SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

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Author:	Kalra		
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Urgency:	No	**Fiscal:**	No
Consultant:	CA		

Subject: ***Criminal procedure: discrimination***

HISTORY

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

Prior Legislation: AB 1118 (Kalra), Ch. 464, Stats. of 2023
AB 256 (Kalra), Ch. 739, Stats. of 2022
AB 2542 (Kalra), Ch. 317, Stats. of 2020

Support: ACLU California Action; Alliance for Boys and Men of Color; Amnesty International USA; Asian Americans Advancing Justice; Back to the Start; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Innocence Coalition; California Pan-Ethnic Health Network; California Youth Defender Center; Californians for Safety and Justice; Communities United for Restorative Youth Justice; Courage California; Disability Rights California; Drug Policy Alliance; Empowering Women Impacted by Incarceration; Free Timothy James Young; Friends Committee on Legislation of California; Grace Institute – End Child Poverty in CA; Human Impact Partners; Justice2Jobs Coalition; LA County Public Defenders Union, Local 148; LA Defensa; Lawyer's Committee for Civil Rights of the San Francisco Bay Area; League of Women Voters of California; Los Angeles County Public Defender's Office; Reuniting Families Contra Costa; Rubicon Program; San Francisco Public Defender; 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

Opposition: California District Attorneys Association; Riverside County District Attorney

Assembly Floor Vote: 48 - 16

PURPOSE

The purpose of this bill is to amend the Racial Justice Act of 2020 (RJA) to revise when and how a defendant may file for relief depending on the procedural posture of the case and to create a new petition process for relief.

Existing law 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:

- 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;

- 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;

- 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;

- 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,

- 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).)

Existing law 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).)

This bill specifies that a defendant, whose judgment is not final, may file a motion alleging an RJA violation in the trial court.

This bill provides that records-based claims raised on direct appeal shall not be subject to "waiver."

This bill requires, where the claim is raised on direct appeal, an appellate court to grant a stay and remand to file an RJA motion in the trial court upon a defendant's request and attestation that the alleged violation needs further development through no fault of the defendant.

This bill authorizes a defendant to file a post-conviction RJA petition as created by this bill instead of a motion to vacate.

Existing law 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).)

Existing law 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).)

Existing law 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).)

Existing law states the defendant must prove the RJA violation by a preponderance of the evidence. The defendant does not need to prove intentional discrimination. (Pen. Code, § 745, subd. (c)(2).)

Existing law requires the court to make findings on the record at the conclusion of the hearing. (Pen. Code, § 745, subd. (c)(3).)

Existing law 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).)

Existing law 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).)

Existing law prohibits imposition of the death penalty where the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).)

Existing law 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).)

Existing law 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).)

This bill requires that before a judgment has been entered, the court shall impose any one of or a combination of the aforementioned existing remedies. Adds to the aforementioned remedies the court's option to vacate the conviction and order a new trial, and to grant "judicial diversion" to the defendant.

Existing law provides that when judgment has been entered, the following remedies apply to an RJA violation:

- 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;
- If the court finds the violation was based only on the defendant being charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, the court may modify the judgment to a lesser included or lesser related offense, except that the court shall not impose a sentence greater than that previously imposed; and,
- 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).)

This bill states that after judgment has been imposed, the court shall proceed as follows:

- If the court finds that the conviction was sought or obtained in violation of the RJA provisions regarding exhibited bias or discriminatory language, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with the RJA, unless the defense requests or the parties stipulate to an alternative remedy. "Alternative remedies" include, but are not limited to, any one of or a combination of the following that would result in a meaningful modification of the judgment;
    - Dismissal of enhancements, special circumstances, or special allegations;
    - Reduction of one or more charges to lesser included or lesser related offenses;
    - Imposition of a lesser sentence than previously imposed; or,
    - Any other lawful remedy;

- 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, the court shall impose any one or a combination of the following remedies, unless the defense requests or the parties stipulate to an alternative remedy, that results in a meaningful modification of the judgment:
    - Modify the judgment to a lesser included or lesser related offense, dismiss enhancements, special circumstances, or special allegations, and resentence;
    - Impose a lesser sentence than previously imposed; or,
    - Order any other lawful remedy;
- If the court finds that only the sentence was sought, obtained, or imposed in violation of the RJA, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence that results in a meaningful modification of judgment, unless the defense requests or the parties stipulate to an "alternative remedy" no greater than the sentence previously imposed. States an "alternative remedy" may be one or a combination of options described above that would result in a substantive reduction in sentence. Specifies that on resentencing the court shall impose a lesser sentence than previously imposed.

Existing law 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).)

Existing law specifies that the RJA does not prevent the prosecution of hate crimes. (Pen. Code, § 745, subd. (g).)

