Berkeley Law | Criminal Law & Justice Center

August 14, 2025

The Honorable Chief Justice Patricia Guerrero
and the Honorable Associate Justices of the
Supreme Court of the State of California
336 McCallister St.
San Francisco, CA 94102

Re: Amicus curiae letter brief from Criminal Law & Justice Center in *Ricky Jay Lisby v. Contra Costa County Superior Court* [Superior Court Case No. 26008; First District Court of Appeal Case No. A173650; Supreme Court Case No. S292094]

To the Honorable Chief Justice and the Associate Justices of the California Supreme Court:

The Criminal Law & Justice Center at UC Berkeley School of Law ("CLJC") submits this letter brief as amicus curiae in support of Petitioner/Defendant Mr. Ricky Jay Lisby.[1] This case raises exceptionally important questions warranting guidance from this Court on review of restrictive court policies that arbitrarily limit judicial discretion in resentencing proceedings and threaten to undermine the Legislature's express commitment to equity and due process in California's criminal justice system. Assembly Bill 600 represents a landmark reform designed to eliminate sentencing disparities by expanding judicial authority to address unjust sentences. Review is necessary to ensure that well-intentioned administrative policies do not frustrate the Legislature's clear mandate for individualized, equitable resentencing procedures.

I. STATEMENT OF INTEREST

CLJC is a leading research institution dedicated to advancing criminal justice reform and sentencing equity throughout the legal system. Our scholarship appears in prestigious academic publications including Boston College Law Review, Wake Forest Law Review, and Berkeley Journal of Criminal Law, to name a few. CLJC's national conferences have garnered significant media coverage, including recognition from the Wall Street Journal. We combine rigorous research with practical advocacy, having spearheaded class action litigation and established strategic partnerships with local government agencies, including District Attorney offices, to

[1] No party or counsel for any party in the pending case authored this letter in whole or in part or made a monetary contribution intended to fund the preparation or submission of this letter. No person or entity other than amici or their counsel made a monetary contribution intended to fund the preparation or submission of this letter.

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directly address sentencing disparities. Affiliated with UC Berkeley School of Law, CLJC operates independently in its research and advocacy efforts. The University of California is not a party to this brief.

CLJC has a strong interest in the proper interpretation and implementation of AB600 and other resentencing laws that aim to promote equity and due process in California's criminal justice system. Our work includes direct engagement in resentencing matters, working collaboratively with District Attorney partners, Public Defender offices, and other agencies to ensure equitable implementation of resentencing statutes that supports defendants' rights to due process. This case presents a critical opportunity for this Court to clarify that local court policies cannot undermine the Legislature's intent in passing AB600 to expand judicial discretion and promote equity in resentencing. The Contra Costa County Superior Court's policy limiting consideration of Penal Code section 1172.1 motions only to defendants who have other pending matters fundamentally contravenes AB600's purpose and violates defendants' constitutional rights. Amici urges the Court grant review in this matter in order to promote equity in the application of Penal Code section 1172.1.

II. AUTHORITY FOR PERMITTING THIS AMICUS LETTER

Amicus curiae letters like this are procedurally proper. California Rules of Court, rule 8.500 subdivision (f) permits filing of amicus briefs in support of petitions for review in the Supreme Court. This Court's consideration of amicus perspectives is particularly appropriate here given the statewide implications of the issues presented and the need for uniformity in implementing AB600. On this basis, amici respectfully requests the Court consider this amicus letter brief in deciding whether to grant review.

III. ARGUMENT

A. THE CONTRA COSTA POLICY CONTRAVENES THE LEGISLATIVE INTENT OF AB600

i. AB600 Was Designed to Expand Judicial Discretion and Promote Equity

AB600 represents a paradigm shift in California's approach to post-conviction relief. The Legislature's intent in enacting AB600 is clear. Section 1 of AB600 expressly declares that "courts have full discretion" in resentencing proceedings pursuant to Section 1172.1 of the Penal Code." (Assembly Bill No. 600 (2023-2024 Reg. Sess.; Stats. 2023, ch. 446, § 1(b).) The Legislature further declared its intent "to create equity and due process in resentencing" and "to

eliminate disparity of sentences and to promote uniformity of sentencing." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Assem. Bill No. 600, p. 5; § 1172.1, subd. (a)(2).) This expansive grant of judicial discretion was specifically designed to remedy the restrictive interpretation of earlier resentencing statutes while ensuring that such proceedings operate within constitutional parameters.

