Staff Memorandum 2023-06
Updates on Recent Law Changes and Related Matters: Preliminary Proposals

At its March 2023 meeting, the Committee discussed recent changes to California's criminal law, with a focus on sentencing reforms. Based on direction from the Committee at that meeting, this memorandum presents five preliminary staff proposals for further discussion and analysis by the Committee.

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Preliminary Staff Proposals

1. Create general resentencing procedures.

Summary Staff Proposal
Establish general procedures that apply to all resentencings.

Current Law
Each resentencing law sets forth its own procedures which are further developed by case law.

Background
For more than a decade, California has allowed thousands of incarcerated people to return to court to have their sentences reconsidered. However, there are no general procedures to follow for resentencings — and each new reform often comes with its own distinct rules — resulting in wide variation and inefficiency across the state in how resentencings are handled.

In contrast to California, retroactive sentencing reforms at the federal level have largely operated more smoothly despite encountering similar challenges to courts in California.[1] Part of the success in federal court was due to the appointment of counsel, which ensured people in prison had adequate

[1] Committee on Revision of the Penal Code, Staff Memorandum 2023-01, March 13, 2023, 17.

representation, and coordination among stakeholders, including the Federal Defender, the U.S. Attorney, and the district court.[2]

Panelists who appeared before the Committee described the varied effects statewide of resentencing laws that do not provide specific guidance. On one hand, general laws give counties discretion and flexibility to develop tailored policies that work best for the respective counties. However, without specific guidance, counties that were not used to collaboration experienced delays and confusion, piece-meal implementation, and procedures that were different from judge to judge.

A law specifying general procedures for resentencings would help resolve cases efficiently and consistently across the state. Such procedures should include:

- **Mandatory stakeholder meetings.** Stakeholders — including the district attorney's office, the public defender's office, the clerk's office, the presiding judge, the local jail, and a representative from CDCR — should be required to meet and decide on initial resentencing procedures and then hold regular meetings to address issues as they arise during implementation. A similar process occurred in San Diego County before the resentencing provisions of SB 483 went into effect and the collaborative process resulted in less appearances, less litigation, and less use of court resources and time.[3]

- **Specialized courts.** In some counties the presiding judge assigned one judge to hear all requests for resentencing, while in others the presiding judge assigned judges at random. As Judge Daniel Lowenthal explained to the Committee, judges may have different perspectives, perceptions of risk, or interpret the law differently before definitive guidance is provided by appellate courts.[4] He suggested that a centralized court streamlines the process and provides consistent results. Such specialization happens in other areas — such as drug courts, veterans courts, or behavioral health courts — where judges develop expertise on the law and common factual

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[2] See, e.g., In the Matter of Appointment of Counsel in Criminal Cases Potentially Affected by *Johnson v. United States,* 135 S. Ct. 2551 (2015), General Order No. 649, S. D. Cal., December 8, 2015; In re: First Step Act of 2018 (Dec. 21, 2018), Application of Fair Sentencing Act of 2010, Misc. Order, N. D. Cal., January 25, 2019 (amended April 27, 2020)

[3] See Submission of Matthew Wechter, Supervising Deputy Public Defender, San Diego County Department of the Public Defender, for March 17, 20203, Meeting of Committee on Revision of the Penal Code, 7.

[4] Committee on Revision of the Penal Code, Meeting on March 17. 2023, Part 1, 0:49:06-0:49:23.

issues and set clear case management policies.[5] This process may not work for all counties so a resentencing law should require the presiding judge to decide whether to centralize all resentencings in the county to one judge, a panel of judges, or at random, providing flexibility to counties while also promoting the efficient resolution of cases.

- **Appointment of counsel.** The most recently enacted resentencing laws have all required the appointment of counsel.[6] Counsel is critical to implementation – in addition to making legal arguments on novel issues of law, they are crucial to reviewing and obtaining mitigation materials. Any resentencing law should require the appointment of counsel for resentencing.

- **Coordination with CDCR.** Attorneys and their representatives must coordinate with CDCR to communicate with their clients and to gather important institutional records necessary for resentencing (i.e. the central file containing information about an incarcerated person's behavior and progress while in prison and any medical or mental health records). Attorneys have experienced lengthy delays getting these records and lack consistent communication with their incarcerated clients, which only delays court proceedings and increases a person's time spent in prison. In federal court, the First Step Act of 2018 contained a provision that required the Bureau of Prisons to "assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction,"[7] which eliminated delays in obtaining institutional records. Similar language should be added to the Penal Code.