Existing law 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. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions, and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin. (Pen. Code, § 745, subd. (h)(1).)

Existing law 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).)

Existing law 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).)

Existing law 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. A defendant's conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence. (Pen. Code, § 745, subd. (h)(6).)

This bill specifies that the aforementioned definitions apply to RJA habeas petitions and the RJA petition created by this bill.

Existing law 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).)

Existing law provides that the RJA applies to all cases in which the judgment is not final. (Pen. Code, § 745, subd. (j)(1).)

Existing law provides that the RJA shall also apply retroactively, as follows:

- Commencing January 1, 2023, to all cases in which, at the time of the filing the habeas petition raising a claim of an RJA violation or motion to vacate based on an RJA violation, the petitioner is sentenced to death or to cases in which a motion to vacate a judgment is filed because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final;

- Commencing January 1, 2024, to all cases in which, at the time of the filing of the habeas petition raising a claim of an RJA violation, the petitioner is currently serving a sentence in the state prison or in a county jail on a realigned felony, or committed to Division of Juvenile Justice (DJJ) for a juvenile disposition, regardless of when the judgment or disposition became final;

- Commencing January 1, 2025, to all RJA habeas petitions and motions to vacate based on an RJA claim, and in which judgment in the case became final for a felony conviction or juvenile disposition that resulted in commitment to DJJ on or after January 1, 2015; and,

- Commencing January 1, 2026, to all habeas petitions or motions to vacate raising an RJA violation and in which judgment was for a felony conviction or juvenile disposition that resulted in commitment to DJJ, regardless of when the judgment or disposition became final. (Pen. Code, § 745, subd. (j)(2)-(4).)

This bill removes the provisions making the phased in retroactivity timelines applicable to motions to vacate and instead makes each of the aforementioned timeless applicable to the RJA petition created by this bill.

Existing law 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).)

This bill extends the aforementioned timeline to encompass habeas petitions filed in cases in which judgment was not final, as opposed to cases in which judgment was entered, before January 1, 2021.

Existing law 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).)

Existing law specifies that habeas corpus is the exclusive procedure for collateral attack on a judgment of death. (Pen. Code, § 1509, subd. (a).)

Existing law 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).)

Existing law provides that a habeas petition raising an RJA claim, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed successive. (Pen. Code, § 1473, subd. (e).)

Existing law states that if the petitioner already has a habeas corpus petition on file in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained or imposed in violation of the RJA. (Pen. Code, § 1473, subd. (e).)

Existing law 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).)

Existing law 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).)

Existing law 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).)

This bill revises and recasts the aforementioned habeas petition procedures where a claim is raised based on a violation of the RJA, providing as follows:

- If the petitioner has a habeas petition pending in state court that has not been decided, they may amend the existing petition with an RJA claim;

- An RJA claim filed under this habeas provision is governed by the same procedural process as an RJA claim filed under the RJA petition created by this bill, as outlined below; and,

- A habeas petition raising an RJA claim may be deemed an RJA petition as created by this bill, at the defendant's request.

Existing law 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).)

Existing law provides that after the court grants postconviction habeas relief and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

- The petitioner and postconviction counsel both agree for postconviction counsel to be appointed; and,

- Postconviction counsel is qualified to handle trials. (Pen. Code, § 1473, subd. (h)(1).)

Existing law 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 eliminates the RJA motion to vacate in existing law and instead creates a new post-conviction RJA petition process, applicable to both defendants in and out of custody, and in addition to other applicable existing remedies, as follows:

- States that any person who is convicted of a crime whose conviction was sought or obtained or whose sentence was imposed in violation of the RJA may file a petition with the court in which they were convicted.

- Requires the RJA petition to be served on the district attorney, or on the agency that prosecuted petitioner, and the attorney who represented the petitioner in the trial court, or on the public defender of the county where petitioner was convicted.

- Requires the petition to include all the following:

    - The superior court case number and year of the petitioner's conviction;

    - Stated in plain language, specifically how the RJA was violated;

    - Whether the petitioner requests the appointment of counsel; and,

  - The petitioner's declaration or counsel's verification that the contents of the petition are true and correct;

- Allows the petitioner to attach copies of any supporting documentation in their possession. However, the failure to attach documentation does not render the petition defective; and,

- States 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.

This bill provides the following procedures and makes them applicable to the new RJA petition, as well as a habeas petition raising an RJA claim:

- Provides 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;

- States any and all definitions and legal thresholds specified in the RJA are controlling for purposes of filing a petition alleging an RJA violation;

- Authorizes a petitioner or their counsel to file a motion for discovery of evidence relevant to the petitioner's RJA claim or in preparation to file a petition;

- Provides that 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;

- Provides that a petition raising a violation of the RJA for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the defendant with due diligence, shall not be deemed a successive, untimely, or abusive petition. Parties may stipulate to incorporating the record created in a prior hearing for subsequent petitions without recalling previously examined witnesses;

- Requires 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;

- 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. Failure to provide that statement shall be grounds for reversal.