AB600's legislative intent provision also explicitly states that the law was designed "to provide remedies that ameliorate discriminative practices in the criminal justice system, including discrimination in seeking or obtaining convictions or imposing sentences." (Assm. Bill No. 600 (2023-2024 Reg. Sess.; Stats. 2023, ch. 446, § 1(c).) This reflects a direct connection to the goals of the California Racial Justice Act and demonstrates the Legislature's commitment to addressing systemic inequities through expanded resentencing opportunities. Mr. Lisby's petition implicates these goals .

ii. The Contra Costa Policy Directly Conflicts with This Legislative Purpose

The Superior Court's policy restricts individual judges' authority to consider defendant-initiated section 1172.1 requests to only those cases where defendants have another matter pending before the court. (Petition for Review [herein "Petition"], at p. 9.) This limitation directly conflicts with AB600's express grant of "full discretion" to courts in resentencing proceedings.

As this Court recognized in *People v. Chavez* (1980) 26 Cal.3d 334, 346, "The exercise of the court's discretion... should not have been restricted by an inflexible rule, but rather should have rested upon consideration of the particular facts and interests involved in the case before it." (Petition, at p. 21, citation omitted.) The same principle applies here with even greater force, given AB600's explicit legislative directive expanding judicial discretion.

The policy is particularly problematic because it creates an irrational distinction between similarly situated defendants. Consider two defendants with identical criminal histories, sentences, and rehabilitative records. Under the Contra Costa policy, one defendant receives consideration of their section 1172.1 petition solely because they happen to have a separate resentencing petition pending, while the other is denied any consideration whatsoever. (Petition, at pp. 27-28.) This arbitrary classification bears no relationship to AB600's goals of promoting equity and eliminating sentence disparities.

B. THE POLICY UNDERMINES JUDICIAL DISCRETION IN VIOLATION OF CONSTITUTIONAL PRINCIPLES

i. Individualized Discretion Is the Cornerstone of California Sentencing Law And is Essential to AB600's Equity-Promoting Purpose

California law has long recognized that judicial discretion in sentencing must be exercised on an individualized, case-by-case basis. As established in *People v. Tenorio*, "[w]hen an individual judge exercises sentencing discretion, he exercises a judicial power which must be based upon an examination of the circumstances of the particular case before him." (*People v. Tenorio* (1970) 3 Cal.3d 89, 95.) This court then later surmised in *People v. Superior Court (Harris)* (1977) 19 Cal.3d 786, 796, judicial discretion means "sound judicial discretion enlightened by intelligence and learning, controlled by sound principles of law... free from partiality, not swayed by sympathy or warped by prejudice." (Petition, at p. 23, citations omitted.) This principle applies with equal force to resentencing proceedings under section 1172.1.

Yet, Contra Costa policy violates this fundamental principle by imposing a "fixed policy" that prevents individual judges from exercising case-specific discretion. (*People v. Chavez*, supra, 26 Cal.3d at p. 346.) Courts cannot "adopt local rules or procedures that conflict with statutes" or are "inconsistent with the Constitution or case law." (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1351; Petition, at p. 23.)

Here, the Legislature specifically chose to expand judicial authority beyond the previous 120-day limitation, recognizing that meaningful equity in sentencing requires ongoing judicial oversight. As the California Supreme Court Honorable Justice Evans cautioned in *Baker v. Superior Court*, "any policy that would interfere with a sitting sentencing judge's ability to receive notice of, or to act upon, a defendant-initiated invitation to recall and resentence under section 1172.1, subdivision (a)(1) would raise significant concerns." (*Baker*, 2024 WL 4379679, at *1 (conc. statement of Evans, J.).) Unfortunately, such a policy was implicated in Mr. Lisby's case.

