

Important Developments in the 2026-2027 Edition

This edition includes the following important developments: The California Legislature enacted new legislation in a number of areas impacting criminal law motions, including the following.

- Effective January 1, 2026, the Legislature, by way of AB 1071, indicated a defendant/petitioner has the right to “file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of [the California Racial Justice Act, Penal Code § 745 (RJA)] in the possession or control of the state.” (Penal Code § 745(d).) An uncodified portion, AB 1071 § 1(b), stated, “The Legislature also intends that individuals must be afforded access to a broad range of relevant discovery to develop and support their potential RJA claims. Otherwise, they are left in the impossible position of having their claims rejected for want of the very data they seek. This is antithetical to the RJA.”
- AB 1071 also amended the habeas corpus statute with respect to RJA claims (Penal Code § 1473), including to state, “(e)(5) The [RJA] 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 pleads a plausible allegation of 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.”
- Pursuant to AB 321, effective January 1, 2026, the Legislature expanded a judge’s authority to reduce a wobbler to a misdemeanor. Under the new version of Penal Code § 17(b)(5)(A), a judge can reduce a wobbler to a misdemeanor at any time prior to trial, whereas previously the power to reduce a wobbler to a misdemeanor prior to trial was required to be exercised at or before a preliminary hearing.
- Effective January 1, 2026, pursuant to SB 281, a defendant must now be given the following verbatim advisement when pleading guilty or no contest: “If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the

consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” (Penal Code § 1016.5(a).)

- Pursuant to AB1036, Penal Code § 1054.9, which governs post-conviction discovery, has been changed to allow discovery in all felony cases resulting in a sentence of one year or more in incarceration, and has expanded the categories of discovery materials to include materials available at the time of the original trial, irrespective of whether the materials were discoverable at the time of trial. The amended section now explicitly authorizes disclosure of the prosecutor’s jury selection notes.

Appellate opinions discussed in this edition include the following.

- The California Supreme Court’s new bail opinion, *In re Kowalczyk*, 19 Cal.5th 593, 608, 343 Cal.Rptr.3d 680, 587 P.3d 1205 (Cal. 2026), elaborating on its landmark *In re Humphrey*, 11 Cal.5th 135, 276 Cal.Rptr.3d 232, 482 P.3d 1008 (2021), opinion.
- The Court of Appeal in *People v. Benson*, 110 Cal.App.5th 1068, 1081, 331 Cal.Rptr.3d 911 (2025) held that a court has the discretion to consider an oral motion to continue.
- *Hernandez v. Superior Court*, 114 Cal.App.5th 684, 687, 337 Cal.Rptr.3d 212 (2025) elected to adhere to the test in *Burgos v. Superior Court*, 206 Cal.App.4th 817, 142 Cal.Rptr.3d 133 (2012), used to determine when a continuance may be granted when a trial is “in progress.”
- The Court of Appeal in *Cain v. Superior Court*, 110 Cal.App.5th 639, 648, 331 Cal.Rptr.3d 806 (2025), granted a writ petition and ordered the trial court to vacate an order recusing a public defender, determining there was “no substantial evidence of an actual or potential conflict of interest—at least not one grounded in anything more than speculation.”
- The Court of Appeal in *People v. NavaAdame*, 116 Cal.App.5th 1, 339 Cal.Rptr.3d 34 (2025), held, for purposes of *Miranda*, an interrogation which is noncustodial at the outset can eventually become custodial.
- The Court of Appeal in *People v. Brown*, 111 Cal.App.5th 384, 387, 332 Cal.Rptr.3d 763 (2025) held that the fact that the defendant violated probation prior to being sent to

prison does not disqualify the defendant from Penal Code § 1203.4 relief.

