

CONCURRENCE IN SENATE AMENDMENTS

CSA1 Bill Id:AB 1071 Author:(Kalra)

As Amended Ver:September 5, 2025

Majority vote

SUMMARY

Amends the Racial Justice Act of 2020 (RJA) to clarify that a person that brings a RJA claim may seek discovery of any relevant evidence.

Major Provisions

- 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) Requires that habeas counsel be appointed if a petitioner is unable to afford counsel and pleads a plausible allegation of an RJA violation.
- 4) Mandates that a prima facie determination in a habeas proceeding 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.
- 6) Double joins this bill with SB 734 (Caballero) to avoid chaptering issues.

Senate Amendments

- 1) Strikes provisions recasting and revising procedures and remedies pertaining to an RJA violation.
- 2) Clarifies that habeas counsel must be appointed if a petitioner unable to afford counsel and pleads a plausible allegation of an RJA violation, rather than alleges facts that would establish a violation.
- 3) Clarifies that a prima facie determination in a habeas proceeding shall be based on the petitioner's showing and the record.
- 4) States, before judgement on a RJA claim is entered, the court must impose a remedy, including granting a defendant's request for a mistrial or any other remedy not prohibited by law.
- 5) Provides that, in preparation of filing a motion to vacate, a defendant may file a motion to obtain discovery, as specified.
- 6) Makes other technical and clarifying amendments.
- 7) Makes double joining amendments.

COMMENTS

As passed by the Assembly: This bill amended the Racial Justice Act of 2020 (RJA) to clarify when and how a defendant may file for relief depending on the procedural posture of the defendant's case, conviction, or sentence.

Major Provisions:

- 1) Authorized where a defendant's sentence *has not been imposed* or who is before the trial court for any remand or resentencing proceeding, they may file a motion alleging a violation of the RJA before the trial court.
- 2) Provided that where a defendant's sentence has been imposed but is not yet final, they may file a motion alleging a violation of the RJA at any time before the sentence becomes final and before any court of competent jurisdiction.
- 3) Authorized, where the defendant's sentence *has been imposed*, but is not final, and for any claims based on the trial record:
 - a) A defendant may raise an RJA claim on direct appeal from the conviction or sentence.
 - b) An appellate court shall address any claims based on the trial record unless a defendant requests a stay and remand to the superior court to file a motion alleging a violation of the RJA. An appellate court shall grant a stay and remand upon a defendant's request and attestation that the RJA claim needs further development through no fault of the defendant.
- 4) Stated for an *incarcerated defendant whose sentence is final*, the defendant may file an RJA motion or a habeas petition, as specified, based on a violation of the RJA in a court of competent jurisdiction.
- 5) Authorized any defendant *who is not incarcerated, but whose conviction is final* to file a motion to alleging a violation of the RJA in any court of competent jurisdiction.
- 6) *RJA – Remedies:*
 - a) *Remedy for violations before judgement is entered -*
- 7) Allowed a court, in determining a remedy for a RJA violation filed before judgement was entered, to order any lawful remedy available pursuant to the United States Constitution or state constitution, or any other law.
 - a) *Remedy after judgement is entered -*
- 8) *Direct Impact Violation:* Required a court, in determining a remedy for a RJA violation filed and ruled on *after* judgement is entered, to vacate the conviction and sentence, find that it is legally invalid, and order new proceedings unless the defense and prosecution stipulate to an alternative remedy, on any RJA motion wherein a defendant shows the judge, attorney, law enforcement officer, or expert witness demonstrates bias or animus against the race, ethnicity, or national origin of a defendant or is discriminatory against the defendant (hereinafter "direct impact violation").

- 9) Stated an "alternative remedy" as described above, for purposes of imposing a remedy for a direct impact violation of the RJA after judgement is entered as:
 - a) Dismissal of the enhancement.
 - b) Reduction of one or more charges to lesser included or lesser related offenses.
 - c) Imposition of a lower sentence than previously imposed.
 - d) Any other lawful remedy available under the United States Constitution, California Constitution, or any other law.
- 10) Stated any "alternative remedy" may be one or a combination of options described above that would result in a substantive reduction in sentence.
- 11) *Disparate Impact Violation*: Required a court, in determining a remedy for a RJA violation filed after judgement is entered, to impose either of the following, on any RJA motion wherein a defendant shows they were charged or sentenced in a manner more serious than defendants of other races, ethnicities, or national origin who are similarly situated to defendant (hereinafter "disparate impact violation"):
 - a) Modify the judgment to a lesser included or related offense, dismiss enhancements, special circumstances, or special allegations, and resentence.
 - b) Order any other remedy available under the U.S. Constitution, California Constitution, or any other law.
- 12) *Petitions for Habeas Corpus*:
 - 13) Required that for any habeas petition based on a violation of the RJA, the petition shall state whether the petitioner requests appointment of counsel; if the petitioner cannot afford counsel; and either the petition alleges a violation of the RJA or the State Public Defender requests that counsel be appointed.
 - 14) Mandated the lack of a request for appointment by the State Public Defender shall not be construed as a reflection of the merits of the petition or the petitioner's entitlement to counsel.
 - 15) Specified that all definitions and legal thresholds stated in the RJA are controlling for purposes of a habeas petition or claim based on a violation of the RJA, as specified.
 - 16) Authorized a person who is planning to file a habeas petition or has filed a petition for violation of the RJA, to request disclosure of any relevant evidence in support of an RJA claim.
 - 17) Stated that when counsel is appointed and before the court takes further action on the habeas petition based on a RJA claim, a petitioner may file a motion requesting disclosure of any relevant evidence in support of their claim and amend their petition.
 - 18) Mandated if a petitioner, when acting as their own attorney, files a habeas petition based on a RJA claim and it is denied, the denial shall be without prejudice.

