Staff Memorandum 2025-08
California's Racial Justice Act and Related Matters

At its July 2025 meeting, the Committee on Revision of the Penal Code will consider California's Racial Justice Act.

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Introduction

The Racial Justice Act, passed by the Legislature in the summer of 2020 and effective in January 2021, has received extensive attention from commentators and academics.[1] According to extensive findings and declarations part of the measure, the Legislature's goal was to "eliminate racial bias from California's criminal justice system," to "reject the conclusion that racial disparities within our criminal justice [system] are inevitable, and to actively work to eradicate them."[2] The RJA applies to all types of cases and both pending charges and final judgments. It allows claims based on both implicit and explicit racial bias shown by words or actions taken in court as well as statistical evidence of disparate charging and sentencing practices.

The RJA, which has little precedent in the laws of California or other states, has gotten off to a slow start, with only three claims based on statistical analysis reaching decisions in the trial courts. But in the last year and a half appellate courts have issued published decisions beginning to clarify many of the threshold issues in bringing a claim — from what is required to be appointed an attorney,[3] to what must be shown with a "prima facie" case for a claim to continue,[4] and to what constitutes "good cause" to obtain disclosure of evidence from the state.[5] The California Supreme Court also routinely orders lower courts to take closer looks at RJA claims.[6] But many legal issues remain to be decided and it's too soon to gauge the long-term impact of the law.

For example, the California Supreme Court recently requested supplemental briefing in three death penalty appeals on how to deal with RJA claims based on biased courtroom language and related activity.[7] The resolution of these issues — discussed further below, but which include whether some claims require a

[1] See, e.g., Annelise Finney, *California's Groundbreaking Racial Justice Act Cuts Its Teeth in Contra Costa*, KQED, February 13, 2024; Sean Kevin Campbell, *California lets defendants challenge racism in court. Few have succeeded*, CalMatters, November 12, 2024. The Santa Clara Law Review devoted an issue to the law (Volume 65, Number 1). The Berkeley Criminal Law & Justice Center and the Berkeley Journal of Criminal Law held a symposium on February 2, 2024.

[2] AB 2542 (Kalra 2020) § 2(i). These statements of intent are in uncodified findings and declarations part of the bill that enacted the RJA; courts give them "considerable weight." *Young v. Superior Court*, 79 Cal. App. 5th 138, 157 (2022).

[3] *McIntosh v. Superior Court*, 110 Cal.App.5th 33 (2025).

[4] *Mosby v. Superior Court*, 99 Cal.App.5th 106 (2024).

[5] *McDaniel v. Superior Court*, 11 Cal.App.5th 228 (2025).

[6] See, e.g., *In re Lorin Raynard Robinson*, S287228, June 25, 2025 (ordering trial court to consider whether counsel should be appointed); *In re Clayton Moore*, S285479, May 28, 2025 (same); *People v. Superior Court (Jones)*, S289184, March 26, 2025 (ordering appellate court to consider whether scope of evidentiary hearing should be expanded); *In re Toufic Nadi*, S282274, December 11, 2024 (counsel); *In re Donell Thomas Haynie*, S284850, August 28, 2024 (counsel).

[7] *People v. Bankston*, S044739; *People v. Barrera*, S103358; *People v. Chhuon and Pan*, S105403, June 12, 2025.

harmless error analysis and whether the death penalty can be forbidden to remedy an RJA violation — have the potential to limit the RJA's scope.

This memorandum gives further background on the RJA, catalogs significant legal issues with the law, and provides staff recommendations for Committee consideration.

History of the Racial Justice Act

Challenging criminal convictions and sentences as racially discriminatory has historically been difficult, if not seemingly impossible. In 1987, the United States Supreme Court held in *McCleskey v. Kemp* that a defendant must "prove that the decisionmakers in his case acted with discriminatory purpose" and cannot rely solely on statistical studies of discrimination.[8] This required a person to prove that the government intended to discriminate.[9]

In 2020, the Legislature passed the Racial Justice Act, which provides in Penal Code section 745(a) that the "state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin." [10]Rejecting the "purposeful discrimination" standard in *McCleskey* that has made it nearly impossible to challenge racial bias, the Legislature adopted a statutory scheme that eliminates any requirement to show discriminatory purpose and permits violations to be established based on statistics. The Legislature expressed its strong commitment to "eliminate racial bias from California's criminal justice system" and "ensure that race plays no role at all in seeking or obtaining convictions in sentencing."[11] The RJA originally applied only to people who were sentenced in the trial court after January 1, 2021.

