

Date of Hearing: April 7, 2026
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 1958 (Kalra) – As Amended March 25, 2026

SUMMARY: Amends the Racial Justice Act of 2020 (RJA) to clarify the process by which a defendant may show evidence they were charged or convicted of a more serious offense than other similarly situated defendants of a different race, ethnicity, or national origin. Specifically, **this bill:**

- 1) Changes the standard required for RJA allegations based on a defendant's sentence, to state that a defendant need only show they were sentenced to a longer or more severe term than defendants similarly situated who engaged in the same conduct rather than defendants similarly situated who were convicted of the same crime.
- 2) States that in order to establish a violation of the RJA based on charging or sentencing of similarly situated defendants of a different race, ethnicity, or national origin:
 - a) A defendant may rely on statistical evidence, aggregate data, or nonstatistical evidence. The defendant is not required to conduct a statistical analysis and is not required to present both statistical evidence and nonstatistical evidence.
 - b) The court shall impose a remedy, as specified, unless the prosecution proves by a preponderance of the evidence that the disparity can be explained by race-neutral factors.
- 3) Requires the prosecution to provide notice of its intent to present race-neutral factors and provide copies of reasonably available documentary evidence supporting those factors prior to the evidentiary hearing.
- 4) States the prosecution's burden requires proffering affirmative evidence and cannot be met by proffering theoretical race-neutral factors.
- 5) Clarifies that, when alleging a RJA violation, the defense may request and be entitled to any evidence relevant to the RJA allegations in the constructive possession or control of the prosecution.
- 6) Provides that a defendant may request any data that has been previously disclosed in response to an RJA claim in another criminal case, and a court shall grant that request, subject to redaction or protective order, unless the data has no relevance to the current charges.
- 7) Expands application of the RJA to either jury or bench trials, plea negotiation practices, plea outcomes, diversion and other alternative dispositions in adult court.

- 8) Clarifies that “more frequently sought or obtained” or “more frequently imposed” means the totality of evidence with or without statistics and means that it demonstrates a significant difference in charging, convictions, or sentencing comparing groups of individuals of different races ethnicities, or national origins who could have been similarly charged, convicted, or sentenced.
- 9) Defines “race-neutral factors,” as that phrase relates to charging and conviction, as elements of an offense, and other factors that may be legally considered in charging, that are supported by evidence.
- 10) Defines “race-neutral factors,” as the term relates to sentencing, as factors contained in the California Rules of Court pertaining to sentencing decisions. Race-neutral factors cannot be factors that are influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

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 a 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 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.
 - 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. (Pen. Code, § 745, subd. (a).)

- 2) States that a defendant may file a motion in the trial court, or if judgement has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence in a court of competent jurisdiction alleging a violation of the RJA. (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 of a violation of the RJA, the court shall hold a hearing. (Pen. Code, § 745, subd. (c).)
- 4) Provides that at the hearing, either party may present evidence, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent investigator. (Pen. Code, § 745, subd. (c)(1).)
- 5) States the defendant must prove the violation by a preponderance of the evidence. (Pen. Code, § 745, subd. (c)(2).)
- 6) Requires the court to make findings on the record at the conclusion of the hearing. (Pen. Code, § 745, subd. (c)(3).)
- 7) Provides that a defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of the RJA 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 if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure. (Pen. Code, § 745, subd. (d).)
- 8) 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).)
- 9) Provides that before a judgment has been entered, the court may declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges. (Pen. Code, § 745, subd. (e)(1).)
- 10) Provides that when judgement has been entered, the following remedies apply:
 - a) If the court finds that the conviction was sought or obtained in violation of the RJA, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with the RJA;
 - b) If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, and the court has the ability to rectify the violation by modifying the judgment, the court shall vacate the conviction and sentence, find that the conviction is legally invalid, and modify the judgment to impose an appropriate remedy for the violation that

occurred, except that the court shall not impose a sentence greater than that previously imposed; and,