- 19) Prohibited a petition from being found to be successive, untimely, or abusive if the petition is based on a first claim of a RJA violation or the RJA claim is filed based on evidence that has not previously been presented and heard in relations to a particular habeas claim.
- 20) Stated if a RJA petition was previously deemed forfeited or waived by the trial court or on direct appeal, the petitioner need not allege nor establish ineffective assistance of counsel to prove a violation or to be entitled to relief.
- 21) Stated the court's determination of whether the petitioner has made a prima facie showing of an RJA violation for purposes of setting a hearing shall be based solely on the petitioner's showing.
- 22) Stated if a court makes a finding that the petitioner has not made a prima facie showing and fails to state its legal and factual reasoning on the record or issue a written order, it shall constitute grounds for reversal of the court's denial.
- 23) Provided that the prosecution may stipulate to the facts forming the basis of a RJA claim eliminating any need for an evidentiary hearing.
- 24) Stated when holding an evidentiary hearing on an RJA claim evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses.
- 25) Allowed the court to appoint an independent expert at any evidentiary hearing on a RJA claim.
- 26) Provided that for purposes of an RJA petition and evidentiary hearing, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a RJA violation occurred.
- 27) Required the petitioner to have the burden of proving a violation of a RJA petition by a preponderance of evidence, but does not need to show intentional discrimination.
- 28) Specified that if a habeas petitioner establishes a violation of the RJA, the court may impose any remedy specified in the RJA.
- 29) Clarified if the prosecutor declines to show cause why a hearing should not be held or at any point concedes or stipulates to a RJA violation, the presumption in favor granting relief applies.
- 30) Required that if the court holds an evidentiary hearing and petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing so long as there is a signed or oral waiver on the record.
- 31) *New Petition for Relief based on a RJA violation after judgment when petitioner is out of custody*
- 32) Stated that any person who is convicted of a crime who conviction is sought or obtained or whose sentence is imposed in violation of the RJA may file a petition with the court in which they were convicted.

- 33) Required an RJA petition to be served on the district attorney, or on the agency that prosecuted petitioner, and the attorney that represented the petitioner in the trial court, or on the public defender of the county where petitioner was convicted.
- 34) Required the petition to include all the following:
- a) The superior court case number and year of the petitioner's conviction.
 - b) Stated in plain language, specifically how the RJA was violated.
 - c) Whether the petitioner requests the appointment of counsel.
 - d) The petitioner's declaration that the contents of the petition are true and correct.
- 35) Allowed the petitioner to attach copies of any supporting documentation in their possession. However, the failure to attach documentation does not render the petition defective.
- 36) Stated if any of the required information is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.
- 37) Provided that if the petition contains all required information, or any missing information can readily be ascertained by the court, and the petitioner has requested counsel, the court shall appoint counsel.
- 38) Stated any and all definitions and legal thresholds specified in the RJA are controlling for purposes of filing a petition when the petitioner is out of custody after imposition of judgement.
- 39) Authorized a petitioner or their counsel, to file a motion for discovery of evidence relevant to the petitioner's RJA claim.
- 40) Mandated if a petitioner originally filed pro per, the court must permit newly appointed counsel to request additional disclosure of evidence, as specified in the RJA, and to amend the petition prior to the court taking further action.
- 41) Provided that a petition raising a violation of the RJA for the first time, or on the basis of evidence that has not previously been presented and heard in relation to the particular alleged violation of the RJA, shall not be deemed a successive, untimely, or abusive petition.
- 42) Mandated the court, in reviewing a petition arising out of an RJA claim to determine whether the petitioner makes a prima facie showing, as specified in the RJA and that determination must be based solely on the petitioner's showing.
- 43) Stated 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. Failure to provide that statement shall be grounds for reversal.