The Racial Justice Act for All Act, signed into law in 2022, applied the RJA retroactively to people sentenced before January 1, 2021, in stages. It began with people sentenced to death becoming eligible on January 1, 2023, and ends with any person with a felony conviction becoming eligible January 1, 2026.

In 2023, the RJA was amended with AB 1118, which made technical changes that seemingly allowed RJA claims to be raised on direct appeal for the first time, or, if additional evidence is needed, allowed individuals to request a stay of an appeal and remand to the trial court to file a motion.[12]

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[8] *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987).
[9] *Id*. at 298.
[10] Penal Code § 745(a).
[11] AB 2542 (Kalra 2020) § 2(i).
[12] Penal Code § 745(b) ("For claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) 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 pursuant to this section.").

In February 2025, Assemblymember Kalra introduced AB 1071, which would further revise procedures and remedies under the RJA. The bill eliminates the RJA motion to vacate and creates a new post-conviction RJA petition process, which would be available to both defendants in and out of custody and would require counsel to be appointed if the defendant clearly states the basis for the RJA claim.[13] Other updates to the RJA from AB 1071 are detailed below.

Types of RJA Claims

There are two broad types of claims permitted by the RJA: language-based claims and statistics-based claims. In practice, both types of claims have required hiring experts by defense attorneys and prosecutors, resulting in significant cost and delay. An expert witness is required to evaluate the data for racial disparities for statistical claims and experts are often employed to explain how specific language was discriminatory.

Language-based claims [(a)(1) & (a)(2)]

Subdivision (a)(1) and (a)(2) claims rely on a showing of actual bias or animus towards the defendant. These violations occur when a prosecutor, defense attorney, witness, juror, or judge "exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin" or during the defendant's trial "used racially discriminatory language about the defendant's race, ethnicity or national origin."[14] The statute specifies that "racially discriminatory language" is that which "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."[15]

Appellate courts have found violations where prosecutors have openly made the defendant's race relevant to the case. For example, appellate courts have vacated convictions where the prosecutor argued the defendant's skin tone and ambiguous "ethnic presentation" equated with deception[16] and where the prosecutor identified the defendant's race as an excuse for law enforcement's omissions in an investigation.[17]

[13] AB 1071 (Kalra).
[14] Penal Code § 745(a)(1) & (2).
[15] Penal Code § 745(h)(4).
[16] *People v. Simmons*, 96 Cal.App.5th 323, 335 (2023).
[17] *People v. Stubblefield*, 107 Cal.App.5th 896 (2024), review granted March 12, 2025.

No violations have been found where: defense counsel advised a defendant to "speak how you speak" and "be yourself" when testifying;[18] the prosecutor described the defendant as a "monster" or "predator" when describing the cruelty of his conduct;[19] the judge characterized the defendant as a "thief, fraudster, liar, and coward" during sentencing;[20] the prosecutor referred to the defendant as a "gorilla pimp";[21] or the trial judge noted during sentencing that the defendant was living "the gangster life."[22]

Statistics-based claims [(a)(3) & (a)(4)]

Subdivision (a)(3) and (a)(4) claims are data-driven. A defendant must prove they were charged with or convicted of more serious offenses or sentenced more severely compared to "similarly situated" people of a different race, ethnicity, or nationality.[23] A comparison must be made to individuals in the same county who have "engaged in similar conduct" or were convicted of "the same offense."[24] There must also be a "significant difference" in the charging or sentencing outcomes, though it need not be "statistical significance."[25] Courts can consider "statistical evidence, aggregate data, or nonstatistical evidence."[26]

The statute also explains that "similarly situated" does "not require that all individuals in the comparison group [be] identical" and should encompass "factors that are relevant in charging and sentencing."[27] But the statute provides little guidance on how to consider the specifics of these claims, such as appropriate comparison groups and sample sizes or how courts should determine what differences in outcomes are "significant."