ii. The Policy Interferes with Statutory Authority

As Defendant Lisby points out, neither Penal Code section 1171 nor section 1172.1 authorizes superior courts to adopt policies that restrict judges' statutory discretion to consider resentencing petitions. (Petition, at p. 23.) While section 1171 permits courts to develop plans for "fair and efficient handling of all postconviction proceedings," it cannot be used to "adopt policies that interfere with individual judges' authority to consider resentencing requests authorized by statute." (Petition, at p. 22.) Notably, the section 1171 mandate requires that any plan be both "fair" and "efficient." (§ 1171, subd. (b)) The Contra Costa policy fails this test because it sacrifices fairness for supposed efficiency, creating an arbitrary system that denies similarly situated defendants equal treatment. While it is understandable that Contra Costa would believe foreclosing some petitioners from having a hearing saves judicial economy, the policy is fundamentally unfair and in turn creates systemic dysfunction. In enacting AB600, the Legislature was not concerned about judicial economy in as much as it was about expanding the use of judicial resources to create due process and equity.

Further, AB600 was enacted as part of a comprehensive framework of resentencing laws designed to work together harmoniously. The policy disrupts this integration by creating artificial barriers between different types of post-conviction relief. The Legislature's intent that section 1172.1 proceedings should "apply any changes in law that reduce sentences or provide for judicial discretion" (§ 1172.1, subd. (a)(2)) contemplates a holistic approach to resentencing that considers all applicable relief mechanisms. The Contra Costa policy undermines this comprehensive approach by arbitrarily linking access to one form of relief with the existence of another.

C. THE POLICY VIOLATES EQUAL PROTECTION AND FAILS CONSTITUTIONAL SCRUTINY

The Contra Costa policy establishes a two-tiered system that violates both federal and state equal protection principles by creating arbitrary classifications among similarly situated defendants. This constitutional violation is particularly egregious because it operates within the realm of fundamental liberty interests—the right to challenge one's continued incarceration. (*See Hicks v. Oklahoma* (1980) 447 U.S. 343, 346; *Kentucky Dept. of Corrections v. Thompson* (1989) 490 U.S. 454, 460-463 [recognizing liberty interests protected by federal constitutional principles of due process may be created by state action]; Petition, at pp. 32-33.)

i. The Policy Creates Arbitrary Classifications Without Constitutional Justification

The policy divides defendants seeking section 1172.1 relief into two classes: those with coincidental pending matters who may receive judicial consideration, and those without such matters who face categorical exclusion. (Petition, at p23.) This distinction fails the most basic constitutional test because it "rest[s] on grounds wholly irrelevant to the achievement of the state's objective." (*Reed v. Reed*, (1971) 404 U.S. 71, at pp. 75-76.)

The Supreme Court's analysis in *Reed* is directly applicable here. Under rational basis review, "a classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." (*Id.*, at pp. 75-76; Petition, at p. 29.) The Supreme Court in *Reed* specifically rejected "administrative efficiency" as sufficient justification for "the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause." (*Id.* at p. 76.) Just as *Reed* rejected administrative convenience as justification for gender-based preferences in estate administration, the Contra Costa policy cannot survive scrutiny when it prioritizes supposed efficiency over the fundamental principle that "all persons similarly circumstanced shall be treated alike." (*Id.* at p. 76.)

Here, the distinction drawn by the policy is "completely arbitrary and irrational" and "bears no conceivable relationship with the Legislature's goals in passing" AB600. (Petition, at p. 28.) The policy cannot survive even rational basis scrutiny because it creates unequal treatment without any legitimate justification related to AB600's purpose of promoting equity and uniformity in sentencing.

ii. The Policy Particularly Harms Defendants Most in Need of Relief

The arbitrary nature of the Contra Costa policy creates perverse outcomes that disproportionately harm the most vulnerable defendants. Those with the resources and legal sophistication to navigate the system can surpass the "pending matter" requirement by filing companion petitions, while pro se defendants and those with limited legal representation are effectively barred from relief.

