
THIRD READING

Bill No: AB 1071
Author: Kalra (D)
Amended: 8/29/25 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 6/24/25
AYES: Arreguín, Gonzalez, Pérez, Wiener
NOES: Seyarto
NO VOTE RECORDED: Caballero

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/29/25
AYES: Caballero, Cabaldon, Grayson, Richardson, Wahab
NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 48-16, 5/19/25 - See last page for vote

SUBJECT: Criminal procedure: discrimination

SOURCE: American Friends Service Committee; Ella Baker Center for Human Rights; CA Coalition for Women Prisoners; CA Public Defenders Association; Californians United for a Responsible Budget; Initiate Justice; Silicon Valley DeBug; USF Racial Justice Clinic

DIGEST: This bill amends the Racial Justice Act of 2020 (RJA), authorizing a defendant to file a motion for disclosure of relevant evidence in any proceeding alleging a violation of the RJA and in preparation for the filing of a motion to vacate or habeas petition based on an RJA violation; makes other technical and clarifying changes.

ANALYSIS:

Existing law:

- 1) Establishes the RJA which prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining or imposing a sentence on the basis of

race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

- a) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;
 - b) During the trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful, except as specified;
 - c) The defendant was charged with, or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;
 - d) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,
 - e) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed. (Penal Code (Pen. Code), § 745, subd. (a).)
- 2) States that a defendant may file a motion, or a petition for writ of habeas corpus, or, if the person is no longer in custody, a motion to vacate the conviction, in a court of competent jurisdiction, alleging an RJA violation. For claims based on the trial record, a defendant may raise a claim alleging a violation on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a

motion. If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section. (Pen. Code, § 745, subd. (b).)

- 3) States that if a motion is filed in the trial court and the defendant makes a prima facie showing an RJA violation, the court shall hold a hearing. (Pen. Code, § 745, subd. (c).)
- 4) Provides a motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed “waived,” in the discretion of the court. (Pen. Code, § 745, subd. (c).)
- 5) Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential RJA violation that is in the possession or control of the state. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records. (Pen. Code, § 745, subd. (d).)
- 6) States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the RJA, the court shall impose a remedy specific to the violation found from a specified list of remedies. (Pen. Code, § 745, subd. (e).)
- 7) Prohibits imposition of the death penalty where the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).)
- 8) Provides that under the RJA provisions, a court is not foreclosed from imposing any other remedies available under the United States Constitution, the California Constitution, or any other law. (Pen. Code, § 745, subd. (e)(4).)
- 9) Specifies remedies that apply before a judgment has been entered. (Pen. Code, § 745, subd. (e)(1).)
- 10) Specifies remedies that apply when judgment has been entered. (Pen. Code, § 745, subd. (e)(2).)
- 11) Specifies that the RJA applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court. (Pen. Code, § 745, subd. (f).)

- 12) Defines “more frequently sought or obtained” or “more frequently imposed” as meaning the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. (Pen. Code, § 745, subd. (h)(1).)
- 13) Defines “prima facie showing” as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the RJA occurred, as specified. A “substantial likelihood” requires more than a mere possibility, but less than a standard of more likely than not. (Pen. Code, § 745, subd. (h)(2).)
- 14) Defines “racially discriminatory language” as meaning language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant’s physical appearance, culture, ethnicity or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory. (Pen. Code, § 745, subd. (h)(4).)
- 15) Defines “similarly situated” as meaning that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. (Pen. Code, § 745, subd. (h)(6).)
- 16) Provides that the RJA applies to all cases in which the judgment is not final. (Pen. Code, § 745, subd. (j)(1).)
- 17) Provides a timeline for retroactive application of the RJA. (Pen. Code, § 745, subd. (j)(2)-(4).)
- 18) States that for petitions filed in cases in which judgment was entered before January 1, 2021, if the habeas petition is based on the conviction having been sought or obtained in violation of the RJA, the petitioner is entitled to relief unless the prosecution proves beyond a reasonable doubt that the violation did not contribute to the judgment. (Pen. Code, § 745, subd. (k).)
- 19) Allows a person who is unlawfully imprisoned or restrained of his or her liberty, under any pretense, to prosecute a writ of habeas corpus to inquire into the cause of their imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)

- 20) Provides that, notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of the RJA, if the RJA applies based on the date of the aforementioned judgments. (Pen. Code, § 1473, subd. (e).)
- 21) Requires the petition to state if the petitioner requests appointment of counsel and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the RJA or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. (Pen. Code, § 1473, subd. (e).)
- 22) Requires the court to review the petition and if the court determines that the petitioner makes a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. (Pen. Code, § 1473, subd. (e).)
- 23) Provides that if the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion. (Pen. Code, § 1473, subd. (e).)
- 24) Provides that if the district attorney or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law. (Pen. Code, § 1473, subd. (g).)
- 25) Allows a person who is no longer in custody to move to vacate a conviction or sentence based on a violation of the RJA, as specified. (Pen. Code, § 1473.7, subd. (a)(3).)