- c) If the court finds that only the sentence was sought or obtained in violation of the RJA, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed. (Pen. Code, § 745, subd. (e)(2).)
- 11) Prohibits imposition of the death penalty where the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).)
- 12) Provides that 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).)
- 13) Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system. (Pen. Code, § 745, subd. (f).)
- 14) Specifies that these provisions do not prevent the prosecution of hate crimes. (Pen. Code, § 745, subd. (g).)
- 15) Defines “more frequently sought or obtained” or “more frequently imposed” as statistical evidence or aggregate data that demonstrate a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have committed similar offenses and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. (Pen. Code, § 745, subd. (h)(1).)
- 16) 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. (Pen. Code, § 745, subd. (h)(2).)
- 17) 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)(3).)
- 18) Defines “state” as including the Attorney General, a district attorney, or a city prosecutor. (Pen. Code, § 745, subd. (h)(4).)
- 19) States that a defendant may share a race, ethnicity, or national origin with more than one group and may aggregate data among groups to demonstrate a violation of the prohibition. (Pen. Code, § 745, subd. (i).)
- 20) Applies the RJA prospectively to cases in which a judgment has not been entered prior to January 1, 2021. (Pen. Code, § 745, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** 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. Under the RJA, individuals are allowed two paths of relief: 1) show bias directed at the individual or use of “racially discriminatory language,” or 2) demonstrate a showing of disparate treatment between similarly situated people from different racial groups in the same county where they were charged or sentenced.

“Since the passage of AB 2542 over five years ago, only four disparity claims using that second path of relief have been litigated to conclusion, and in only one of those cases did a trial find a violation had been established. This can be explained by several reasons, including difficulty obtaining relevant data, lack of clarity as to what is required to establish a disparity claim, and other procedural inconsistencies.

“To address this, AB 1958 makes clear that there are multiple ways to establish a disparity claim and that to refute a disparity claim, the prosecution must produce evidence showing the disparities are explained by race-neutral factors. The bill also clarifies the evidence disclosure requirements, makes it explicit that no part of the criminal process is insulated from the RJA, and specifies the procedure for cases where a motion is based on conduct or statements from a judge before sentence has been imposed. In doing so, AB 1958 will streamline litigation, reduce delays, provide consistent guidance to courts across the state, and increase judicial efficiency.”

- 2) **RJA:** The RJA was initially enacted in 2020 and amended again in 2021. It generally authorizes a criminal defendant to file a motion in court alleging they suffered racial bias in the charging or sentencing of a defendant. Specifically, the RJA 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. The defendant must demonstrate a prima facie case that defendants similarly situated of other races are less likely to be charged or sentenced in a specific manner.

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 RJA does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant’s case.

Since the enactment of the RJA, the courts have confronted a variety of situations that demonstrate the need for clarity. First, a few appellate courts have continued to deem petitions forfeited if the trial record does not demonstrate the issue was preserved, or the motion is procedurally deficient. (See *People v. Lashon* (2023) 95 Cal.App.5th 136 (RJA

motion deemed forfeited on direct appeal because it was not raised in the trial court before judgment was entered [remanded by the Cal. Sup. Ct., 315 Cal.Rptr.3d 16]; *People v. Singh* (2024) 103 Cal.App.5th 76, 114 [“The Legislature could have, but did not, expressly declare that a defendant in such instances could raise such a claim on appeal for the first time.”]; *People v. Corbi* (2024) 106 Cal.App.5th 25, 43 [holding defendant forfeited RJA claim by not objecting at trial]; *People v. Hodge* (2024) 107 Cal.App.5th 985 [holding that since the defendant was in custody, he must raise an RJA claim in a habeas petition].)

- 3) **Disparity Claims:** Penal Code section 745, subdivision (a)(3)-(4) stands for the proposition, “...the Racial Justice Act revitalizes the venerable principle, recognized 135 years ago in *Yick Wo*, that we must offer a remedy where a facially neutral law is applied with discriminatory effect” by “endorsing statistics as an appropriate mode of proof and eliminating any requirement of showing discriminatory purpose.” (*Young v. Superior Court (People)* (2022) 79 Cal.App.5th 138, 165.)

