

**In the Supreme Court of the State of California**

In re  
**ANTHONY COOK,**  
**On Habeas Corpus.**

Case No. S240153

Fourth Appellate District Division Three, Case No. G050907  
San Bernardino County Superior Court, Case No. WHCSS1400290  
The Honorable Katrina West, Judge

**REQUEST FOR JUDICIAL NOTICE**

**SUPREME COURT  
FILED**

**JUN 12 2017**

**Jorge Navarrete Clerk**

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TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE  
AND ASSOCIATE JUSTICES:

The People request this Court take judicial notice of the record in the habeas writ proceeding in *In re Wilson*, S235541, currently pending before the Court. Pursuant to Evidence Code sections 452, subdivision (d), and 459, subdivision (a), a reviewing court may take judicial notice of its own records. The People also request this Court take judicial notice of the legislative history of Senate Bill 260, which enacted Penal Code section 3051 (Stats. 2013, ch. 312 (S.B. 260)), and Senate Bill 261, which amended Penal Code section 3051 by expanding the class of qualifying offenders to include those under the age of 23 at the time of the offense (Stats. 2015, ch. 471 (S.B. 261)). (Evid. Code, §§ 452, subd. (c) [judicial notice of legislative acts], 459, subd. (a).)

*In re Wilson*, S235541, presents the same issue regarding the availability of habeas corpus to order a record-supplementing hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261. The People's response in *Wilson*, asking the Court to issue an order to show cause to address *Franklin* remands on habeas, preceded the petition for review in *Cook*. Our review petition in *Cook* invited the Court to consider the People's response in *Wilson* in conjunction with *Cook*. The legal issues identified in *Wilson* mirror the legal claims for which review was sought and ultimately granted in *Cook*.

In support of our response in *Wilson*, the People included a declaration from Jennifer Shaffer, Executive Officer of the California Board of Parole Hearings (CBPH), dated October 4, 2016. Her declaration provided data regularly maintained by the CBPH regarding the number of incarcerated youthful offenders subject to early parole provisions of Penal Code section 3051. That declaration is also attached as Exhibit A to this request for judicial notice for the convenience of the Court.

The Schaffer declaration from *In re Wilson*, S235541, is relevant to the current proceedings. The declaration contains statistical data collected and maintained by the CBPH as to the number of prisoners eligible for the new parole proceedings under Penal Code section 3051, and thus, for whom habeas petitions seeking *Franklin* remands could be available. (See generally *Watson v. Los Altos School Dist., Santa Clara County* (1957) 149 Cal.App.2d 768, 772-773 [noting propriety of taking judicial notice of records of state agencies].)

The legislative history of S.B. 260 is relevant because the analysis of the Assembly Appropriations Committee identified the scope and impact of providing a new parole eligibility date for youthful offenders who were under 18 at the time of the offense. The Assembly Appropriations Committee analysis observed, as of May 23, 2013, that as many as 5,700 inmates would be eligible for accelerated parole hearings under the legislation. (<[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0251-0300/sb\\_260\\_cfa\\_20130813\\_150553\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0251-0300/sb_260_cfa_20130813_150553_asm_comm.html)>, at p. 3.) The committee analysis further observed that one potential offset for the cost of the implementing the new legislation was cost savings resulting from a reduction in habeas corpus petitions raising challenges related to those sentences. (*Ibid.* at p. 2 [“The above costs would be offset to an unknown degree by state trial court [general fund] savings as a result of an accompanying reduction in writs of Habeas Corpus, by which inmates challenge convictions and/or sentences”].) This information was included in the bill analysis submitted to both the full Senate (<[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0251-0300/sb\\_260\\_cfa\\_20130906\\_193101\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0251-0300/sb_260_cfa_20130906_193101_sen_floor.html)> at pp. 8, 11), and the full Assembly (<[http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0251-0300/sb\\_260\\_cfa\\_20130905\\_163649\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0251-0300/sb_260_cfa_20130905_163649_asm_floor.html)>, at p. 6), prior to enactment.

The legislative history of S.B. 261 is likewise relevant because the analysis of the Senate Appropriations Committee identified the scope and impact of the legislation that expanded parole eligibility under Penal Code section 3051 to include offenders under the age of 23 at the time of the offense. The Senate Appropriations Committee analysis observed, as of May 28, 2015, that 800 inmates would be immediately eligible for parole hearings upon the effective date of the bill, 3,000 inmates would be eligible for hearings within the next hearing cycle, and an additional 5,600 inmates would be added to the CBPH's hearing calendar over the next several years. (<[http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0251-0300/sb\\_261\\_cfa\\_20150528\\_124909\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0251-0300/sb_261_cfa_20150528_124909_sen_comm.html)>, at p. 1.) The Senate Appropriations Committee analysis also observed that one potential source of cost savings was a reduction in habeas corpus petitions raising challenges related to those sentences. (*Ibid.* [“Reduced writs: Potential offset to an unknown degree by state trial court savings as a result of an accompanying reduction in writs of Habeas Corpus, by which inmates challenge convictions and/or sentences.”].) This information was included in the bill analysis submitted to both the full Senate (see <[http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0251-0300/sb\\_261\\_cfa\\_20150601\\_185621\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0251-0300/sb_261_cfa_20150601_185621_sen_floor.html)>), and the full Assembly (<[http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0251-0300/sb\\_261\\_cfa\\_20150831\\_200238\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0251-0300/sb_261_cfa_20150831_200238_asm_floor.html)>), prior to enactment.