- States 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.

- States that at the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses.

- Authorizes a court to appoint an independent expert. For the purpose of a motion and 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 an RJA violation has occurred. Expert testimony is not required to prove a violation of the RJA.

- States 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.

- Provides 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.

- Requires a court to impose a remedy in accordance with the RJA if it determines that the petitioner has established a violation of the RJA. Additionally, the defendant shall not be eligible for the death penalty.

- States that if the court determines the petitioner has not established a violation of the RJA by a preponderance of the evidence, 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.

- Creates 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. States 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.

This bill provides the following, as applicable to the RJA petition it creates:

- Requires 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 as an order made after judgment affecting the substantial rights of the party;

- States 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;

- Provides that claims alleging a violation of the RJA in a habeas petition shall be deemed an RJA petition at the petitioner's request.

COMMENTS

1. Need for This Bill

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.
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> 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.
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> 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.

2. California 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 (Kalra), 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 (Kalra), 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. (*In re Carpenter* (1995) 9 Cal.4th 634, 646 ["Appellate jurisdiction is limited to the four corners of the record on appeal . . . ."].) 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 may be necessary to permit the trial court to rule on the claim in the first instance, and to allow the parties to fully litigate the issue. (See *Gray1 CPB, LLC v. SCC Acquisitions, Inc*. (2015) 233 Cal.App.4th 882, 897 ["[I]t is fundamental that a reviewing court will ordinarily not consider claims made for the first time on appeal which could have been but were not presented to the trial court. Thus, we ignore arguments, authority and facts not presented and litigated in the trial court"] (citation and quotations omitted); see also *People v. Welch* (1993) 5 Cal.4th 228, 237 ["Reviewing courts have traditionally excused parties for failing to raise an issue at trial where an objection would have been futile or wholly unsupported by substantive law then in existence"].)

Generally, a trial court loses jurisdiction once an appeal is filed. But in other post-conviction relief contexts, stays and remands have been permitted by the courts – for example to file a petition to vacate a felony murder conviction and be resentenced under SB 1437 (Skinner), Chapter 1015, Statutes of 2018. (See *People v. Martinez* (2019) 31 Cal.App.5th 719, 729 ["A Court of Appeal presented with such a stay request and convinced it is supported by good cause can order the pending appeal stayed with a limited remand to the trial court for the sole purpose of permitting the trial court to rule on a petition under section 1170.95."].)

AB 1118 also clarified that an RJA motion does not have to be filed during trial, in particular.

This bill attempts to provide additional guidance on how an RJA claim should be addressed by the courts depending on the procedural posture of the defendant's case: (a) where the defendant is still before the trial court; (b) when the defendant is on direct appeal before final judgment; and (c) when the defendant's judgment is final. This bill also attempts to clarify the appointment of counsel and the remedies that may either be agreed to by counsel or imposed by the court for an RJA violation.

This bill also clarifies the possible remedies that may be available for a violation of the RJA depending on whether the violation is the result of discrimination or bias by the judge, a law enforcement officer, defense counsel, the prosecutor, an expert, or juror or where the violation is based on bias in the charging and/or sentencing of the defendant and similarly situated defendants of other races, national origins, or ethnicities are treated differently.

Further, since the enactment of the RJA, the courts have confronted a variety of situations that demonstrate the need for additional clarity regarding its application. First, some appellate courts have found RJA claims forfeited on direct appeal[1] where the issue was not first raised in the trial court:

> When the Legislature again amended section 745 by Assembly Bill 1118, it retained the waiver provision in subdivision (c) of section 745, which is consistent with the basic rationale of the forfeiture doctrine—i.e., "'"'to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had.'"'" (*People v. Simon* (2001) 25 Cal.4th 1082, 1103 [108 Cal. Rptr. 2d 385, 25 P.3d 598].) The Legislature recognized that, for tactical reasons, some defendants might choose not to pursue a claim of racial bias in the trial court "'in the hopes of an acquittal, with the thought that if those hopes did not materialize, the claim could be used to upset an otherwise valid conviction at a time when reprosecution might well be difficult.'" (*Id*. at p. 1104 & fn. 15 [defendant's challenge to venue may be forfeited if not raised by timely motion in trial court as failure to make motion "often will reflect a strategic decision on part of the defense, and … improper venue is a defect that easily can be remedied if timely raised"].)
>
> It makes little sense for the Legislature to prescribe a comprehensive procedure for making and adjudicating a section 745 motion at the trial level (including a specific waiver provision for untimely motions), only to allow defendants who could have but did not use that procedure (thereby preserving their claim for review) to bypass that procedure and pursue a section 745 claim for the first time on direct appeal.