Perhaps the most notable example of how disparity demonstrates institutional racism in criminal sentencing is the Baldus Study at issue in *McCleskey v. Kemp* (1987). Professor David Baldus at the University of Iowa found that, even accounting for hundreds of factors, people accused of killing white victims were 4.3 times more likely to be sentenced to death than those accused of killing Black victims. The unadjusted data, as Justice William Brennan pointed out in his dissent, was even more striking—it showed the capital sentencing rate for all white-victim cases was almost 11 times greater than the rate for Black-victim cases. Black defendants in cases with white victims were sentenced to death at nearly 22 times the rate of Black defendants with Black victims and more than seven times the rate of white defendants with Black victims. And the Baldus study showed that prosecutors sought the death penalty for 70% of Black defendants with white victims, but for only 15% of Black defendants with Black victims, and only 19% of white defendants with Black victims.¹

Despite the Court noting the racial disparity in the manner in which the death penalty is imposed, it ultimately upheld *McCleskey*’s death sentence holding,

At most, the Baldus study indicates a discrepancy that appears to correlate with race. Apparent disparities in sentencing are an inevitable part of our criminal justice system. The discrepancy indicated by the Baldus study is "a far cry from the major systemic defects identified in *Furman*," *Pulley v. Harris*, 465 U. S., at 54. As this Court has recognized, any mode for determining guilt or punishment "has its weaknesses and the potential for misuse." *Singer v. United States*, 380 U. S. 24, 35 (1965). See *Bordenkircher v. Hayes*, 434 U. S. 357, 365 (1978). Specifically, "there can be no perfect procedure for deciding in which cases governmental authority should be used to impose death." *Zant v. Stephens*, 462 U. S. 862, 884 (1983) (quoting *Lockett v. Ohio*, 438 U. S., at 605 (plurality opinion of Burger, C. J.)). Despite these imperfections, our consistent rule has been that constitutional guarantees are met when "the mode [for

¹ <https://eji.org/news/the-legacy-of-mccleskey-v-kemp/>

determining guilt or punishment] itself has been surrounded with safeguards to make it as fair as possible." [internal citation omitted]. Where the discretion that is fundamental to our criminal process is involved, we decline to assume that what is unexplained is invidious. In light of the safeguards designed to minimize racial bias in the process, the fundamental value of jury trial in our criminal justice system, and the benefits that discretion provides to criminal defendants, we hold that the Baldus study does not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process. (*McCleskey v. Kemp* (1987) 481 US 279, 313.)

In order to demonstrate a violation of the RJA based on disparity in charging or sentencing a defendant in a more serious manner than similarly situated defendants, the defendant must show:

“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.” (§ 745, subd. (a)(4)(A).) Under section 745, subdivision (h)(1), “‘more frequently imposed’ means that the totality of the evidence,” which “may include statistical evidence” or “aggregate data,” “demonstrates a significant difference ... in imposing sentences comparing individuals who have committed similar offenses and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity.” And under section 745, subdivision (h)(6), “[similarly situated] means that factors that are relevant in ... sentencing are similar and do not require that all individuals in the comparison group are identical.” (*In re Mercy* (Nov. 19, 2025, No. S292693) ___ Cal.5th ___ [2025 Cal. LEXIS 7706, at *4-5].)

It seems obvious this is an onerous burden for a defendant. It generally requires access to statistical data and interpretative resources that are unavailable to defendants that may be incarcerated. For instance, the trial court in *People v. Windom, et al.*, May 23, 2023, Case No. 01001976380, Contra Costa Sup. Ct.) demonstrates the laborious nature of determining whether a defendant is similarly situated and whether the more severe sentence is more frequently imposed on people of a specific race, national origin, or ethnicity. In that case, the court analogized examples like baseball statistics to discuss whether the sample size was statistically significant.

There was significant testimony about which defendants were similarly situated and whether all relevant cases were included in the sample. The court held that the percentage of Black defendants that were charged with special circumstances gang homicides was greater than

Non-Black defendants. Also, the People were unable to present any race-neutral reasons for the statistical disparity.

This bill specifically eases the burden on a defendant alleging a violation based on disparity by specifying that a defendant need only show that similarly situated individuals of a different race, ethnicity, or national origin that engaged in similar conduct rather than a similarly situated individual that was convicted of the same offense. It also expands the case type that a defendant may allege a RJA claim to include plea negotiations, plea outcomes, diversion, and other alternative disposition in juvenile and adult court.