Because they are labor intensive and the law is still developing, statistics-based claims have moved much more slowly, taking months or even years of litigation and multiple trips to higher courts. To date, Committee staff are only aware of 3 cases where a trial court has reached the merits of a statistical claim after an evidentiary hearing. Two of these were denied because the courts rejected the

[18] *People v. Coleman*, 98 Cal.App.5th 709, 722–723 (2024).
[19] *People v. Quintero*, 107 Cal.App.5th 1060, 1074–1075 (2024).
[20] *People v. Lawson*, 108 Cal.App.5th 990, 1001 (2025).
[21] *People v. Wilson*, 333 Cal.Rptr.3d 327, 338 (2025).
[22] *People v. Tiebout*, 2025 WL 998514, *8 (2025). Justices Liu and Evans voted to grant the petition for review. See California Supreme Court case number S290536, June 15, 2025.
[23] Penal Code § 745(a)(3) & (4). A sentencing claim can also be premised on harsher sentencing "in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed." Penal Code § 745(a)(4)(B).
[24] Id.
[25] Penal Code § 745(h)(1).
[26] Id.
[27] Penal Code § 745(h)(6).

expert witness' methodology and faulted the defense for failing to provide examples of people charged differently for similar conduct.[28]

In the third case, the trial court dismissed the gang special circumstance after the defense presented expert testimony that Black people were almost 44% more likely to be charged with the more serious gang special circumstance rather than only the gang enhancement.[29]

None of these three decisions on statistics-based claims have been reviewed by an appellate court on the merits.

Data Available for RJA Claims

Since the inception of the RJA, data availability has impacted the resolution of (a)(3) and (a)(4) claims.[30] As the Committee noted in its 2023 Annual Report, prosecutors and other entities may not collect the relevant data, and even if they do, it may not be accurate, comprehensive, or readily accessible. Since 2023, the landscape of available data largely remains the same, though a few entities including the ACLU of Northern California and the Paper Prisons Initiative have collected and made public some relevant data.[31]

In 2023, the Committee recommended expanding the scope of publicly available data and access to existing data for attorneys investigating a claim under the RJA.[32] This recommendation would have been largely implemented with AB 2065 (Kalra), introduced in 2024, but that bill was held in appropriations.

[28] *People v. Jenkins*, Orange County Superior Court, No. 17NF0293, April 14, 2025 (oral decision); *People v. Decuir and Mims*, San Francisco County Superior Court, Nos. 17011544 & 17011543, June 12, 2023 (written decision).
[29] Court's Order Re: PC 745(a)(3) Motion, *People v. Windom et al.*, Contra Costa County Superior Court, No. 01001976380, May 23, 2023.
[30] Committee on Revision of the Penal Code, Staff Memorandum 2023-01: Updates on Recent Law Changes and Related Matters, March 13, 2023.
[31] See, e.g., ACLU of Northern California, Racial Justice Act <www.aclunc.org/racial-justice-act>; Paper Prisons, Racial Justice Act Data Tool.
[32] Committee on Revision of the Penal Code, Annual Report and Recommendations, 19–21 (December 2023).

Current Process

The process for determining a claim under the RJA has multiple steps and a series of "escalating burdens" for the defendant to overcome to prevail.[33]

1. Prima facie case

After a defendant files a motion or petition for habeas corpus alleging an RJA violation, the trial court determines whether a "prima facie" showing has been made: whether the "defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred."[34] This standard requires "more than a mere possibility," but is a less stringent standard than "more likely than not."[35]

Appellate courts have clarified that to make a prima facie showing, the defendant must both "(i) state fully and with particularity the facts on which relief is sought, as well as (ii) include copies of reasonably available documentary evidence supporting the claim."[36] "The court should accept the truth of the defendant's allegations, including expert evidence and statistics, unless the allegations are conclusory, unsupported by the evidence presented in support of the claim, or demonstrably contradicted by the court's own records."[37]

2. Appointment of counsel

In habeas petitions, where the petitioner is incarcerated and not already represented by counsel, the RJA directs the court to appoint counsel if requested and either "the petition alleges facts that would establish a violation" of the RJA or the State Public Defender requests counsel be appointed.[38]