- **Abstracts of judgment.** The abstract of judgment (AOJ), a written summary of the sentence, is created by court clerks and transmitted to CDCR, the sheriff, or probation so that they may administer the sentence. Current law provides that an abstract should be sent "forthwith," with no specific timeframe in the law.[8] CDCR regulations then provide another 5 days for CDCR to act on the AOJ.[9] CDCR cannot release someone until they receive an amended AOJ after resentencing, yet sometimes courts take several weeks to send them — and may not be allowed to do so electronically — resulting in people staying in custody longer than necessary. A new law could require that where the anticipated remaining

[5] Markus B. Zimmer, *Overview of Specialized Courts*, International Journal for Court Administration (Aug. 2009), 1–3.
[6] See, e.g., Penal Code §§ 1172.7(d)(5); 1172.75(d)(5); 1172.1(b)(1); 1172.6(b)(3).
[7] 18 U.S.C. § 3582(d)(2)(A)(iii).
[8] Penal Code § 1213.
[9] 15 Cal. Code Regs. § 3371.1(e)(2).

time to serve is less than 30 days, the AOJ must be submitted to CDCR electronically within 24 hours and CDCR must act on the AOJ within a similar amount of time.

- **Application to plea bargains.** Unless an exception is created by the Legislature, a sentence that was imposed following a plea bargain generally cannot be modified without the agreement of the prosecutor.[10] SB 483 resentencings and law-enforcement initiated resentencing under Penal Code § 11721.1 expressly allow resentencings in plea bargained cases without prosecutorial consent. Given that the vast majority of felony cases resolve with a plea bargain, a resentencing law should make clear that it applies retroactively to cases resolved by plea agreement.[11]

- **Clarity on type of hearing.** A resentencing law should also clarify whether a full resentencing hearing is required when a case comes back to the trial court, allowing courts to consider all recent ameliorative changes, or if the court is only limited to consider the present change. For example, in SB 483, the law provides that when a person is resentenced after removal of the 1 or 3 year prior, the court shall apply any other changes in law that reduce sentences.[12] A resentencing law should also clarify whether a person may waive the hearing or appear through remote technology.

Staff Proposal
The Committee should consider recommending a general procedure law as specified above that would apply to all resentencings.

2. **Apply the “nickel prior” reform retroactively.**

Summary Staff Proposal
Allow people incarcerated or under supervision with a 5-year “nickel” prior as part of their sentence to petition a court for a reduced sentence if the sentence was imposed before 2019.

Current Law
In 1982, Proposition 8 created a sentence enhancement that added five years to the sentence of anyone convicted of a “serious” offense who has a prior

[10] See *People v. Stamps*, 9 Cal.5th 685, 706 (2020).
[11] Judicial Council of California, 2023 Court Statistics Report — Statewide Caseload Trends, Table 8a.
[12] Penal Code § 1171(d)(2); *People v. Monroe,* 85 Cal.App.5th 393, 402 (2022).

conviction for a serious offense. Between 1986 and 2019, the Legislature prohibited courts from dismissing the "nickel prior" in the interests of justice.[13]

Background
In 2018, the Legislature restored judicial discretion to dismiss the nickel prior sentencing enhancement, which adds five years to the sentence for a current "serious" offense if the defendant has a prior conviction for a serious offense.[14] From 2015 to 2018, around 4.5% of all admissions to CDCR had a nickel prior enhancement.[15] After the restoration of judicial discretion to dismiss the enhancement began in 2019, the share of admissions dropped to 3.4% and continued dropping, with only 1.7% of admissions having a nickel prior in 2022.[16] Though other factors may have caused this decline, the restoration of judicial discretion appears to be associated with a drop in the number of nickel priors imposed on people sentenced to prison.

SB 1393, however, was not retroactive and did not allow people serving sentences which included the nickel prior to apply for a reduction of sentence.[17]

Staff Proposal
As the Committee has recommended for other changes to sentencing enhancements, the Committee should consider allowing people serving a sentence lengthened with a nickel prior that was imposed before 2019 to to apply for resentencing to allow a judge to determine whether the nickel prior should be dismissed in the interests of justice.