The legislative analysis of the scope and perceived effect of the both the original enactment and the expansion of Penal Code section 3051 is directly relevant to the whether the Legislature contemplated that the new law would include habeas corpus as an avenue for supplementing the record for a future parole hearing, and is therefore the proper subject for

judicial notice. (Evid. Code, § 452, subd. (c); *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45 & fn. 9.)

The People therefore request the Court take judicial notice of the record in *In re Wilson*, S235541, including the declaration of Jennifer Schaffer contained therein, which is attached as Exhibit A to this motion, and the legislative history of S.B. 260 and S.B. 261.

Dated: June 12, 2017

Respectfully submitted,

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# **EXHIBIT A**

## DECLARATION

I, Jennifer Shaffer, declare as follows:

1. I am over 18 years old, and I have personal knowledge of the facts set forth in this declaration. If called to testify, I could and would testify competently to the facts stated in this declaration.
2. For the last five years, I have been employed as the executive officer of the California Board of Parole Hearings. Governor Edmund G. Brown, Jr. appointed me to this position on June 10, 2011. As executive officer, I am the administrative head of the Board. In that capacity, I develop and implement Board policy, manage the Board's daily operations, and ensure that the Board's responsibilities are carried out.
3. The Board of Parole Hearings is a state administrative agency that was created on July 1, 2005, and is the successor agency to the now-abolished Board of Prison Terms. (Pen. Code, § 5075.) The Board's duties, which are generally set forth in Penal Code section 5075.1, include conducting parole consideration hearings and parole rescission hearings for inmates under the jurisdiction of the California Department of Corrections and Rehabilitation (CDCR). The Board also conducts mentally disordered offender hearings and sexually violent predator screening, and investigates and reports on all applications for reprieves, pardons, and commutation of sentences.
4. The Board conducts three types of parole consideration hearings. It conducts elderly parole hearings for offenders who are sixty years or older and have been in continuous custody for at least twenty-five years; youth offender hearings for offenders eligible for parole consideration and who were under 23 years old at the time they committed their offense, and parole consideration hearings for inmates sentenced to life in prison with the possibility of parole who do not otherwise qualify for an elderly parole or youth offender hearing.

5. As part of the Board's duties, the Board maintains a database of electronic records of those inmates in the custody of the CDCR who are entitled to a parole consideration hearing. As executive officer of the Board, I am familiar with this database, including how the information is entered and maintained. These electronic records, which the Board maintains in the ordinary scope of its duties, contain information of each parole eligible offender, such as the offender's name, CDCR number, date of birth, date of conviction, commitment offense, length of sentence, date eligible for parole consideration, and whether the offender qualifies for a youth offender or elderly parole hearing, among other information.

6. The Attorney General's Office requested that I review the Board's electronic records to determine the number of offenders in CDCR's custody who will receive a youth offender hearing under Penal Code sections 3051 and 4801, subdivision (c), once they become eligible for parole consideration.

7. I personally reviewed the information from the Board's electronic database, which revealed that as of September 1, 2016, the total number of offenders in CDCR's custody who are eligible to receive a youth offender parole consideration hearing is 14,532. To place these numbers in context, the tables below divide these offenders into two groups: offenders who were under 18 years old at the time they committed their crimes and those who were 18 to 22 years old at the time they committed their crimes. The tables also indicate the number of youth offenders who have been incarcerated for a certain range of years from less than five to more than twenty.



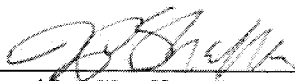
Youth Offenders in CDCR Custody as of Sept. 1, 2016, Who Were Under  
18 Years Old at the Time of the Commitment Offense

Years Incarcerated	Number of Youth Offenders
< 5	696
5 – 10	1000
10 – 15	627
15 – 20	693
> 20	851
Total	3867

Youth Offenders in CDCR Custody as of Sept. 1, 2016, Who Were 18 – 22  
Years Old at the Time of the Commitment Offense

Years Incarcerated	Number of Youth Offenders
< 5	2141
5 – 10	2618
10 – 15	1701
15 – 20	1300
> 20	2905
Total	10665

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Sacramento on October 4, 2016.

  
 \_\_\_\_\_  
 Jennifer Shaffer, Executive Officer  
 California Board of Parole Hearings

**DECLARATION OF SERVICE**

Case Name: **In re Anthony Cook, on Habeas Corpus**

No.: **S240153**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 12, 2017, I served the attached **REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Michael Satris Attorney at Law P.O. Box 337 Bolinas, CA 94924-0337 <i>Attorney for Petitioner Anthony Cook</i> (2 copies)	The Honorable Michael A. Ramos District Attorney San Bernardino County District Attorney's Office 303 West 3rd Street, 5th Floor San Bernardino, CA 92415-0042
Superior Court of California County of San Bernardino Criminal Division 247 West Third Street San Bernardino, CA 92415-0240	Appellate Defenders, Inc. 555 West Beech Street, Suite 300 San Diego, CA 92101
Court of Appeal of the State of California Fourth Appellate District, Division Three P.O. Box 22055 Santa Ana, CA 92702 (via TrueFiling)	

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 12, 2017, at San Francisco, California.

J. Wong  
\_\_\_\_\_  
Declarant

*J Wong*  
\_\_\_\_\_  
Signature