One appellate court recently clarified that the preliminary showing necessary for appointment of counsel is lower than the prima facie showing necessary to begin an RJA claim.[39] The inquiry for assignment of counsel in the RJA is limited only to whether the facts in the petition would establish a violation of the RJA.[40]

For petitioners who have completed their sentences and are already out of custody, the RJA does not expressly provide for the appointment of counsel,

[33] *Young v. Superior Court*, 79 Cal. App. 5th 138, 160 (2022).
[34] Penal Code § 745(h)(2).
[35] Id. The RJA prima facie standard is lower than the prima facie standard for writs of habeas corpus. *Finley v. Superior Court*, 95 Cal.App.5th 12, 21–22 (2023).
[36] Id. at 21.
[37] Id. at 23.
[38] Penal Code § 1473(e).
[39] *McIntosh v. Superior Court*, 110 Cal.App.5th 33, 44–45 (2025).
[40] Id.

although precedent provides a limited right to appointed counsel for a motion to vacate a conviction.[41]

3. Disclosure

The RJA states 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."[42] The defendant must show "good cause" to obtain disclosure.[43]

Courts have explained that the threshold for obtaining disclosure is low and must be "broad and flexible."[44] The defendant need only show a "plausible factual foundation, based on specific facts, that a violation of the [RJA] could or might have occurred in his case."[45] This showing can be made with statistical evidence alone and does not require discussion of specific cases that were treated differently than the defendant's.[46] So long as the "statistical data demonstrates an actual racial disparity in the charging decisions of the county, weaknesses in the data pool or concerns about additional data points do not necessarily negate the plausible factual foundation that an RJA violation could or might have occurred."[47]

4. Evidentiary hearing

If the defendant makes a prima facie showing that a violation has occurred, the court must hold an evidentiary hearing. At the hearing the defendant has the burden of proving a violation by a preponderance of the evidence — more likely than not — and does not need to prove intentional discrimination.[48] A prosecutor may also show at the hearing race-neutral reasons explaining the racial disparities.[49] The court must make findings on the record at the conclusion of the hearing.[50]

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[41] See *People v. Fryhaat*, 35 Cal.App.5th 969 (2019).
[42] Penal Code § 745(d).
[43] Id.
[44] *Young v. Superior Court*, 79 Cal.App.5th 138, 160 (2022). This showing is also lower than that required to make out a prima facie case. *Young v. Superior Court,* 79 Cal.App.5th 138, 161 (2022); *McDaniel v. Superior Court*, 332 Cal.Rptr.3d 667, 681 (2025).
[45] *Young v. Superior Court*, 79 Cal.App.5th 138, 159 (2022) (quotation marks omitted).
[46] *McDaniel v. Superior Court,* 332 Cal.Rptr.3d 667, 677 (2025).
[47] Id. at 680 (quotation marks omitted).
[48] Penal Code § 745(c)(2).
[49] Penal Code § 745(h)(1). "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." Id.
[50] Penal Code § 745(c)(3).

5. Remedies

If a court finds a violation of the RJA for a case before sentencing, the RJA lists several remedies: the court may declare a mistrial, discharge the jury and empanel a new jury, or — if it is in the interest of justice — dismiss enhancements, special circumstances or allegations, or reduce charges.[51]

But for cases in which someone has already been convicted and sentenced, the available remedies are more restrictive and depend on the nature of the claim:

- For (a)(1) or (a)(2) claims — language-based claims — there is only one remedy: the conviction should be vacated and new proceedings ordered.[52] The RJA does not require a party to show how this bias impacted the case outcome.

  But the rule is more complicated for people bringing (a)(1) or (a)(2) claims where judgment was entered before January 2021: relief is not allowed if "the state proves beyond a reasonable doubt that the violation did not contribute to the judgment."[53]

- For (a)(3) claims — that a defendant was charged more harshly due to their race — the remedy is reducing the charge and resentencing.[54]

- For (a)(4) claims — that a sentence was longer due to a defendant's race — the remedy is adjusting the sentence.[55]

Notable Legal Issues

Many unresolved legal questions remain in how the RJA should be interpreted and applied. The below catalog is not comprehensive.

1. Prima facie case in statistics-based claims

Appellate courts have begun to explain the evidence needed for a prima facie case in statistics-based claims, but there is still little clarity on how lower courts should consider these claims.