- *People v. Murphy*, 116 Cal.App.5th 249, 252, 339 Cal.Rptr.3d 132 (2025), agreed with the defendant’s argument that Penal Code § 1203.4(c)(3)(C) prohibits a court from relying on unpaid restitution to deny a request to expunge a conviction.
- The Court of Appeal in *People v. Seigler*, 116 Cal.App.5th 596, 601, 339 Cal.Rptr.3d 455 (2025), held that the pendency of a defendant’s application for mental health diversion under Penal Code § 1001.36 may constitute good cause to continue a trial.
- *People v. S.H.*, 116 Cal.App.5th 1064, 1067, 339 Cal.Rptr.3d 813 (2025), held that, for purposes of moving to vacate a conviction for crimes which were the “direct result” of being a victim of partner or sexual violence (Penal Code § 236.15), the crime of possession of child pornography (Penal Code § 311.11(b)) was not the “direct result” of sexual abuse the defendant had suffered.
- Court of Appeal opinions discussing discovery under the RJA included the following: *McDaniel v. Superior Court*, 111 Cal.App.5th 228, 244, 332 Cal.Rptr.3d 667 (2025) (a sufficient showing warranting ordering discovery may be made even if a defendant does not provide case-specific facts, so long as it is based on “statistical facts relevant to the charges and individuals involved,” and “a minimally plausible basis exists to grant discovery.” *Gonzales v. Superior Court*, 108 Cal.App.5th Supp. 36, 64, 329 Cal.Rptr.3d 449 (2024) (countywide statistics may be sufficient to order discovery). *People v. Superior Court (Lalo)*, 114 Cal.App.5th 707, 714, 337 Cal.Rptr.3d 205 (2025) (statewide statistics, not focused on county where crime occurred, held to be insufficient to order discovery).
- The Courts of Appeal in *McIntosh v. Superior Court*, 110 Cal.App.5th 33, 46, 331 Cal.Rptr.3d 301 (2025) and *In re Lynex*, 118 Cal.App.5th 756, 763, 341 Cal.Rptr.3d 845 (2026), held counsel must be appointed for a defendant filing an RJA habeas corpus petition, so long as a “plausible allegation of a violation of [the RJA] is made.”
- Opinions determining whether RJA relief was required included the following: *People v. Wilson* (2025) 111 Cal.App.5th 1020, 1025-1026, 333 Cal.Rptr.3d 327 (2025) (defense counsel’s failure to object to the prosecutor’s use of the term “gorilla pimp” was held to not constitute ineffec-

tive assistance of counsel violating the RJA, because the term was commonly used in the business of sex trafficking and “[a]t no time did the prosecutor compare appellant to an actual gorilla”). *People v. Midell*, 113 Cal.App.5th 1060, 1065, 336 Cal.Rptr.3d 537 (2025) (the defense attorney comparing his Black client to “an animal” did not violate the RJA, because defense counsel’s comparison was “part of a tactically developed defense theme designed to negate the intent elements of the most serious offenses charged”). *People v. Wagstaff*, 111 Cal.App.5th 1207, 1221, 333 Cal.Rptr.3d 612 (2025) (defendant’s counsel’s failure to object when the court during sentencing referred to the defendant, who was Black, as “a strong young buck,” was held to forfeit an argument the on appeal that the RJA was violated, and no ineffective assistance of counsel was found, because defense counsel may have decided not to object for a “rational tactical reason”).

- The Court of Appeal in *Harmon v. Superior Court*, 117 Cal.App.5th 1236, 1243, 341 Cal.Rptr.3d 113 (2026), held that, when counsel is required to be appointed for an indigent defendant asserting an RJA violation in a habeas corpus petition, the Public Defender’s Office cannot be forced to represent the defendant over the Public Defender’s objection.
- Opinions discussing motions to vacate under Penal Code § 1473.7 included the following. *People v. Padron*, 109 Cal.App.5th 950, 960, fn. 1, 330 Cal.Rptr.3d 798 (2025) (to establish what advice, or lack thereof, was provided by the attorney, a defendant can rely on a declaration from the attorney, or the defendant’s own declaration as corroborated by his attorney’s notes). *People v. Lopez*, 83 Cal.App.5th 698, 713-714, 299 Cal.Rptr.3d 701 (2022) (to establish prejudice, the defendant must convince the judge hearing the Penal Code, § 1473.7 motion that the defendant would have insisted on a trial if the defendant had known the defendant would have been deported if convicted). *People v. Benitez-Torres*, 112 Cal.App.5th 1252, 1270, 335 Cal.Rptr.3d 302 (2025) (a defendant can succeed in having a motion granted if the defendant persuades the judge the defendant would have litigated a motion to suppress evidence had the defendant known of the immigration consequences).

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