- 4) **Discovery:** This bill specifies that a defendant may file a request for all evidence relevant to a potential RJA claim that is in the constructive possession of the prosecution. The author suggests that district attorney offices are not providing evidence relevant to a RJA claim claiming it is in the possession of law enforcement. It also requires that a court grant any request for data that was provided in another criminal case.

A trial court has jurisdiction to consider a stand-alone post judgment discovery motion filed under the RJA and must order discovery "[u]pon a showing of good cause." (Pen. Code, § 745, subd. (d); *People v. Serrano* (2024) 106 Cal.App.5th 276, 282.) In order to establish good cause for discovery under the RJA, a defendant is only required to advance a plausible factual foundation, based on specific facts, that a violation of the Racial Justice Act could or might have occurred in their case. (*Young v. Superior Court (People)* (2022) 79 Cal.App.5th 138, 159.) As the court in *Young* explained:

But a showing of plausible justification is merely a threshold consideration. The trial court, in deciding whether the defendant shall be permitted to obtain discovery of the requested material, must consider and balance a number of other factors, specifically: (1) whether the material requested is adequately described, (2) whether the requested material is reasonably available to the governmental entity from which it is sought (and not readily available to the defendant from other sources), (3) whether production of the records containing the requested information would violate (i) third party confidentiality or privacy rights or (ii) any protected governmental interest, (4) whether the defendant has acted in a timely manner, (5) whether the time required to produce the requested information will necessitate an unreasonable delay of defendant's trial, and (6) whether the production of the records containing the requested information would place an unreasonable burden on the governmental entity involved. (*Young, supra*, at p. 144.)

By expanding the discovery rights to include any information in the constructive possession of the prosecutor, it may reduce the amount of litigation between the defense and the prosecutor regarding access to information. Presumably, if the state argues it does not have records because they are in the possession of law enforcement, the petitioner must file further motions to compel the law enforcement agency to produce the records.

- 5) **Argument in Support:** According to the *California Innocence Coalition*: “The Racial Justice Act (RJA) prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. The RJA was passed, in part, to address disparities in charging and sentencing that pervade California's criminal legal system.

“A ‘disparity’ in charging or sentencing exists when people of one race are charged, convicted, or sentenced more harshly than people of other races who engage in similar conduct. For example, decades of research shows that Black, Latino, and Native people in California are more likely to be sentenced to death or life without the possibility of parole than white individuals who commit similar offenses. Despite the clear intent of the Legislature to address racial disparities through the RJA, justice has eluded those with viable claims due to procedural barriers. In the five years since the RJA became law, only four disparity claims have been litigated to completion due to procedural uncertainty and difficulty obtaining data.

“This bill provides needed clarity regarding procedures for evaluating charging and sentencing disparity claims including that:

(1) a violation may be found when the defendant shows statistical or non-statistical evidence to establish a disparity claim, and the defendant is not required to show both kinds of evidence;

(2) to refute a claim, prosecutors must show by a preponderance of the evidence that any disparity is explained by race-neutral factors; and

(3) counsel may use previously requested data to reduce courts’ duplicative labor and litigation.

“Additionally, AB 1958 addresses other inconsistencies that have presented themselves since the law’s passage to ensure that no part of the criminal legal process is insulated from the RJA, including plea negotiations. Finally, this bill makes absolutely clear that the prosecution’s duty to disclose evidence includes evidence possessed by law enforcement. AB 1958 builds upon the Legislature’s previous work to address racial discrimination and bias in the criminal legal system. In 2020, California enacted the California Racial Justice Act, making it possible to confront racial bias in our criminal courts. Through additional refinements, the California Legislature can support the law in functioning more effectively to provide justice to those who have experienced discrimination in our legal system.

“The Racial Justice Act is one of the most important and consequential laws enacted in this state. AB 1958 (Kalra) is essential to aid courts in effectuating the legislation’s intent to eliminate racial bias from California’s criminal legal system because racism, whether intentional, implicit, or institutional, is intolerable and undermines true justice.”