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[13] See California Statutes of 1986, Chapter 85 (amending Penal Code § 1385 and abrogating *People v. Fritz*, 40 Cal. 3d 227 (1985), which allowed dismissal of the enhancement under Penal Code § 1385) SB 1393 (Mitchell 2019).
[14] Penal Code § 667(a)(1). The list of "serious" offenses is in Penal Code § 1192.7(c). The "violent" offenses from Penal Code § 667.5(c) are generally also "serious" ones.
[15] See Committee on Revision of the Penal Code, Staff Memorandum 2023-01, March 13, 2023, 5.
[16] *Id.*
[17] Some people may have been eligible for a reduction through SB 483, which removed the 1 and 3 year sentence enhancements, and allows for the consideration of the entire sentence, including whether other sentence enhancements should continue to be imposed. See, e.g., *People v. Monroe*, 85 Cal.App.5th 393, 402 (2022).

3. Clarify that SB 81's updates to Penal Code § 1385 apply to strikes.

Summary Staff Proposal
Clarify that the sentencing discretion guidance created in SB 81 applies to a court's dismissal of a prior strike at sentencing.

Current Law
Penal Code § 1385 has long allowed judges to dismiss sentence enhancements "if it is in the furtherance of justice to do so."[18] Implementing a recommendation from the Committee, SB 81 (2021 Skinner) created further guidance for judges when exercising this discretion by creating a list of nine mitigating circumstances, any of which "weigh[] greatly in favor of dismissing the enhancement" unless the court finds that "dismissal of the enhancement would endanger public safety."[19] Appellate courts have uniformly held that SB 81 does not apply to prior strikes because strikes are an "alternative sentencing scheme."[20]

Background
California's Three Strikes law imposes longer prison sentences for people who have any "strike" priors, which are serious or violent felonies. And while the California Supreme Court has long held that courts retain discretion under section 1385(a) to dismiss a strike,[21] appellate courts — albeit in largely unpublished opinions — have held that the specific mitigating factors the trial court now must consider under section 1385(c) do not apply to strikes.[22]

Courts have reasoned that "enhancement" is a technical term in California law; but that the Three Strikes law is instead an "alternative sentencing scheme," so the reforms of SB 81 do not apply to strikes.[23] As one court noted, the Committee's initial report did not distinguish strikes from enhancements and did not exclude them from its recommendation.[24]

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[18] Penal Code § 1385(c)(1). See generally *People v. Superior Court (Romero)*, 13 Cal. 4th 497 (1996).
[19] The law further specifies that "'Endanger public safety' means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others." Penal Code § 1385(c)(2).
[20] *People v. Burke*, 89 Cal.App.5th 237, 244 (Third Appellate District 2023); *People v. Hempstead*, 2023 WL 3141009, *5 (Third Appellate District April 8, 2023); *People v. Oliveros*, 2023 WL 3108542, *9 (Fourth Appellate District, April 27, 2023); *People v. Pimentel*, 2023 WL 3220922, *3–*5 (Sixth Appellate District May 3, 2023); *People v. Poliquin*, 2023 WL 3367690, *3 (Third Appellate District May 11, 2023); *People v. Gomez*, 2023 WL 3402597, *3–*5 (Sixth Appellate District May 12, 2023); *People v. Gray*, 2023 WL 3593929, *2 (Third Appellate District May 23, 2023); *People v. Scott*, 2023 WL 3833259, *1–*3 (Fourth Appellate District June 6, 2023).
[21] *People v. Superior Court (Romero)*, 13 Cal. 4th 497 (1996).
[22] *Burke*, 89 Cal.App.5th at 244.
[23] *Id.*
[24] *Id.* at 233, n. 3.

This interpretation excludes a significant group of people from the clarity provided by SB 81. Strikes are the most common sentencing enhancements in California: In January 2022, approximately 36% of people in prison were serving a sentence enhanced by the Three Strikes Law with 28% (around 28,000 individuals) serving a term enhanced by a second strike and 8% (around 7,500 individuals) serving a term enhanced by a third strike.[25] People of color, particularly Black people, are overrepresented among people serving these sentences.[26]

Staff Proposal
The Committee should consider recommending that the Legislature clarify that SB 81 applies to prior strikes.