(*People v. Lashon, supra*, 98 Cal.App.5th at p. 812; see also *People v. Corbi* (2024) 106 Cal.App.5th 25, 38-42 (*Corbi*) [the phrase "for claims based on the trial record" in § 745, subd. (b), did not preclude forfeiture of claims based exclusively on the record but, instead, meant direct appeals in RJA cases were limited to the four corners of the record].)

This bill states that records-based claims cannot be "waived" on direct appeal. To the extent the bill uses the term "waiver" interchangeably with "forfeiture," and as *Lashon* points out, it seems

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[1] Though the bill and existing law in the RJA use the term "waiver," courts have interpreted this as "forfeiture." (See *People v. Lashon* (2024) 98 Cal.App.5th 804, 815-816; Pen. Code, § 745, subd. (c) ["A motion that is not timely may be deemed waived, in the discretion of the court."].) Waiver is different from forfeiture, though the terms are often used interchangeably. Forfeiture is the failure to make the timely assertion of a right. Waiver is the intentional relinquishment or abandonment of a known right. (See *People v. Saunders* (1993) 5 Cal.4th 580, 590 fn. 6; see also *In re Sheena K*. (2007) 40 Cal.4th 875.) Given that the RJA uses the term waiver in the context of untimeliness, forfeiture appears to be the correct term.

incongruent that under subdivision (c) of section 745, RJA claims in the trial court can be deemed waived (forfeited) if not timely raised only to then be allowed to be raised for the first time on appeal.

To the extent this means the appellant can raise a pure question of law for the first time on appeal that is already the law. (*In re Sheena K*. (2007) 40 Cal.4th 875, 889 [the California Supreme Court found a narrow exception to the forfeiture rule for "'"pure questions of law that can be resolved without reference to the particular …record developed in the trial court."'"].)
To the extent this bill seeks to allow claims to be raised for the first time on appeal that are not pure questions of law, but are based on a possibly underdeveloped trial record, raises a question as whether such a process is balanced and fundamentally fair to opposing parties. Under this bill, the only party who can request a stay and remand to the trial court to develop the facts of an RJA allegation raised on appeal is the defendant. This leaves the other party with no opportunity to develop or challenge the credibility of the facts on which the RJA claim is based. (*Smith v. Commonwealth Land Title Ins. Co.* (1986) 177 Cal.App.3d 625, 629–630 [The general waiver or forfeiture rule is "grounded on principles of waiver and estoppel, and is a matter of judicial economy and fairness to opposing parties. [Citations.]"].)

In *People v. Wilson* (2024) 16 Cal.5th 874, the California Supreme Court found that a motion to stay and remand a case on appeal to pursue an RJA motion in the trial court need not automatically be granted, and no good cause existed to grant it where the trial court had jurisdiction to hear the claim via a habeas petition and the defendant also had access to habeas counsel. The Court noted:

> We recognize that even when there is no legal impediment to pursuing RJA claims while an appeal remains pending, there may be practical reasons in a particular case why the usual appellate process must be altered to ensure timely and effective access to RJA remedies. Here, however, Wilson has not shown that delaying the resolution of this appeal is necessary to afford him a full, fair, and timely opportunity to litigate his RJA claims in superior court. We therefore deny his motion to stay the appeal and to order a limited remand.

(*Id.* at p. 944.)

In *People v Frazier* (2024) 16 Cal.5th 814, an automatic appeal in a capital case, the California Supreme Court found there was no good cause to stay the appeal for the defendant to file an RJA motion, as the claim was not "intertwined" with issues on appeal. In the dissenting opinion, Justice Evans, joined by Justice Liu, strenuously disagreed with the majority's denial of Frazier's motion for a stay of the appeal and limited remand to pursue an RJA motion in the trial court, stating:

> A defendant like Frazier, who has a plausible claim for relief under the RJA—but who would be unable, because of the profound and ongoing dysfunction of the state's capital habeas corpus system, to present that claim for many years unless this appeal were stayed to allow current counsel to file a motion for relief in the superior court as provided in the RJA itself (Pen. Code, § 745, subd. (b))—is not being afforded the "'efficient and effective'" remedy the Legislature explicitly intended to provide when it added the stay-and-remand procedure. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis

> of Assem. Bill No. 1118, supra, as amended May 18, 2023, p. 6; see also Assem. Conc. Sen. Amends. to Assem. Bill No. 1118 [2023-2024 Reg. Sess.], as amended May 18, 2023, p. 1 ["to ensure RJA claims are processed more efficiently and that the intent of the law is followed"].) To prevent Frazier from using this sensible and efficient mechanism without the assurance of an effective alternative is difficult to understand.