- 6) **Argument in Opposition:** According to *California District Attorneys Association*: “Fundamental fairness in the criminal justice system rests at the core of the California District Attorneys Association (CDAA) and is embedded in every prosecutor’s oath of office. When a prosecutor swears to support and defend the Constitution of the United States and the Constitution of the State of California, that prosecutor pledges fealty to Equal Protection for

all under the Fourteenth Amendment to the United States and article I, section 7 of the “California Constitution. With these underpinnings, CDAA unquestionably agrees that ‘[d]iscrimination on the basis of race, odious in all respects, is especially pernicious in the administration of justice.’ (Assem. Bill No. 2542 (2019 – 2020 Reg. Sess.) § 2, subd. (a) [which initially enacted the Racial Justice Act], quoting *Rose v. Mitchell* (1979) 443 U.S. 545, 556.)

“It is CDAA’s steadfast adherence to these constitutions that also compels it to focus on the rights of crime victims found within article I, section 28 of the California Constitution (Marsy’s Law). Because of our commitment to the rule of law, the fundamental principles of the proper presentation of evidence, and our obligation to protect justly obtained verdicts, we must oppose AB 1958. The changes proposed by AB 1958 pose numerous troubling issues.

- Resources throughout the justice system have been significantly taxed in recent years with the advent of legislatively driven post-conviction proceedings. AB 1958 would not only put additional fiscal strains on all justice partners, it would erase much of the groundwork that has already been laid for the Racial Justice Act.
- Significant parts of the language in AB 1958 appear without definition, but rest in key operative areas. Vagueness of terminology can only lead to varied guesswork by the courts across the state, causing further delays in resolution for defendants and victims.
- The bill appears to suggest that the use of information couched as “statistics” might somehow bypass the adversarial process inherent in our system of justice, which is of particular concern when there is no current agreed-upon repository of data sets or methodology.
- The proposed language of the bill appears to require the affirmative proffering of evidence that racial bias did not exist. In other words, a requirement of concrete proof of a negative.
- At no point does the bill work to assess the disparate negative impact suffered by victims of crime with re-litigation of old cases, and whether victims in underserved communities see justice pulled further away from them as a result.

“Under existing law, the Racial Justice Act permits a criminal defendant, or a former defendant who already stands convicted of a crime, to challenge the validity of the case against her or him via claims that the process bore the taint of impermissible bias. (Pen. Code, § 745, subd. (b).) No conviction or sentence may be based on race, ethnicity, or national origin. (Pen. Code, § 745, subd. (a).) Bias of this nature may not be present in the judge, any attorney in the case, the law enforcement personnel who investigated the case, expert witnesses, or any juror. (Pen. Code, § 745, subd. (a)(2).)

“Historically, the improper influence of bias was already a means of redress in both state and federal courts. California’s Racial Justice Act, however, removed certain barriers for defendants challenging their cases and convictions by removing the requirement that a criminal defendant shows that impermissible bias had an actual impact on her or his case. For example, in most circumstances under federal law, a defendant claiming ineffective defense counsel must also show that counsel’s ineffectiveness had an actual negative impact

on the defendant’s case. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) There are circumstances in which prejudice to the defendant would be presumed. (See, e.g., *Cuyler v. Sullivan* (1980) 446 U.S. 335, 345 – 350 (an actual conflict of interest for counsel creates a presumption of prejudice).) In applying these precepts to racist defense counsel, federal courts have contemplated the abrogation of a defendant’s Sixth Amendment right to effective counsel where racist beliefs on the part of counsel have a “cumulative effect,” rendering a fundamental failure to the defendant. (See, e.g., *Ellis v. Harrison* (9th Cir. 2020) 947 F.3d 555, 561 – 564 (conc. opn. of Nguyen, J.)

“In its current form, the Racial Justice Act provides “broader relief for racial discrimination in the criminal justice system than is available under federal equal protection principles . . .” (*Gonzales v. Superior Court* (2024) 108 Cal.App.5th.Supp 36.) The Act employs a common-sense nexus between the defendant in the case and claims of bias, either through an expression of that bias or the impact of bias. (Pen. Code, § 745, subds. (a)(1) – (4).) But courts throughout California are still addressing the proper measure of implementation and whether there are constitutional infirmities within its framework.² The state of the already-developed jurisprudence implementing the Act would be open to new questions with the fundamental altering proposed by AB 1958.