This bill:

- 1) Authorizes a defendant to file a motion for disclosure of all relevant evidence in any proceeding alleging a violation of the RJA, as well as in preparation for filing a habeas petition or motion to vacate based on an RJA violation.
- 2) Specifies that RJA definitions and legal thresholds apply to motions to vacate and habeas petitions based on an RJA violation.

- 3) Clarifies that habeas counsel shall be appointed if a petitioner unable to afford counsel pleads a plausible allegation of an RJA violation, rather than alleges facts that would establish a violation.
- 4) Clarifies that a prima facie determination in a habeas proceeding shall be based on the petitioner's showing and the record. The court may request an informal response from the state.
- 5) Clarifies that if the court finds a violation of the RJA on habeas or a motion to vacate, the court must impose one or more of the applicable remedies outlined in the RJA.

Comments

Racial Justice Act (RJA). In its landmark *McCleskey* decision, the United States Supreme Court rejected the defendant's claim that the Georgia capital punishment statute violates the equal protection clause of the 14 Amendment. The defendant argued "that race has infected the administration of Georgia's statute in two ways: persons who murder whites are more likely to be sentenced to death than persons who murder blacks, and black murderers are more likely to be sentenced to death than white murderers." (*McCleskey v. Kemp* (1987) 481 U.S. 279, 291-292.) In rejecting the claim, the Court concluded the defendant had failed to demonstrate that the statute was enacted for or that decisionmakers in defendant's case acted with a discriminatory purpose. (*Id.* at pp. 297-299.)

The Court acknowledged that biased decision making may affect sentencing. (*McCleskey v. Kemp, supra*, 481 U.S. at p. 309.) However, the Court suggested that the legislature, not the judiciary, was the proper branch to engineer remedies to these systemic problems. (*Id.* at p. 319.)

In response, the Legislature passed AB 2542 (Kalra, Chapter 464, Statutes of 2020), the RJA, which allows a defendant to seek relief because their case was impacted by racial bias. This Act allows racial bias to be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities or national origin in the county where the convictions were sought or obtained; or longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. Racial bias may also be shown by evidence that a judge or attorney, among other listed persons associated with the defendant's case, exhibited bias towards the defendant, or, in

court and during the trial proceedings, used racially discriminatory language or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The Act does not require the discrimination to have been purposeful.

As originally enacted, the RJA applied only to judgments of conviction occurring on or after January 1, 2021 and did not require the discrimination to have had a prejudicial impact on the defendant's case. AB 256 (Katra, Chapter 739, Statutes of 2022), created a timeline for retroactive application of the RJA. AB 256 made additional substantive, technical, and clarifying changes. These changes included imposing a standard of prejudice for certain petitions filed in cases in which the judgment was entered before January 1, 2021. In that subset of cases, in particular, if the petition is based on exhibited bias or animus or the use of discriminatory language, the petitioner would be entitled to relief *unless* the state proves beyond a reasonable doubt that the violation did not contribute to the judgment. (Pen. Code, § 745, subd. (k).)

AB 1118 (Katra), Chapter 464, Statutes of 2023, made additional clarifying changes to the RJA. It specified that an RJA claim based on the trial record may be raised on direct appeal from the conviction or sentence, not just in a habeas petition. It also clarified that the defendant/appellant may move to stay the appeal and request remand to the superior court to file an RJA motion.

This bill provides additional guidance on how an RJA claim should be addressed by the courts.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee:

Fiscal Impact:

- Unknown, significant workload costs pressures to the judicial branch (Trial Court Trust Fund, Appellate Court Trust Fund, General Fund). It is estimated that 100,000 claims could be filed under the RJA. The Judicial Council notes that the courts are currently implementing the RJA and anticipating higher filings related to the act when it expands on January 1, 2026 under the current statute. The branch is currently considering the workload implications of the current statutory requirements under the RJA and expects needing approximately \$19 million as the only funding provided was one-time funding of \$2.9 million in the 2023-24 Budget Act specifically for the Supreme Court, the California Appellate Project,

and the Habeas Corpus Resource Center. AB 1071 will further expand RJA and create additional workload, possible hearings, and costs for the courts. While exact amounts are still being determined.