This disparity directly contradicts AB600's express connection to California Racial Justice Act principles and the Legislature's commitment to "ameliorate discriminative practices in the criminal justice system." (Assm. Bill No. 600 (2023-2024 Reg. Sess.; Stats. 2023, ch. 446, § 1(c).) Rather than promoting equity, the policy entrenches existing disparities by advantaging defendants with superior legal resources. AB600's connection to the California Racial Justice Act principles demonstrates the Legislature's recognition that resentencing laws must be

implemented in ways that promote, rather than undermine, equity and equal treatment. The Contra Costa policy does the opposite.

D. THE POLICY DOES NOT ACHIEVE JUDICIAL EFFICIENCY AND CREATES SYSTEMIC DYSFUNCTION

Contrary to any supposed efficiency benefits, the Contra Costa policy actually undermines judicial efficiency by encouraging the filing of frivolous post-conviction relief motions. Defendants who would otherwise file straightforward section 1172.1 petitions are now incentivized to file additional resentencing or post-conviction motions—regardless of their merit—simply to gain access to section 1172.1 review through this "back channel" approach.

This creates additional work for courts, wastes judicial resources, and clogs the system with potentially meritless filings. A defendant might file a section 1172.6 petition with little chance of success solely to create the "pending matter" necessary to obtain consideration of their section 1172.1 request. (*see* Petition, at p.28.) This perverse incentive structure contradicts any efficiency justification for the policy.

Moreover, the policy forces defendants and their counsel to engage in procedural gamesmanship rather than focusing on the substantive merits of their resentencing claims. In other words, the policy transforms what should be a straightforward resentencing process into a procedural obstacle course. This undermines the dignity of the judicial process and contradicts AB600's goal of creating a fair and straightforward path to resentencing relief.

Perhaps most troubling, the policy creates a system where a defendant's access to constitutional rights depends entirely on the happenstance of which county handled their case. This geographic lottery violates basic principles of legal uniformity and equal justice under law. The Legislature could not have intended that AB600's implementation would vary so dramatically based on county-specific policies that lack any basis in the statutory text. Such disparate implementation threatens the rule of law and undermines public confidence in the criminal justice system's fairness and consistency.

IV. CONCLUSION

The Contra Costa County Superior Court's policy restricting consideration of defense-initiated section 1172.1 petitions represents a fundamental misapplication of AB600 that threatens the statute's core purpose of expanding access to resentencing relief. This policy

violates the express legislative intent of AB600, contravenes established principles of judicial discretion, and denies defendants their constitutional rights to due process and equal protection.

More broadly, this case illustrates the critical need for this Court's guidance to ensure that AB600 is implemented uniformly across California in a manner that advances, rather than undermines, the Legislature's goals of promoting equity and eliminating disparities in sentencing. The stakes extend far beyond Mr. Lisby's individual case to encompass the rights of thousands of California defendants who seek meaningful access to the relief that AB600 was designed to provide.

This Court should grant review to establish clear standards for AB600 implementation that prevent local courts from adopting policies that contradict statutory text and legislative intent. Only through such guidance can the promise of AB600—to create a fair and equitable system of resentencing relief—be fully realized.

Respectfully submitted,

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PROOF OF SERVICE

I, Andrea Crider, am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is University of California, Berkeley, Berkeley Law West, Law Building, Berkeley, CA 94720-7200. My email address is andreacrider@berkeley.edu. On the date indicated below, I caused to be served the foregoing document described as:

Amicus curiae letter brief from Criminal Law & Justice Center in *Ricky Jay Lisby v. Contra Costa County Superior Court* [Superior Court Case No. 26008; First District Court of Appeal Case No. A173650] on the interested parties in this action by causing a true and correct copy of the above-described document(s) to be transmitted from an Electronic Filing Service Provider (EFSP) on the date listed below:

I further caused the same the foregoing document(s) to be placed in theUnited States mail, with postage thereon fully prepaid, for delivery by the United States Postal Service to the following recipients:

Attorneys for Petitioner/Defendant: Jeremy Price Rebecca Brackman Ellen McDonald Contra Costa County Public Defenders 800 Ferry Street Martinez, CA 94553 jeremy.price@pd.cccounty.us	Office of the Attorney General: sfagdocketing@doj.ca.gov	Contra Costa County District Attorney: appellate.pleadings@contracostada.org
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on _August 14, 2025, at __Berkeley_, California.

Andrea Crider

Andrea Crider

Signature