4. **Expand second-look resentencing.**

Summary Staff Proposal
Expand second look sentencing to allow any person who has served more than 15 years to request reconsideration of a sentence.

Current Law
CDCR, prosecutors, and other law enforcement personnel can request resentencing in any case at any time, but courts and incarcerated people cannot initiate these requests on their own.[27]

Background
In its 2020 Annual Report, the Committee recommended a universal second-look resentencing law that would allow any incarcerated person who had served 15 years to ask to be resentenced.[28] As Judge Daniel Lowenthal of Los Angeles County explained at the Committee meeting, "long sentences don't age well [and] evolving norms generally will render a proportion of prison sentences of one time period disproportionate in the next."[29]

California currently allows law enforcement officials to request resentencing in any case. For example, in Los Angeles County, as of February 2023, 55 people have been resentenced after a request from the prosecutor and 64 people have been resentenced after a request from CDCR.[30] Of the 96 people who have been released on time served, only one person has been rearrested on a felony

[25] Mia Bird et al, *Three Strikes in California*, California Policy Lab, Aug. 2022, 13.
[26] *Id.* at 27.
[27] Penal Code § 1172.1
[28] Other aspects of the Committee's recommendation around the current second-look sentence process were enacted as AB 1540 (2021 Ting).
[29] Committee on Revision of the Penal Code, Meeting on March 17. 2023, Part 1, 0:37:45–0:37:59.
[30] *Id.*, Part 2, 0:36:17–0:37:35.

charge.[31] Though this process is encouraging, statewide, only around 1,280 people have been resentenced, with more than 70% of those cases originating in referrals from CDCR.[32] And as Deputy District Attorney Robert Mestman of Orange County told the Committee, his office does not ever make recommendations for resentencing and instead relies entirely on recommendations from CDCR.[33]

Judges have a similar ability to reconsider a sentence, but that power is extremely limited as it exists for only 4 months after a sentence is imposed.[34]

Though no jurisdiction currently has a universal second-look law, Washington, D.C., allows people who have been incarcerated for more than 15 years and who were under the age of 25 at the offense to ask for resentencing.[35] In 2021, Maryland passed a law allowing people who were under 18 at the offense and who have served 20 years to ask for resentencing.[36] A similar age-based approach in California that limited eligibility to those under age 26 who have served at least 15 years would make around 12,000 people eligible for resentencing, with release only occurring after a judge determines the incarcerated person does not present a risk to public safety.[37]

As the Committee has noted before, convincing research shows that long prison sentences do not improve public safety while also having significant racial disparities.[38] An expansion of California's current second-look resentencing laws would be an important step in fixing that problem, while also creating significant cost savings for the state.

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[31] *Id.* and *id.* at 0:40:41–0:40:48.
[32] Data provided by CDCR shows 937 resentencings as of May 2023. A previous staff memo reported approximately 350 people had been resentenced as a result of prosecutor referrals. See Committee on Revision of the Penal Code, Staff Memorandum 2023-01, March 13, 2023, 10.
[33] *Id.* at 0:43:14–0:43:46.
[34] Penal Code § 1172.1(a)(1).
[35] See D.C. Council Passes Second Look Amendment Act of 2019, District of Columbia Corrections Information Council, May 19, 2019.
[36] Maryland Code of Criminal Procedure § 8-110.
[37] Committee on Revision of the Penal Code, Staff Memorandum 2023-01, March 13, 2023, 19.
[38] See, e.g., Committee on Revision of the Penal Code, 2020 Annual Report and Recommendations, 9–10, 67–68; 2021 Annual Report and Recommendations, 7–9. The Committee also devoted an entire meeting in June 2020 to the relationship between long prison sentences and public safety.

Staff Proposal
The Committee should consider the following ways to expanding second-look sentencing:

- Allow judges to reconsider a sentence at any time, not just within 4 months.[39]
- Allow a person who was under the age of 26 at the time of the offense and who has served 15 years to request reconsideration of a sentence.
- Allow any person who has served more than 15 years to request reconsideration of a sentence directly from the court. (The Committee made this recommendation in its 2020 Annual Report.)

Staff will also continue studying, including consulting with our research partners at the California Policy Lab, other categories of incarcerated people that may be appropriate for resentencing.