- The Department of Justice (DOJ) reports a fiscal impact of approximately \$2.5 million or more (General Fund). DOJ notes that implementation of this bill will be dependent upon the appropriation of funds. The DOJ will be unable to absorb the costs to comply with or implement the requirements of the bill within existing budgeted resources. In addition, the DOJ reports that the Office of General Counsel has identified that costs are unquantifiable at this time, but are anticipated to be significant. Legal Team within DOJ's Office of General Counsel would be responsible for processing records requests as a result of the Bill. To address the increase in workload, the team will require a significant level of resources, which is currently unquantifiable, beginning FY 2025-26 through FY 2028-29. The work required for these cases is anticipated to be similar to what the Appeals, Writs and Trials Section (AWT), within the Criminal Law Division, has done for RJA state habeas cases. AWT has had 142 such cases so far, and they required an average of 80 hours of work. The appeals may become routine and require 40 hours of work each. AWT anticipates each fiscal year would entail 250 cases requiring 40 hours each = 10,000 hours. Due to the lag in cases getting to AWT on appeal or habeas, AWT anticipates that workload would begin in FY 2026-27 and continue for four years. To address the increase in workload, AWT will require the following resources, from July 1, 2026 through June 30, 2030: 6.0 *Deputy Attorneys General* (DAG) & 4.0 *Legal Secretaries* (LS).
- Unknown, potentially significant costs to the counties for indigent defense counsel (General Fund, local funds), likely in the millions of dollars annually. The California Constitution requires the state to reimburse local agencies for certain costs mandated by the state. Counties may claim reimbursement of those costs if the Commission on State Mandates determines that this bill creates a new program or imposes a higher level of service on local agencies. The Commission on State Mandates recently approved a Test Claim from the County of Los Angeles and found that the RJA imposes a reimbursable state-mandated program by requiring counties to provide counsel to represent indigent

habeas corpus petitioners when appointed by the court.¹ The claimant estimated that the costs to provide counsel under the existing statute in 2024-2025 would be \$2,190,000 statewide.

- Potential cost savings (General Fund, local funds) to the extent that fewer people are incarcerated due to racial bias and discrimination. For example, Santa Clara County has resentenced around 12 individuals to time served because of successful RJA claims. Additionally, this bill may result in costs savings to the extent it allows parties to avoid retrials, which are currently required under the RJA, through granting of alternative remedies instead.

SUPPORT: (Verified 8/29/25)

California Public Defenders Association (Co-Sponsor)
 Californians United for a Responsible Budget (Co-Sponsor)
 Ella Baker Center for Human Rights (Co-Sponsor)
 Initiate Justice (Co-Sponsor)
 Silicon Valley De-bug (Co-Sponsor)
 ACLU California Action
 Alameda County Public Defender's Office
 Alliance for Boys and Men of Color
 American Friends Service Committee
 Amnesty International USA
 Amnesty International USA Group 30 San Francisco
 Asian Americans Advancing Justice Southern California
 Back to the Start
 California Alliance for Youth and Community Justice
 California Attorneys for Criminal Justice
 California Coalition for Women Prisoners
 California Innocence Coalition
 California Native Vote Project
 California Pan - Ethnic Health Network
 California Youth Defender Center
 Californians for Safety and Justice
 Cleanearth4kids.org
 Communities United for Restorative Youth Justice
 Courage California

¹ Commission on State Mandates, Draft Proposed Decision, *Criminal Procedure: Discrimination*, 24-TC-02. (Sept. 26, 2025)

Disability Rights California
Drug Policy Alliance
Empowering Women Impacted by Incarceration
Exonerated Nation
Free Timothy James Young
Friends Committee on Legislation of California
Grace Institute - End Child Poverty in CA
Human Impact Partners
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of California
Local 148 LA County Public Defenders Union
Los Angeles County Public Defender's Office
Peace and Justice Law Center
Reuniting Families Contra Costa
Rubicon Programs
San Francisco Public Defender
SEIU California
Services, Immigrant Rights and Education Network
Sister Warriors Freedom Coalition
Smart Justice California
Starting Over INC.
Starting Over Strong
The Social Impact Center
The W. Haywood Burns Institute
Uncommon Law
University of San Francisco School of Law | Racial Justice Clinic
Vera Institute of Justice
Western Center on Law & Poverty
One Private Individual

OPPOSITION: (Verified 8/29/25)

California District Attorneys Association
California Police Chiefs Association
Monterey County District Attorney's Office - ODA - Salinas, CA
Peace Officers Research Association of California
Riverside County District Attorney

ASSEMBLY FLOOR: 48-16, 5/19/25

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Jackson, Kalra, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Patel, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Rogers, Schultz, Sharp-Collins, Solache, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Alanis, Castillo, Chen, Davies, DeMaio, Ellis, Gallagher, Hadwick, Hoover, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis

NO VOTE RECORDED: Bains, Boerner, Dixon, Flora, Jeff Gonzalez, Irwin, Krell, Pacheco, Papan, Pellerin, Petrie-Norris, Michelle Rodriguez, Blanca Rubio, Schiavo, Soria

Prepared by: Cheryl Anderson / PUB. S. /
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**** END ****