(*Frazier, supra*, 16 Cal.5th at p. 867.) *Frazier* was a capital case which had been fully briefed on appeal in 2017. The RJA had not even been enacted yet, so the issue could not have been raised in the trial court – i.e., it was not factually developed in the trial court through no fault of Frazier's.

This bills states that an appellate court is required to grant a stay and remand to file a motion in the trial court upon a defendant's request and "attestation" that the alleged RJA violation needs further development through no fault of the defendant's, as opposed to if good cause exists under current law. In light of the concerns laid out in *Lashon* above, balanced with Justice Evans' concerns in *Frazier* above, should the standard at least be that a defendant has a "plausible claim for relief under the RJA" which needs further development through no fault of the defendant's to merit a stay and remand of the appeal to raise the RJA motion in the trial court in the first instance?

This bill also creates a separate standalone post-conviction RJA petition for defendants. This petition applies to both in custody and out of custody defendants. It replaces the current relief available through a motion to vacate which applies only to out of custody defendants. (See Pen. Code, 1473.7. subd. (c).) Since in custody defendants can proceed by way of a habeas petition, should this new RJA petition process be focused on out of custody defendants? Under the bill, the habeas and RJA petition process largely mirror each other.

To the extent that defendants may seek relief under multiple RJA vehicles – e.g., file a habeas petition based on an RJA claim and an RJA petition as created by this bill – the bill requires the court to deem a habeas an RJA petition, but only at the defendant's request. What if the defendant does not make this request?

Courts have also grappled with the discovery provision of the RJA and its application in habeas proceedings. *In re Montgomery* (2024) 104 Cal.App.5th 1062, the Court of Appeal held the RJA did not create an exception to the general rule that there is no statutory authority for a trial court to entertain a postjudgment motion unrelated to any proceeding then pending before the court. Accordingly, the trial court's denial of a discovery motion was not an appealable order because the trial court had properly summarily denied defendant's related petition for writ of habeas corpus for failure to state a prima facie case.

This bill clarifies that a petitioner or their counsel may file a motion for discovery based upon the prosecution of an RJA petition or in preparation to file a petition.

3. Habeas Corpus

Habeas corpus, also known as "the Great Writ," is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from unlawful restraint. The functions of the writ is set forth in Penal Code section 1473, subdivision (a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a

writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Penal Code section 1473, subdivision (d) specifies that "nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted."

A writ of habeas corpus may be prosecuted when there is false evidence that is material on the issue of guilt or punishment that was introduced against the defendant at trial or at the time of entering a plea of guilty, as specified; when new evidence exists that is sufficiently material and credible and it more likely than not would have changed the outcome of the case, as specified; and, if a significant dispute has emerged or further developed in the defendant's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and that expert testimony more likely than not affected the outcome of the case, as specified. (Pen. Code, § 1473, subd. (b)(1).)

Under existing law, a person is not allowed to engage in "piecemeal litigation" by bringing successive habeas petitions (i.e. "abuse of the writ"). For example, courts may refuse to consider new arguments if those arguments were known to the person when they brought a prior attack on the judgment. (*In re Clark*, *supra*, 5 Cal.4th 750.) Similarly, previously rejected claims will not be considered in a successive petition. "It has long been the rule that absent a change applicable law of facts the court will not consider repeated applications for habeas corpus presenting claims that were previously rejected." (*Ibid*.) Before a successive petition is considered on its merits, the petitioner must explain their failure to timely present their claims in prior petitions. (*Id*. at p. 779.)

Before ruling on a habeas petition, an appellate court may request an informal response. An informal response serves as a "screening function" where the Attorney General has an opportunity to respond before the court decides whether to summarily deny or grant the petition. (*People v. Romero* (1994) 8 Cal.4th 728, 741.) After the Attorney General's response, the petitioner may file a reply.

If the court is satisfied the petition states a prima facie case for relief, and the petition is otherwise not defective, the court is required to issue an order to show cause or issue the writ. (Pen. Code, §§ 1480, 1483; *People Duvall* (1995) 9 Cal.4th 464, 475; *Romero, supra*, 8 Cal.4th at p. 737, 740.) This is not the same as granting relief but merely begins the process of litigating the claims. (*Romero, supra*, at p. 740.)

The RJA provides for habeas relief. (Pen. Code, §§ 745, subd. (c) & 1473, subd. (e).) This bill recasts and revises the RJA habeas process to largely align with the new RJA petition process created by this bill.

In revising the RJA habeas process, the bill removes the opportunity for the government to file an informal response to the petition. This bill instead provides the court's determination of whether the petitioner has made a prima facie case for relief shall be based solely on the petitioner's showing. Given that the standard to state a prima facie case is lower for an RJA habeas petition than other petitions (substantial likelihood of a violation as opposed to assuming the petition's factual allegations are true the petitioner would be entitled to relief), does it make sense to also take away the government's opportunity to respond – i.e., take away the already lower screening mechanism? (See *People v. Duvall, supra*, 9 Cal.4th at pp. 474-475.)

