If the return is ordered to be filed in the Supreme Court or the Court of Appeal, the court in which the return is ordered filed 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.

**Advisory Committee Comment**

\* \* \*

**Rule 8.386. Proceedings if the return is ordered to be filed in the reviewing court**

(a)–(e) \* \* \*

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

- (1) An evidentiary hearing is required if, after considering the verified petition, the return, any traverse, 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.
- (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.

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

(g) \* \* \*

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

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

DRAFT  
Not approved by the Judicial  
Council  
12/7/2023

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

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

\_\_\_\_\_  
Petitioner  
  
vs.  
  
\_\_\_\_\_  
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





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,
  - (2)  You were sentenced to death,
  - (3)  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,
  - (4)  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
  - (5)  This petition is filed **on or after** January 1, 2026, and judgment is for a felony conviction.

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

If yes, please state the judge's name:

c. Do you want appointed counsel?  Yes, I cannot afford counsel  No

d. 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? \_\_\_\_\_

e. 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)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY  <b>DRAFT</b> Not approved by the Judicial Council 12/7/2023
<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:	FOR COURT USE ONLY  DATE: TIME: DEPARTMENT:

**MOTION TO VACATE CONVICTION OR SENTENCE**

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

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

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

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

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

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

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

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

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

b. **Supporting Facts**

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

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

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

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

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

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:

CASE NUMBER:

3. b. **Supporting Facts**

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

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

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

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

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

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

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

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

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

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

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

a. **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,
- (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.

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**5. b. GROUNDS 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 5(b) above on or about (date): \_\_\_\_\_

**d. Supporting Facts**

Tell your story. For each ground chosen above, explain the facts that support it and why you did not bring a motion on that ground sooner. Give details. (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.)

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:

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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):	FOR COURT USE ONLY  <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3> <h2 style="margin: 0;">11/27/2023</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: DATE OF BIRTH:	CASE NUMBER:
<b>ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE</b> <input type="checkbox"/> Pen. Code, § 1016.5 <input type="checkbox"/> Pen. Code, § 1473.7(a)(1) <input type="checkbox"/> Pen. Code, § 1473.7(a)(2) <input type="checkbox"/> <b>Pen. Code, § 1473.7(a)(3)</b>	FOR COURT USE ONLY  DATE: TIME: DEPARTMENT:

1. **FOR APPOINTMENT OF COUNSEL**
  - a.  The court **grants** the request for appointment of counsel.
  - b.  The court **denies** the request for appointment of counsel because the Moving Party has not shown (*choose all that apply*)
    - a prima facie case     indigency.
  
2. **FOR PENAL CODE SECTION 1016.5 RELIEF**
  - a.  **The court grants** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
  - b.  **The court denies** the Moving Party's request to vacate the judgment and to permit the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.
  
3. **FOR PENAL CODE SECTION 1473.7(a)(1) RELIEF**
  - a. **Request to Waive Personal Appearance (if applicable)**
    - (1)  The court finds good cause to **grant** the request that the court hold the hearing without the personal presence of the Moving Party.
    - (2)  The court **denies** the request that the court hold the hearing without the personal presence of the Moving Party.
  - b. **Timeliness**
    - (1)  The court **deems the motion timely** because the Moving Party did not receive, or acted with reasonable diligence after receiving, notice from immigration authorities.
    - (2)  The court exercises its discretion to **deem the motion timely.**
    - (3)  The court **deems the motion untimely and dismisses the motion** after a hearing (*People v. Alatorre* (2021) 70 Cal.App.5th 747).
  - c. **Vacatur of Conviction or Sentence**
    - (1)  The court **grants** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.
      - The court permits the Moving Party to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty.**
    - (2)  The court **denies** the Moving Party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error damaging the Moving Party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.

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#### 4. FOR PENAL CODE SECTION 1473.7(a)(2) RELIEF

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

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

##### b. Undue Delay

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

##### c. Vacatur of Conviction or Sentence

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

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

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

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

##### b. Timeframes

- (1)  The court finds that the motion **was filed in accordance with the timeframes** in Penal Code section 745(j).
- (2)  The court finds that the motion **was filed prematurely under the timeframes** 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.

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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:

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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)