5. **Improve data access to support Racial Justice Act claims.**

Summary Staff Proposal
Expand data access for people bringing claims under the Racial Justice Act, by expanding the scope of existing reports by state entities, increasing access to probation and reports, and funding the Justice Data Accountability and Transparency Act.

Current Law
The Racial Justice Act (RJA) allows discovery from law enforcement agencies after a showing of "good cause,"[40] but many documents and data that are relevant to RJA claims are not reasonably accessible to people bringing such claims.

Background
The RJA allows two paths to relief: the first requires showing actual bias or animus while the second relies on a statistical showing of disparate treatment. The only RJA motions that have been successfully litigated so far were brought under the first path, which do not require extensive record collection and analysis like the statistics-based claims do.

[39] A pending bill in the Assembly, AB 600 (Ting), would provide judges with resentencing power "at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law."
[40] Penal Code § 745(d). See also *Young v. Superior Court of Solano County*, 79 Cal.App.5th 138, 144 (2022) ("good cause" is "a plausible case, based on specific facts, that any of the four enumerated violations of [the Racial Justice Act] could or might have occurred" and requires a court to balance additional factors).

Data collection and sharing practices vary by county and agency[41] and have created unnecessary barriers to bringing statistics-based claims. While the RJA provides for discovery from law enforcement agencies after a showing of "good cause,"[42] litigants may be prevented, including by unnecessary restrictions in current law, from obtaining the data needed to even make the initial showing of good cause. In addition, district attorneys or other law enforcement agencies may not collect the data requested or refuse to disclose it.[43]

Three categories of expanded access would help address these issues and further implement the RJA: (a) expanding the scope of data that is already publicly released; (b) amending current law to increase access to certain data if the request is related to a RJA claim; and (c) funding the Justice Data Accountability and Transparency Act (AB 2418 Kalra 2022) to support the collection and publication of data from prosecutors.

In addition to the proposals below, staff is continuing to study other ways of expanding access to data relevant to RJA claims, as well as discussing these proposals with stakeholders.

a. Expand the scope of publicly available data.

Some agencies already collect and release data that may support a claim under the RJA, but the data nonetheless remains unusable because of how it is presented to the public. These agencies can be directed to expand the scope of data released to the public in a usable format, which would assist both defense counsel and prosecutors in evaluating RJA claims.

- **California Department of Corrections and Rehabilitation.** CDCR has extensive data about people sent to state prison and regularly provides information to researchers and others who request it. Instead of requiring these individual requests, CDCR could provide more granular information about people who have been in their custody in a publicly-accessible format, similar to how the California Department of Justice makes raw

[41] See Department of Justice Research Center, Presentation for the Task Force to Study Reparations Proposals for African Americans Public Hearing, March 3, 2023.
[42] Penal Code § 745(d). See also *Young v. Superior Court of Solano County*, 79 Cal.App.5th 138, 144 (2022) ("good cause" is "a plausible case, based on specific facts, that any of the four enumerated violations of [the Racial Justice Act] could or might have occurred" and requires a court to balance additional factors).
[43] The Orange County District Attorney recently refused such a request for felony diversion records, asserting the information was exempt as attorney work product. See *Chicanxs Unidxs de Orange County v. Spitzer*, Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Orange County Superior Court, Case No. 30-2022-01291297-CU-WM-CJC, Oct. 18, 2022.

data available for many of their statistical reports. Another potentially relevant model is North Carolina, which makes decades of detailed information about its prison population publicly available.[44] While CDCR has taken important first steps by creating publicly-accessible data dashboards, the information available in these resources is often at too high a level to support sophisticated analyses.[45]

In addition, CDCR should begin to track and make public information about the statutory special circumstances that lead to the imposition of life without parole and death sentences.[46] The special circumstances are typically included on the court paperwork that CDCR receives, but CDCR does not track this information.

- **Judicial Council**. By statute, the Judicial Council collects data on criminal case dispositions statewide according to the race and ethnicity of the defendant.[47] An annual report to the Legislature measures conviction rates, conviction offense level, prison sentencing rates, and prison sentence length.[48] While this data is a helpful starting point, the analysis only reports statewide information and is of limited use in assessing county-based disparities, which is necessary for an RJA claim. The reports also aggregate information on different offenses and does not disaggregate these categories by race or ethnicity, limiting its utility for RJA claims.