This bill also revises the appointment of counsel requirements for RJA habeas petitions. Current law states, "The petition shall state if the petitioner requests appointment of counsel and the court shall 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." (Pen. Code, § 1473, subd. (e).) In *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, the Court of Appeal concluded the statutory language in section 1473, subdivision (e) makes it clear that RJA habeas corpus petitioners are entitled to the appointment of counsel based on an assessment of whether the habeas corpus petition alleges facts that would establish a violation of the RJA. The trial court therefore erred when it denied counsel on the ground that McIntosh failed to meet the prima facie showing that is required to obtain an order to show cause (OSC). (*McIntosh, supra,* 110 Cal.App.5th at p. 46.)

This bill instead provides that if the petition contains all the required information, or any missing information can readily be ascertained by the court, and the petitioner has requested counsel, the court shall appoint counsel. This appointment of counsel provision also applies to the RJA petition created by this bill, which again, largely mirrors the habeas process for RJA petitions.

4. Lack of Prejudice Standard:

As discussed above, AB 256 (Kalra), Chapter 739, Statutes of 2022, created a timeline for retroactive application of the RJA and included a standard of prejudice for a subset of cases. In particular, for habeas petitions in which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a claim that the sentence or conviction was sought or obtained in violation of the RJA provisions regarding exhibited bias or discriminatory language, the petition shall be entitled to relief unless the state proves beyond a reasonable doubt that the violation did not contribute to the verdict. (Pen. Code, § 745, subd. (k).) The RJA requires no prejudice showing in other cases.

This bill amends subdivision (k) of Penal Code section 745, to apply to cases in which judgment was final, rather than entered, before January 1, 2021. This expands the subset of petitioners who will not need to show prejudice in order to obtain relief. This bill also makes this provision applicable to the RJA petition created by this bill.

Generally, an error of California law is not subject to reversal unless an examination of the entire record establishes a reasonable probability that the error affected the outcome. (*People v. Watson* (1956) 46 Cal. 2d 818, 836.) This emanates from Article VI, section 13 of the California Constitution. While section 13 of Article VI of the California Constitution does not apply to state habeas proceedings (*In re Clark* (1993) 5 Cal.4th 750, 795), the California Supreme court has nonetheless applied a similar standard to habeas petitions grounded on some violations of fundamental constitutional rights. (See *In re Richards* (2016) 63 Cal.4th 291, 312-313 [habeas corpus petition based on false evidence]; *In re Clark*, *supra*, 5 Cal.4th at p. 795, citing *In re Martin* (1987) 44 Cal.3d 1, 50-51 [habeas corpus petition based on prosecutorial witness intimidation in violation of a criminal defendant's right to present a defense]; *Strickland v. Washington* (1984) 466 U.S. 668, 688, 691-692 [habeas corpus petition based on claim of ineffective assistance of counsel in violation of the constitutional right to counsel].)

In *People v. Simmons* (2023) 96 Cal.App.5th 232, the Court of Appeal held that the California Constitution does not require a case-specific prejudice inquiry in RJA cases.

> Article VI, section 13 of the California Constitution provides, "No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." The RJA represents the Legislature's express determination that "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California." (Assem. Bill No. 2542, § 2, subd. (i).) Article VI, section 13 does not prohibit the Legislature from making this presumptively constitutional determination.

(*Id.* at p. 338.) However, the California Supreme Court has recently ordered supplemental briefing in three capital appeals regarding this question. (https://www.atthelectern.com/2025/06/13/significant-supplemental-racial-justice-act-briefing-ordered-in-three-death-penalty-cases/ [as of June 16, 2025].)

5. Proposition 7:

Existing law prohibits imposition of the death penalty where the court finds a violation of the RJA. (Pen. Code, § 745, subd. (e)(3).) Proposition 7 was approved by the voters in 1978 and does not permit legislative amendment without voter approval. (*People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 278.) The Supreme Court has recently also requested briefing on the following issues: The RJA prohibits the death penalty where there has been a violation of the Act's prohibitions against racial bias. The California Supreme Court has requested briefing on the following issue: If a Racial Justice Act violation has occurred, is the defendant ineligible for the death penalty under Penal Code section 745, subdivision (e)(3) regardless of whether the violation was prejudicial? If so, would reversal of a death judgment under Penal Code section 745, subdivision (e)(3) without possibility of retrial on penalty be barred by the "Briggs Initiative" (Prop. 7, as approved by voters, Gen. Elec. (Nov. 7, 1978))? (https://www.atthelectern.com/2025/06/13/significant-supplemental-racial-justice-act-briefing-ordered-in-three-death-penalty-cases/, supra.)