Fiscal Impact

“No widening of post-conviction remedies can occur without the very practical consideration of the use of finite resources within the justice system. Many district attorneys’ offices throughout the state now devote specific staff to the handling of Racial Justice Act claims due to the volume and complexity of the litigation. We observe that our colleagues in the Public Defenders’ offices often do the same, and courts now must parse out significant blocks of time to litigate issues arising from the claims. Using a two-stage process that is now common in many post-conviction proceedings, with an initial prima-facie showing followed by a hearing to address the substantive merits of each claim, the criminal justice system must divert significant resources away from current prosecutions to assess the merits of each petition or motion.

“The fiscal impact statewide from these changes cannot be ignored. Based on current Racial Justice Act litigation, Contra Costa County estimated no less than \$81,000 in district attorney resources being consumed per case for discovery alone. Santa Clara County ran a test case to measure the costs of pulling, reviewing and properly redacting files and determined a *single* case could cost \$750,000. When costs to the public defenders and the courts are added, the economic effects statewide easily reach into the millions of dollars. In Los Angeles County’s Test Claim number 24-TC-02, filed with the Commission on State Mandates, the Public Defender’s Office of that county estimated \$2,190,000 in statewide costs for addressing Racial Justice Act claims for Fiscal Year 2024 – 2025. AB 1958 offers no funding source to

² The California Supreme Court appears to have serious concerns over whether the Racial Justice Act, in a portion that would be unaltered by AB 1958, runs afoul of an initiative enacted by the Electorate. In *People v. Bankston* (case number S044739), *People v. Barrera* (case number S103358), *People v. Chhuon & Pan* (case number S105403) and *People v. Demolle* (case number S159120), the Court asked three questions concerning the constitutionality of the Act in light of the Briggs Initiative. In an unusual move, the Court held new oral argument on the matter in all of these cases. The cases stand submitted and an opinion from the Court is pending.

accommodate expenditures, and district attorneys will be forced to bill the state for time spent on habeas corpus litigation.

Undefined Terms, Shifting Standards and Proof of a Negative

“AB 1958’s use of vague terminology and re-writing of the established standards exponentially aggravates costs associated with implementation. For example, AB 1958 would change the basis of comparing cases for disparate treatment or impact. Under current law, claims made under the Racial Justice Act are analyzed between cases for the same offense. (Pen. Code, § 745, subd. (a)(4)(A) & (B).) The bill would change that to a comparison of similarly situated individuals “who have engaged in similar conduct,” but it contains no explanation as to what “similar conduct” might mean. Different courts could easily reach different conclusions with no statewide uniformity.

“Moreover, AB 1958’s use of “similar conduct” necessarily defeats the best method of accumulating meaningful statistics for comparison. With a discrete and identifiable data set under current language (“the same offense”) a known universe is created without leaving room for ambiguity. “Similar conduct,” however, leaves much room for varied interpretation, rendering an easily identified data sample as elusive as the definition of the term. Litigation over the meaning of this phrase alone would consume the resources of both superior and appellate courts throughout California, delaying resolution and denying access to justice for many other important issues pending in those courts.

“In the proposed amendment to subdivision (d)(1), the bill would charge prosecutors with ‘constructive’ possession or control of materials in discovery proceedings. Although constructive possession is a concept known to criminal law in the context of litigation related to *Brady v. Maryland* (1963) 373 U.S. 83 and the Criminal Discovery Act, it is not clear that it has the same meaning within this context. If its meaning ultimately requires prosecutors to either work with law enforcement to research and scour records solely in law enforcement possession, or to litigate privilege issues with law enforcement, the costs discussed above become even more significant.

“AB 1958 would also redefine the standards and evidence used in each case, in part by requiring prosecutors to provide “race-neutral factors,” but in a manner that leaves litigants and courts guessing as to what a “race-neutral factor” might be. Although proposed subdivision (h)(3) of Penal Code section 745, indicates that such factors would “relate[] to charging and conviction” and “means elements of an offense [] and other factors that may be legally considered in charging, it goes on to state that “[r]ace-neutral factors cannot be factors that are influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin. With no more explicit guidance as to what that means, courts will be forced to struggle with numerous questions, such as whether a defendant’s prior criminal history can be attributed to implicit bias, and therefore in assessing whether that defendant is similarly situated to another person, or whether that defendant might be viewed as being similarly situated to someone with no prior criminal history. Guesswork in the courts leads to neither increased efficiency nor swift resolution.

