

GENERAL OFFICE MEMORANDUM 18-173

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOSEPH P. ESPOSITO   
Chief Deputy District Attorney

SUBJECT: HANDLING SENATE BILL 1437 RESENTENCING PETITIONS

DATE: December 27, 2018

This memorandum is third in a series of General Office Memoranda (GOM) regarding Senate Bill (SB)1437's changes to accomplice liability for murder. SB 1437, effective January 1, 2019, allows defendants to seek resentencing if convicted under a now-invalid theory of first or second-degree murder. With its passage comes the problem of how to handle the numerous petitions defendants will file requesting resentencing. Set forth below are the procedures deputies shall follow in responding to the petitions.

According to Penal Code (PC) section 1170.95, the defendant must file in the original sentencing court a petition and affidavit declaring that he or she was convicted under a now-invalid theory of murder. The petition must include a case number and the year of conviction, and may request the appointment of counsel. The Superior Court has decided that the original sentencing courts will handle all resentencing petitions, subject to reassignment based on the judge's availability and workload.

The Assistant Head Deputy (AHD) at each courthouse or Central Trials unit shall be designated as the "point person" with responsibility for processing all petitions received at his or her respective courthouse or unit. As soon as the AHD receives a petition, the AHD shall forward a scanned copy of the face sheet of the petition to the Deputy-in-Charge (DIC) of the Third Strike Resentencing Division (TSR), currently Brock Lunsford, who is the Office's designated point of contact for SB 1437 petitions. Thereafter, the AHD shall determine if the conviction was obtained by a Branch office/Central Trials deputy, or a special unit trial deputy.

- **BRANCH OFFICE OR CENTRAL TRIALS**

If the conviction was obtained by a Branch office or Central Trials deputy, the responsible AHD shall determine if the original trial deputy is currently employed by the Office. If the original trial deputy is currently employed by the Office, regardless of current assignment, that deputy shall be responsible for the handling of the petition for all purposes, absent demonstration of an unreasonable burden being placed upon the trial deputy. The chain of command of the Branch office or Central Trials from which the case originated is responsible for overseeing the prosecution of the case and any related decisions.

If the trial deputy is now assigned to a different chain of command, the AHD in the new chain of command shall be contacted and advised of the assignment of the case to the trial deputy. The two AHDs shall confer regarding details of the case transfer to the trial deputy. Should concerns regarding an unreasonable burden being placed on a trial deputy arise impacting case assignment the respective Head Deputies shall confer and attempt to resolve them. If both Head Deputies agree on the assignment of the original trial deputy to the pending petition, both Head Deputies shall notify their respective Bureau Directors by email that the original trial deputy shall be responsible for the case. If the Head Deputies are unable to reach an agreed-upon resolution, both Head Deputies shall contact their respective Bureau Directors. The Bureau Directors shall then work to resolve the case assignment.

If the original trial deputy is no longer employed by the Office, the Branch office or Central Trials AHD shall assign the case to a trial deputy from the Branch office or Central Trials for all purposes.

If the petition is received by an Area Office, the respective DIC shall forward the petition to the AHD in the chain of command responsible for the Area Office for review and assignment.

If the case is a Victim Impact Program (VIP) case, and the deputy is no longer employed with the Office, the AHD shall consult with the respective VIP DIC regarding assignment of the case. After consultation with the AHD, the VIP DIC shall assign the case to a VIP deputy for all purposes.

Any concerns regarding an unreasonable burden being placed on a VIP deputy shall be resolved by the Head Deputy responsible for the respective Branch Office. If the responsible Head Deputy approves assigning a case outside the respective VIP unit, the AHD may assign the respective VIP case to a non-VIP deputy assigned to the Branch Office.