This bill applies the death penalty prohibition to the RJA petition created by this bill.

6. Practical Considerations

For after-judgment remedies, the bill speaks in terms of remedies that result in a "meaningful modification" of the judgment. How should courts interpret "meaningful modification?" What if there is not a legally authorized sentence that would result in a "meaningful modification" of a sentence?

7. Related Legislation

SB 734 (Caballero) addresses due process issues for law enforcement related to the Racial Justice Act. SB 734 is pending in Assembly Public Safety.

8. Argument in Support

According to the Ella Baker Center for Human Rights, a co-sponsor of this bill:

> 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. While the intent of the RJA is clear, courts have struggled with how to properly resolve violations of the law. AB 1071 provides clarity and a more efficient process for determining if a violation has occurred. This legislation is necessary to ensure the RJA delivers on its promise: eliminating racial bias from California's criminal legal system.
>
> AB 1071 reflects extensive implementation tracking, years of collaboration with defense attorneys and legal advocates, and consideration of concerns raised by California Supreme Court justices regarding procedural clarity.
>
> Key provisions of AB 1071 will:
> - Create uniform procedures for how and when RJA motions can be filed;
> - Increase access to discovery and legal counsel for those raising RJA claims;
> - Empower judges to craft appropriate remedies that address and eliminate racial bias.
>
> These improvements are critical to making the RJA real in practice—not just in principle. The intent of the original law was to confront the unacceptable presence of racial bias in our justice system. AB 1071 is essential to aid courts in effectuating that intent because racism in any form or amount, at any stage of a criminal trial, is intolerable and undermines a fair criminal justice system.
>
> As stated in the original legislative intent:
>
> "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."
>
> The Racial Justice Act is one of the most important and consequential laws enacted in this state. AB 1071 helps us take the next step toward realizing that vision.

9. Argument in Opposition

According to the California District Attorneys Association:

> 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.
>
> **AB 1071 would create a massive unfunded mandate**
>
> AB 1071 would create unnecessary new avenues for relief under the Racial Justice Act (RJA), lessen the burden for defendants to obtain RJA discovery, and virtually eliminate any prerequisites for a previously convicted defendant to obtain appointed counsel. These changes to the RJA would result in an explosion of new litigation from already convicted defendants, whether they have any basis to seek relief or not. Current law gives the courts the ability to ensure that only cases where the defendant makes a preliminary showing that they might be entitled to relief go forward. AB 1071 removes those guardrails, which means that the courts will have no ability to screen RJA cases at early stages. As you must already know, RJA litigation is not a simple matter; each of these new petitions will need to be fully and zealously litigated by both sides, and ultimately the Courts of Appeal will need to examine cases for error.
>
> The California court system is already overwhelmed, and AB 1071 will require judges to hear thousands of new cases, even if it is clear defendants are not entitled to relief. Likewise, the Attorney General, State Public Defender, the Habeas Corpus Resource Center, local Public Defenders, and local prosecutors will also be forced to absorb these thousands of cases into their already overworked offices. Without Legislative approval of ***significant*** increased funds for the courts and attorneys who will be handling these cases, the California criminal justice system will grind to a halt.
>
> This problem is particularly acute in post-conviction matters. AB 1071 would require courts to hold evidentiary hearings in virtually all cases; the bill would even hamstring the Courts of Appeal by requiring remand-on-demand by convicted defendants without giving the People an opportunity to respond. This would be an extraordinary financial and logistical burden on the courts and litigants.
>
> **AB 1071 would mean that no criminal case is ever final**
>
> As recognized by our Supreme Court, both individual litigants and society as a whole have a legitimate interest in the finality of criminal prosecutions. "No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation." (*In re Reno* (2012) 55 Cal.4th 428, 451.)

If passed, AB 1071 would mean that no criminal case is ever truly final. The newly created petition outlined in proposed Penal Code section 1473.2 (1473.2) would allow any person convicted of a crime *ever* – no matter if they are still incarcerated, no matter if their conviction was dismissed after successfully completing probation – to petition for RJA relief. Likewise, habeas corpus petitions filed by pro per defendants can never be truly denied because such denials would automatically be without prejudice. Victims of decades-old crimes who believe their cases were done will be subjected to new trauma; old wounds will open, and they will have to revisit some of the worst moments of their lives without any judicial backstop.

AB 1071 upends traditional rules of habeas corpus and gives the courts little guidance

The writ of habeas corpus is a foundational tool of Western law. It predates the Magna Carta and is specifically enshrined in the United States and California Constitutions. Over hundreds of years lawyers and judges have developed a complex set of rules and procedures governing the Great Writ. AB 1071 upends these long-established rules and would leave the criminal justice system with more questions than answers.