  Since the Judicial Council already collects this information, they could be directed to report county-level data and to disaggregate dispositions by offense type and to make raw data publicly-accessible.

- **California Department of Justice**. The Department of Justice's OpenJustice data portal provides public access to a range of information about arrests and homicides in California. But the data is aggregated at a high level. For example, arrest data is available only at the level of whether an offense is a violent, property, drug, or sex offense — information that is too generalized to be relevant to most RJA claims.

[44] North Carolina Department of Adult Correction, Criminal Offender Searches.
[45] Offender Data Points and CDCR Recidivism dashboards <public.tableau.com/app/profile/cdcr.or>
[46] See Penal Code § 190.2(a).
[47] Penal Code § 1170.45.
[48] See, e.g., Judicial Council of California, *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* (November 2021).

The Department of Justice has more granular information and could be directed to make more raw data publicly available.[49]

b. Expand access to existing data for attorneys investigating an RJA claim.

In each of the categories of information described below — probation reports and police reports — existing law allows some access to the reports but only for a limited time. The information contained in these reports is often highly detailed and potentially of great relevance in RJA claims. But because these reports can also contain private information, greater access to them should be limited to attorneys investigating or litigating an RJA claim.

- **Probation/presentence reports.** These reports, which are required to be compiled before sentencing,[50] contain detailed information about individual cases. Under existing law, the entire report is publicly available for 60 days after a case concludes.[51] After that, courts consider requests for access on a case-by-case basis. One appellate court has held that anyone seeking these reports must provide notice to the subject of each report,[52] an impossible task for almost any criminal defendant or researcher seeking multiple reports to compare conviction or sentencing outcomes.

  The Penal Code could be amended to require the release of probation reports to attorneys investigating or litigating an RJA claim and with either a protective order or redactions as specified by a court.

- **Police reports**. Similar to probation reports, police reports and other law enforcement records contain detailed information about particular offenses that may be extremely relevant to RJA claims. The California Public Records Act (CPRA) covers law enforcement records, but appellate courts have held that only records about "contemporaneous police activity" are covered.[53] Recently, one appellate court upheld a county's denial of a request to provide law enforcement records because the arrest

[49] While there is an existing avenue for researchers to request more detailed information, many report that that process takes too long, and attorneys investigating or litigation RJA claims may be denied access because they are not researchers. Penal Code § 13202(a). See also Mikaela Rabinowtiz, Robert Weisberg, & Lauren McQueen Pearce, The California Criminal Justice Data Gap, Stanford Criminal Justice Center, April 2019, 10–11.
[50] Penal Code § 1203(b).
[51] Penal Code § 1203.05(a).
[52] *People v. Connor*, 115 Cal.App.4th 669 (2004).
[53] *Kinney v. Superior Court*, 77 Cal.App.5th 168 (2022); *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal.App.4th 588 (1993).

information the petitioner sought was 11 months old at the time it was requested.[54]

The law could be amended to access to non-contemporaneous information from law enforcement if it is sought by an attorney investigating or litigating an RJA claim.

c. Fund the Justice Data Accountability and Transparency Act (AB 2418).

The Justice Data Accountability and Transparency Act (AB 2418 (Kalra 2022)) created new obligations for prosecutors to collect and disclose data to the Department of Justice, which would, among other responsibilities, publish reports about the data.[55] The law specifies more than 50 data elements, including demographic information about defendants and victims, charging information, plea offers, and case dispositions.[56]

But the changes made by AB 2418 are not yet in effect and only become operational upon an appropriation by the Legislature.[57] In addition, data collection would not begin until 2027. However, if funded, the extensive data that would be collected would significantly enhance transparency and public access to data, thus supporting RJA claims.

Staff Proposal

The Committee should consider recommending expanded data access as specified and funding the Justice Data Accountability and Transparency Act.

Conclusion

Staff look forward to discussing the proposals presented in this memorandum.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel

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[54] *Kinney v. Superior Court*, 77 Cal.App.5th 168 (2022).

[55] Penal Code §§ 11370(e); (b)(1)(E). The law also requires the creation of a Prosecutorial Transparency Advisory Board, which includes as a member the chair of the Committee on Revision of the Penal Code. Penal Code § 11370(b)(1)(F)(v).

[56] Penal Code §§ 11370(e).

[57] Penal Code § 13370(c)(1).