- SPECIAL UNITS

If the conviction was obtained by a special unit trial deputy, the Branch AHD shall forward a copy of the petition to the special unit AHD for handling. The special unit AHD shall then determine if the original special unit trial deputy is currently employed by the Office. If the original trial deputy is currently employed by the Office, regardless of current assignment, that deputy shall be responsible for the handling of the petition for all purposes, absent demonstration of an unreasonable burden being placed upon the trial deputy. The chain of command of the Special Unit from which the case originated is responsible for overseeing the prosecution of the case and any related decisions.

If the trial deputy is now assigned to a different chain of command, the AHD in the new chain of command shall be contacted and advised of the assignment of the case to the trial deputy. The two AHDs shall confer regarding details of the case transfer to the trial deputy. Should concerns regarding an unreasonable burden being placed on a trial deputy arise impacting case assignment the respective Head Deputies shall confer and attempt to resolve them. If both Head Deputies agree on the assignment of the original trial deputy to the pending petition, both Head Deputies shall notify their respective Bureau Directors by email that the original trial deputy shall be responsible for the case. If the Head Deputies are unable to reach an agreed-upon resolution,

both Head Deputies shall contact their respective Bureau Directors. The Bureau Directors shall then work to resolve the case assignment.

If the original special unit trial deputy is no longer employed by the Office, the special unit AHD shall assign the case to a trial deputy from the special unit for all purposes.

- **RESPONSIBILITIES OF THE ASSIGNED DEPUTY**

Once the matter is assigned to a deputy for all purposes, the deputy shall review the District Attorney file, the court file, and any appellate opinion (many unpublished opinions are available on Lexis or the Court of Appeal's website). If trial transcripts are necessary to make an eligibility determination, requests for trial transcripts from the Attorney General's Office, for cases they handled on appeal, shall only be made through the TSR DIC. For more recent cases, the trial deputy may need to obtain trial transcripts directly from the court or court reporter.

The assigned deputy shall determine if the petitioner is eligible for relief. If the petitioner is not eligible for the requested relief, the deputy shall object to the petition utilizing a template response entitled "Response to PC 1170.95" which will be available in PIMS. The assigned deputy shall calendar a hearing, subpoena all necessary witnesses, and conduct the hearing.

If the original trial deputy is employed by the Office as a Head Deputy or higher, the case shall be assigned to a trial deputy in the responsible unit. If the original trial deputy is unable to assume responsibility for the case, the assigned deputy shall make reasonable efforts to consult with the original trial deputy. If the original trial deputy is currently employed by the Office and cannot assume responsibility for the case, he or she shall make every reasonable effort to consult with and assist the assigned deputy.

As required by Marsy's Law and as early as practicable, the assigned deputy shall contact the homicide victim's family to notify them of the petition and explain the process. The assigned deputy shall consult with the Bureau of Victim Services prior to contacting the next of kin to have a Victim Services Representative (VSR) assist in the notification. The assigned deputy shall maintain contact with the homicide victim's family and meet with them as necessary.

As the Office will be submitting requests for reimbursement from the State of California for work performed on these petitions, the assigned deputy shall maintain a log of hours worked on the matter and submit the log to his or her AHD at the end of each month. A sample reimbursement log is attached. The AHD shall maintain a folder with the monthly logs until further instruction is provided on the processing of the logs.

Upon the resolution of each petition, the AHD in the assigned deputy's current chain of command shall forward by email the following tracking information to the TSR DIC:

- the petitioner's name;
- the court case number;
- the defense attorney's name and what agency, if any, he or she works for;
- whether the petition challenged a felony murder theory of culpability, a natural and probable consequences theory of culpability, or both;

- whether the Office conceded or opposed the petition;
- whether a hearing was conducted, and;
- the outcome of the hearing.

Penal Code § 1170.95 creates a new procedure for a new law that will present issues of first impression as the Office moves forward. This protocol is a first step as the Office prepares to address these petitions in a fair and ethical manner. As the situation evolves, the protocol may need to be revised to address emerging legal and workload issues. For any questions regarding PC 1170.95 petitions, please contact TSR DIC Brock Lunsford at (213) 974-1615.

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Attachment