“Finally, the bill’s requirement that the prosecution produce affirmative evidence in proposed subdivision (c)(3) of the statute creates the nearly impossible burden of producing evidence that something did not exist. One might struggle to conceive of how such evidence might be

presented in the face of the proposed language that would bar the offering of “theoretical race-neutral factors.”

“These unanswered questions and others mean that the courts would necessarily have to scrap the recently developed body of law that has developed in relation to the Racial Justice Act framework. Existing jurisprudence would offer little assistance to vague new terms and procedural guidelines, thus compounding problems of resource exhaustion.

Untethered Statistical Sources

“Nothing about AB 1958 establishes any guidelines for statistical analysis or interpretation.³ The freeform approach leaves open many questions as to the validity and discipline behind statistical interpretations, so that testing of methodology, data and analysis must be addressed in California’s courts. The rules of evidence are key to the use of such information.

“From inception, the right to confrontation under the Sixth Amendment to the United States Constitution has played a vital role in our criminal justice system. The United States Supreme Court has long referred to confrontation as a “bedrock procedural guarantee.” (*Crawford v. Washington* (2004) 541 U.S. 36, 42.) It is a fundamental method to “help[] assure the accuracy of the truth-determining process.” (*Chambers v. Mississippi* (1973) 410 U.S. 284, 295, internal citations and quotation omitted.) The absence of confrontation “calls into question the ultimate ‘integrity of the fact-finding process.’” (*Ibid.*) Our state Supreme Court recognizes “[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” (*People v. Sanchez* (2016) 63 Cal.4th 665, 679 – 680, quoting *Davis v. Alaska* (1974) 415 U.S. 308, 315 – 316.) Its means of testing evidence is guaranteed to California defendants in the state constitution (Cal. Const., art. I, § 15) and by statute (Evid. Code, § 711). With its proven ability to test the reliability of evidence, it is no wonder that the statutory guarantee applies to all litigants in state court. (*Ibid.*)

“AB 1958’s alteration of the Racial Justice Act to allow those convicted of crimes to challenge either their criminal proceedings or their convictions with the use of statistics alone creates great concern over the ability to test such proffers through courtroom cross-examination. Although permitting a defendant to rely *solely* on “statistical evidence” or “aggregate data,” AB 1958 does not provide a definition of the meaning of these terms. Moreover, the implication is that a defendant is now further distanced from the need to tie such statistics into her or his own case. By further granting access to such “data” (in whatever form that might be) across cases, a defendant might be permitted to obtain and use information with no real assessment of its source or reliability. Indeed, the manner in which the amendments are presented suggests that such information might be sufficient for an ultimate determination following an order to show cause, and that one defendant’s success in

³ CDAA recognizes a statewide effort for data collection in the area of criminal justice is slated to commence in 2027 with the transmission of information from the Justice Data Accountability and Transparency Act. (Pen. Code, § 13370.) In its 2025 report, the Committee on the Revision of the Penal Code urged this Act be funded “to support the collection and publication of data from prosecutors.” (*Annual Report and Recommendations* (December 2025), Committee on Revision of the Penal Code, at p. 38.)

a trial court might enable an entire cognizable class to obtain relief from criminal convictions, while another class might not have the same opportunity. In other words, the amendments may raise as many Equal Protection claims as those that they seek to address.

Other Considerations and Impact on Victims

“Other considerations at work make one wonder how prosecutors can help guard against violations beyond our control. Statistical surveys offered on conviction rates seemingly never factor in the personal choices made by defendants in cases. Whether one defendant chooses an offered plea bargain and another does not is completely beyond the prosecutorial purview. Moreover, the amendments proposed by AB 1958 provide nothing to assist prosecutors who want to ensure that cases pending in court are not infected by implicit bias on the part of defense counsel. (See, e.g., *Sanchez v. Superior Court* (2024) 106 Cal.App.5th 617.) The changes proffered by AB 1958 appear to assume all bias flows from prosecution and do nothing to assist prosecutors actively working to prevent it from infecting a case.

