

ASSEMBLY THIRD READING  
AB 1958 (Kalra)  
As Amended March 25, 2026  
Majority vote

## 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.

### Major Provisions

- 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.

## COMMENTS

### 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."

### Arguments 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."

### **Arguments 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.) Section 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.

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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, Section 745, subd. (b).) No conviction or sentence may be based on race, ethnicity, or national origin. (Pen. Code, Section 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, Section 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, Section 745, subs. (a)(1) – (4).) But courts throughout California are still addressing the proper measure of implementation and whether

there are constitutional infirmities within its framework.<sup>1</sup> 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 COMMENTS

According to the Assembly Committee on Appropriations:

- 1) Potential costs of an unknown, but likely significant amount, to county district attorneys' offices and public defenders' offices for expanded RJA litigation resulting from the bill's broadened scope, eased evidentiary standards, and expanded discovery requirements. The bill establishes that RJA claims apply to plea negotiations, diversion, and bench trials and shifts the comparison standard from "same offense" to "similar conduct," which could broaden the universe of potential claims and the discovery necessary to litigate them. The California District Attorneys Association reports that existing RJA discovery costs range from approximately \$81,000 per case in Contra Costa County to \$750,000 per case in Santa Clara County. The Los Angeles County Public Defender's Office estimated \$2.19 million in statewide costs for RJA claims in fiscal year 2024-25 in a test claim filed with the Commission on State Mandates. The bill's clarification of the RJA would increase these costs, though by how much is unknown. These county costs are potentially reimbursable as state-mandated local programs. Los Angeles County has filed Test Claim 24-TC-02 with the Commission on State Mandates regarding costs under the existing RJA. If the Commission determines the existing RJA imposes a reimbursable state mandate, this bill's expansion of RJA claims would amplify those costs.
- 2) Unknown, likely moderate impact to the judicial branch (Trial Court Trust Fund) for additional and expanded RJA hearings, discovery motions, and additional litigation over terms that may require judicial interpretation. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-26.
- 3) Costs of \$5.5 million ongoing to the Department of Justice (DOJ) (General Fund). The Legal unit within DOJ's Office of General Counsel (OGC Legal) would be responsible for responding to requests seeking DOJ data to support RJA motions. To address the increase in workload, OGC Legal would require one supervising deputy attorney general, three deputy attorneys general, one analyst, and three legal secretaries. The Appeals, Writs and Trials section (AWT) within DOJ's Division of Criminal Law would be responsible for defending

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<sup>1</sup> 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.

against an increased number of claims of RJA violations. To address the increase in workload, the AWT section would require one supervising deputy attorney general, seven deputy attorneys general, and five legal secretaries. The DOJ will be unable to absorb the costs to comply with or implement the requirements of the bill within existing budgeted resources; implementation will be dependent upon the appropriation of funds.

The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year beginning in the 2027-28 fiscal year.

## VOTES

### **ASM PUBLIC SAFETY: 6-2-1**

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

**NO:** Alanis, Lackey

**ABS, ABST OR NV:** Nguyen

### **ASM APPROPRIATIONS: 10-4-1**

**YES:** Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pellerin, Sharp-Collins, Solache

**NO:** Hoover, Dixon, Ta, Tangipa

**ABS, ABST OR NV:** Pacheco

## UPDATED

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