GENERAL OFFICE MEMORANDUM 18-104

TO: ALL DISTRICT ATTORNEY PERSONNNEL

FROM: JOHN K. SPILLANE
Chief Deputy District Attorney

SUBJECT: HABEAS CORPUS PETITIONS SEEKING A *PEOPLE V. FRANKLIN* (2016) 63 Cal.4th 261 SENTENCE MITIGATION HEARING

DATE: JULY 24, 2018

## BACKGROUND INFORMATION

Recent United States and California Supreme Court ("CSC") decisional law, together with implementing statutes, permit certain youthful, incarcerated offenders the opportunity for parole consideration at a Youth Offender Parole Hearing ("YOPH") long before the inmates would otherwise be eligible for parole. Consequently, and with increasing frequency, inmates who committed their offenses when they were 25 years or younger and are serving at least a determinate term of 15 years, or inmates serving a life without parole ("LWOP") sentence for an offense committed before the age of 18, are petitioning the Court of Appeal and the Superior Court for a post-conviction sentence mitigation hearing. The general outlines of the inmates' eligibility for a YOPH and the hearings are described in Penal Code sections 3051, 3046, subdivision (c), 4801, subdivision (c);[1] and *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin.*)

The CSC's decision in *Franklin* was founded upon earlier decisions of both the United States and California Supreme Courts which have limited the circumstances under which a juvenile can be sentenced to either LWOP or *de facto* LWOP, i.e., a sentence that is so long a youthful offender is unlikely to be eligible for parole during his or her natural life expectancy.[2]

While affirming Franklin's sentence, the CSC nevertheless returned his case to the Court of Appeal with instructions for that court to remand the matter to the trial court for a determination of whether Franklin had had an opportunity to make a record of youth-related mitigating evidence that would be relevant at Franklin's eventual YOPH. (*Id.*, at pp. 286-287.)

The *Franklin* decision has resulted in a flurry of petitions from youthful offenders seeking a sentence mitigation hearing. A habeas corpus petition is the vehicle most defendants will use when seeking a *Franklin* hearing. Trial units which originally prosecuted the case will be responsible for responding to these petitions.

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[1] All further statutory references are to the Penal Code unless otherwise noted.

[2] *Roper v. Simmons* (2005) 543 U.S. 551 [125 S.Ct. 1183, 161 L.Ed.2d 1] (*Roper*); *Miller v. Alabama* (2012) 567 U.S. 2455 [132 S.Ct. 2455; 183 L.Ed.2d 407] (*Miller*)]; *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011; 176 L.Ed.2nd 825] (*Graham*), and *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero.*)

If a defendant was sentenced before *Roper* and *Miller, et al.* were decided, it is unlikely the parties at the time of trial or disposition would have presented the kinds of mitigating evidence unique to juvenile offenders described in those cases because those cases articulated for the first time how children are different from adults. (*Franklin, supra,* 63 Cal.4th at p. 274].)

## FRANKLIN HEARING

A deputy assigned to handle a *Franklin* hearing should first obtain a copy of the probation and sentence transcript to determine what mitigating evidence, if any, was presented before the court pronounced judgment and imposed sentence. If no youth-related mitigating evidence was introduced, the assigned deputy should concede that the defendant is entitled to a *Franklin* hearing while clearly informing the court that the original sentence remains valid. A template of the concession letter is available on PIMS by clicking on File>Document>Create>Franklin Concession Hearing Letter. If youth-related mitigating evidence, as described in *Roper, Miller,* et al. was introduced at the probation and sentence hearing, the assigned deputy should oppose a defendant's request for a *Franklin* hearing as moot because a record already exists and is available to the Board at the eventual YOPH.

If the trial court determines that the defendant did not have a sufficient opportunity to present youth-related mitigating factors at the time of his or her sentencing, the court at a *Franklin* hearing may receive submissions and, if appropriate, testimony pursuant to procedures set forth in section 1204 and rule 4.437 of the California Rules of Court. Evidence introduced at the hearing is subject to the rules of evidence.[3] The defendant may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual YOPH, and the prosecution likewise may present any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors. The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to "give great weight to" youth-related factors (§ 4801, subd. (c)) in determining whether the offender is "fit to rejoin society" despite having committed a serious crime "while he was a child in the eyes of the law." (*Graham, supra,* 560 U.S. at p. 70.) (*Id.,* at p. 284.)

HABLIT's Deputy-in-Charge is available to provide advice and guidance to deputies assigned to litigate a *Franklin* hearing.

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[3] "A reference hearing following issuance of an order to show cause is subject to the rules of evidence as codified in the Evidence Code. (See Evid. Code, § 300.) …Under those rules, an out-of-court declaration is hearsay, and unless subject to some exception permitting it to be admitted, should be excluded upon timely and proper objection. (See Evid. Code, § 1200.) A declaration so excluded is not part of the evidentiary record and cannot serve to support the findings of the referee or this court. The same is true, of course, of declarations which are never offered into evidence… ." (*In re Fields* (1990) 51 Cal.3d 1063, 1070.)