“Criminal prosecutions are reactive by nature. Cases begin in response to victimization in our communities. Many socioeconomic forces impact crime rates in a given area long before our cases are ever seen in court. Those factors go unacknowledged by litigation and processes focused solely on criminal prosecution. Sadly, no attention is paid to the unequal treatment of victims.

“CDAA shares the goals of the Racial Justice Act, as its members are steadfastly committed to a justice system that treats all people fairly, and without the taint of racial or ethnic bias. Indeed, we seek to ensure that those who are most impacted on a personal level, the victims of crime, are also afforded a just and meaningful outcome within the system. While the ultimate processes of the Racial Justice Act are still being addressed by our courts, the changes suggested within AB 1958 appear unworkable and counterproductive to any progress that has been made. CDAA cannot support changes that could counter the rule of law and needlessly harm those who have been victimized.”

7) Prior Legislation:

- a) AB 1071 (Kalra), Chapter 721, Statutes of 2025 amended the RJA by 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.
- b) AB 2065 (Kalra), of the 2023-24 Legislative Session, would have required disclosure of certain arrest records and probation reports, upon request, to an attorney for the purpose of investigating a RJA claim. AB 2065 was held in the Assembly Appropriations Committee.
- c) AB 256 (Kalra), Chapter 739, Statutes of 2022, makes the RJA, which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, apply retroactively and makes other changes.

- d) AB 2542 (Kalra), Chapter 317, Statutes of 2020, prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin by establishing the RJA.
- e) SB 734 (Caballero), Chapter 784, Statutes of 2025, prohibits a public agency from taking punitive action or denial of promotion on grounds other than merit against any public safety officer because of a court finding made in a challenge brought pursuant to the RJA.
- f) SB 133 (Committee on Budget), Chapter 34, Statutes of 2023, require Judicial Council to promulgate standards for appointment of private counsel in superior court for claims where an individual has not been sentenced to death and require those standards to include a minimum requirement of 10 hours of training in the RJA approved for Minimum Continuing Legal Education credit by the State Bar of California.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Path

A New Way of Life Re-entry Project

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

Bend the Arc: Jewish Action, California

Black American Political Association of California (BAPAC) Sacramento Chapter

California Attorneys for Criminal Justice

California Black Power Network

California Coalition for Women Prisoners

California Coalition for Women's Prisoners

California Domestic Workers Coalition

California for Safety and Justice

California Innocence Coalition

California Public Defenders Association

Californians United for A Responsible Budget

Care First California

Center for Policing Equity

Center on Juvenile and Criminal Justice

Communities United for Restorative Youth Justice (CURYJ)

Consumer Attorneys of California

Contra Costa County Public Defender

Courage California

Criminal Justice Clinic, UC Irvine School of Law

Death Penalty Focus

Dignity and Power Now

Disability Rights California
Ella Baker Center for Human Rights
Equal Rights Advocates
Fair Chance Project
Felony Murder Elimination Project
Friends Committee on Legislation of California
Glide
Indivisible CA Statestrong
Initiate Justice
Inland Coalition for Immigrant Justice
Justice and Diversity Center of the Bar Association of San Francisco
Justice2jobs Coalition
Juvenile Innocence & Fair Sentencing Clinic, LMU Loyola Law School, Los Angeles
Kapor Center Advocacy
LA Defensa
Lawyers Committee for Civil Rights of the San Francisco Bay Area
League of Women Voters of California
Local 148 Los Angeles County Public Defender's Union
Los Angeles County Public Defender's Office
National Center for Youth Law (NCYL)
Pillars of the Community
Restoring Hope California
Riverside All of US or None
Rubicon Programs
San Francisco Public Defender
Showing Up for Racial Justice - San Francisco (surj Sf)
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Beyond Impact
Starting Over INC.
Starting Over Strong
The Amelia Ann Adams Whole Life Center
The Social Impact Center
The W. Haywood Burns Institute
Transitions Clinic Network
University of San Francisco School of Law | Racial Justice Clinic
Western Center on Law & Poverty
Youth Leadership Institute
4 Private Individuals

Opposition

California District Attorneys Association
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744