It is not clear that 1473.2 is a new cause of action within the habeas corpus universe, or an altogether new type of petition. Generally, with limited exceptions, a person seeking relief under habeas corpus must be incarcerated. Current Penal Code section 745, subdivision (j)(3), limits petitions to defendants who are currently incarcerated. Proposed Penal Code section 745, subdivision (b)(3), states that an incarcerated defendant whose sentence is final may file a petition under 1473.2. But 1473.2 would not contain the limitation that it applies only to incarcerated defendants; it applies to any "person convicted of a criminal offense." Which section controls?

Moreover, 1473.2 contains its own rules and procedures; some of those conform to existing rules of habeas corpus, others do not. For example, under proposed section 1473.2, subdivision (g), certain petitions may not be deemed successive, untimely, or abusive, three well-established concepts in the law of habeas corpus. But subdivision (b)(3) states that petitioners may, rather than shall, attach copies of supporting documentation to their petition. This controverts a longstanding habeas corpus procedural bar. Likewise, subdivision (h)(1) states, "A prima facie determination shall be based solely on the petitioner's showing." AB 1071 would also amend section 1473 to include the same provision. But current law allows courts to request and consider an informal response prior to issuing an order to show cause (OSC). (Cal. Rules of Court, 8.385 subd. (b)(1); see *In re Jenkins* (2023) 14 Cal.5th 493, 519.)

Even worse, under current law, the issuance of an OSC "creates a 'cause' giving the People a right to reply to a petition by a return and to otherwise participate in the court's decision making process." (*People v. Patterson* (2017) 2 Cal.5th 885, 900; *In re Serrano* (1995) 10 Cal.4th 447, 455.) The return frames the issues for the court and defines the scope of the evidentiary hearing. But AB 1071 could be read to eliminate the People's ability to file a return at all. Do traditional rules of

habeas corpus apply to petitions under the RJA? Do those rules apply to petitions filed under proposed section 1473.2? The bill is unclear and resolving that lack of clarity will take years of litigation at all levels of the California court system.

AB 1071 is unconstitutional

California voters have repeatedly and consistently supported the continued existence of capital punishment. Most recently, the voters passed Proposition 66, which among other things created Penal Code section 1509. That section states that habeas corpus is only way for a condemned prisoner to collaterally attack a death sentence. By creating proposed section 1473.2, AB 1071 would create a new mechanism to collaterally attack death sentences via the RJA. But this new mechanism violates the California Constitution. Under Article II, section 10(c), an initiative may only be amended by the Legislature if the initiative specifically allows for such an amendment. In the case of Proposition 66, "The statutory provisions of this act shall not be amended by the Legislature, except by a statute passed in each house by rollcall vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." (Death Penalty Reform And Savings Act, 2016 Cal. Legis. Serv. Prop. 66 (Proposition 66) (West).)

The RJA was not passed by a three-fourths vote in either chamber, and therefore cannot be used as a basis to collaterally attack a death penalty sentence outside of habeas corpus. Because AB 1071 would create a new, non-habeas corpus mechanism to collaterally attack death sentences via the RJA, the bill is facially unconstitutional.

AB 1071 is confusing, unclear, and internally inconsistent

Finally, in addition to the serious problems we lay out above, AB 1071 contains numerous provisions that cannot be harmonized with other statutes, are internally inconsistent, or otherwise confusing or unclear. For example:

– Section 1473.2, subdivision (c), states that a court shall appoint counsel if a petition is missing critical information but that information could be "readily" ascertained by the court. How should the court make that ascertainment? What does "readily" mean? May a court order a third party such as a defense attorney or prosecutor to provide the information, and if so, how would that order be harmonized with the good cause requirement found in section 745 subdivision (d)?

– Section 1473.2, subdivision (h)(3)(A), states that expert testimony is not required to prove a violation of subdivision (a). We assume that this refers to subdivision (a) of the RJA – a different section – but proposed section 1473.2 is not clear. Moreover, Evidence Code section 720 defines an expert as a person who has "special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." Such a person may give an opinion related to "a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code § 801, subd. (a).) Statistical analysis is by any measure beyond common experience. Does proposed section 1473.2 override the Evidence Code?

Can a judge consider unexplained statistics; if so, at what stage and to what degree?

– A proposed amendment to section 745, subdivision (e), would require a "substantive" reduction in sentence. So far as we are aware, a "substantive" reduction in sentence is not defined by this bill or by any provision of the Penal Code. Does this mean a certain number of years, a certain percentage of the sentence, or something else?

The RJA is slowly but surely winding its way through the courts. AB 1071 will undo years of litigation by both defense attorneys and prosecutors, inject new uncertainty into existing RJA jurisprudence, and massively increase the caseloads of the courts, defense attorneys, and prosecutors. For those reasons, CDAA respectfully opposes AB 1071.

-- END –