- 44) Prohibited a RJA petition from being deemed successive, untimely, or abusive, if petitioner is raising a RJA claim for the first time, or on the basis of evidence that has not previously been presented and heard in relation to the particular alleged violation of the RJA.
- 45) Stated if the petitioner makes a prima facie showing, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing within 60 days of the issuance of the order, unless the state declines to show cause or stipulates to facts establishing a violation of the RJA.
- 46) Stated evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses.
- 47) Authorized a court to appoint an independent expert. For the purpose of a motion and hearing under this subdivision, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a RJA violation has occurred. Expert testimony is not required to prove a violation of the RJA.
- 48) Stated the petitioner shall have the burden of proving a RJA violation by a preponderance of the evidence and the petitioner does not need to prove intentional discrimination.
- 49) Provided that a petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless petitioner's counsel indicates that the petitioner's presence in court is needed or the petitioner requests to be physically present.
- 50) Required a court to impose any of the remedies specified in the RJA if the court determines that the petitioner has established a violation of the RJA.
- 51) Stated if the court determines the petitioner has not established a violation by a preponderance of the evidence, a violation of the RJA, 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. Failure to provide such a statement shall be grounds for reversal.
- 52) Mandated a presumption in favor of granting relief, if the prosecutor declines to show cause or at any point concedes or stipulates to a violation of the RJA.
- 53) Stated 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.
- 54) Required that the denial of counsel, granting or denial of disclosures to prepare a petition, and the granting or denial of a petition filed pursuant to this new petition process shall be appealable the same as any order made after judgment affecting the substantial rights of the party, as specified.
- 55) Stated in cases in which the petitioner is not represented by counsel and the petition is denied, the court shall promptly notify the petitioner of their right to appeal, the time limits and procedures for doing so, and the right to counsel on appeal.

According to the Author

"In 2020, the Legislature passed AB 2542 (Kalra), the California Racial Justice Act (RJA), to address racial discrimination and bias in criminal proceedings across the state. However, despite clean-up legislation, there continue to be procedural barriers that impede incarcerated individuals' attempts to raise legitimate RJA claims.

"AB 1071 builds upon the RJA to make certain that RJA claims are processed consistently and according to the intent of the law. Specifically, this bill affirms the Legislature's intent to create a low threshold for the appointment of counsel, ensures access to discovery for petitioners to prove their claims, directly incorporates Penal Code section 745's standards and procedures to habeas petitions alleging a violation of the RJA, and clarifies the range of appropriate remedies available.

By making these technical, clarifying changes, AB 1071 responds to feedback from the courts and practitioners to better ensure cases can be heard based on merit rather than stalled by procedure."

Arguments in Support

According to *California Innocence Coalition*: "The California Innocence Coalition consists of four Innocence Network member organizations in California, the Northern California Innocence Project, The Innocence Center, the Los Angeles Innocence Project, and the Loyola Project for the Innocent. The missions of our organizations are to protect the rights of the innocent by litigating their cases to bring them home and to promote a fair and effective criminal legal system by advocating for change in California laws and policy. Collectively, the California Innocence Coalition has won the freedom of over 70 wrongly imprisoned individuals who collectively lost over 800 years in prison for crimes they did not commit.

"The Racial Justice Act prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. While the intent of the Racial Justice Act (RJA) is clear, courts have struggled with how to properly resolve violations of the Racial Justice Act. This bill provides clarity and a more efficient process for determining if a violation has occurred.

"This bill also helps guarantee that those who may have suffered a violation are afforded an attorney and an opportunity to obtain the information necessary to file an RJA challenge. AB 1071 reaffirms the importance of courts imposing remedies that serve to eliminate bias and redress past harms. As stated in the intent section of the original RJA, "We cannot simply accept the stark reality that race pervades our system of justice. Rather, we must acknowledge and seek to remedy that reality and create a fair system of justice that upholds our democratic ideals."

"At the same time, AB 1071 provides judges more discretion and flexibility in selecting a remedy, to ensure that the remedies are commensurate with the violation. The Racial Justice Act is one of the most important and consequential laws enacted in this state. AB 1071 (Kalra) is essential to aid courts in effectuating the intent of the legislation to eliminate racial bias from California's criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable and undermines a fair criminal justice system."

Arguments in Opposition

According to the *Riverside County District Attorney's Office*: "This bill disrupts the finality of judgments, upends habeas corpus procedures, raises serious constitutional concerns, and will

result in significant disruption to the California criminal justice system. Moreover, this bill creates an enormous unfunded mandate whose cost will have to be absorbed by already-strained state and local budgets."

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) 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.
- 2) 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).
- 3) 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.

- 4) 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 resented 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.

VOTES:

ASM PUBLIC SAFETY: 7-2-0

YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins

NO: Alanis, Lackey

ASSEMBLY FLOOR: 48-16-15

YES: 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

NO: Alanis, Castillo, Chen, Davies, DeMaio, Ellis, Gallagher, Hadwick, Hoover, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis

ABS, ABST OR NV: Bains, Boerner, Dixon, Flora, Jeff Gonzalez, Irwin, Krell, Pacheco, Papan, Pellerin, Petrie-Norris, Michelle Rodriguez, Blanca Rubio, Schiavo, Soria

UPDATED

VERSION: September 5, 2025

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FN: 0002075

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