Statistics only?

Courts have not resolved whether aggregate statistics are enough on their own to sustain a prime facie case. The leading case to consider this issue, arising from Riverside County, explicitly left the issue open because the defendant had

[51] Penal Code § 745(e)(1)(A)–(C).
[52] Penal Code § 745(e)(2)(A).
[53] Penal Code § 745(k).
[54] Penal Code § 745(e)(2)(A).
[55] Penal Code § 745(e)(2)(B).

presented both statistics on racial disparities in the rates at which the death penalty was sought in murder cases and "the underlying facts of several cases in which the District Attorney did not seek the death penalty for non-minority defendants."[56] The presentation of both statistics and case-specific facts was sufficient to show a prima facie case so the court did "not determine if statistics alone could meet the prima facie burden."[57]

In reaching this conclusion, the court noted repeatedly that "there is nothing in the plain meaning of the [RJA] that provides what evidence is necessary to establish a prime facie case."[58]

The resolution of this question could be important because requiring both statistical analysis and specific cases would increase the time and expense of investigating and raising RJA claims for most defendants.

Detail of statistics

The precise nature and scope of aggregate statistics — even if coupled with summaries of individual cases — that will satisfy a prima facie case is also uncertain. A recent appellate case about the charging of felony-murder special circumstances in Santa Clara County held there was not a a prima facie case because the "the report on which [defendant] relied [was] logically infirm and its authors' curation of the available data …omit[ted] — without explanation — necessary and apparently available information."[59]

The court gave further guidance as a "starting point" that the statistical analysis should include: "(1) a clearly defined sample of those defendants who were charged with murder in the relevant period and region, (2) the subset of that sample who were also charged with a special circumstance, and (3) the racial makeup of both the murder group and the special circumstance subset, as compared with the general population."[60]

But even this guidance was incomplete as the court noted that "more granular" detail might also be needed, such as "the type of special circumstance, type of predicate felony, or underlying facts."[61]

[56] *Mosby v. Superior Court*, 99 Cal.App.5th 106, 129 (2024).
[57] Id.
[58] Id. at 127.
[59] *People v. Jimenez*, __ Cal.Rptr.3d __, 2025 WL 1834002, *22 (June 3, 2025).
[60] Id. at *26.
[61] Id.

2. Disclosure

Timing

Courts have split on whether a disclosure request may be filed as a standalone motion or may only be filed after a prima facie case has been met. The California Supreme Court is currently considering the issue.[62]

AB 1071 would allow motions for disclosure while preparing to file a petition and not require making a prima facie case.[63]

County-level data required for disclosure

Meeting the threshold to obtain disclosure with statewide — as opposed to county-level — data is likely impossible because that data does not address local charging or sentencing practices.[64] But state-level data, including from reports from this Committee, are generally more readily available than county-level data.

As California Supreme Court Justices Liu and Evans have pointed out, some petitioners are "in an impossible catch-22" because their "petitions are deemed inadequate for lack of the very data they seek counsel and discovery under the RJA to obtain."[65] The Justices wrote, "In the face of judicial inaction, the Legislature may wish to clarify what showing is adequate to secure appointment of counsel and discovery under the RJA, and to require state and county agencies to make relevant charging, conviction, and sentencing data publicly available."[66]

In another case, three Justices dissented from denying review in a case where the trial court had denied a disclosure request because the defendant relied on state-wide data instead of county-level data.[67] Justice Liu wrote that "[f]aulting [the defendant] — who is incarcerated, without counsel, and with limited ability to gather data on his own — for failing to present county-level data at this juncture is tantamount to requiring petitioners to provide the very documentation they seek through discovery in order to further develop their RJA claims."[68]

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[62] *In re Montgomery*, 104 Cal.App.5th 1062 (2024), review granted December 11, 2024; *People v. Serrano*, 106 Cal.App.5th 276 (2024) (holding that the RJA allows a defendant to file a stand-alone disclosure motion to gather evidence of potential racial or ethnic bias), review granted January 15, 2025.

[63] AB 1071 (Kalra).

[64] *McDaniel v. Superior Court*, 332 Cal.Rptr.3d 667, 680 (2025); *Young v. Superior Court*, 79 Cal.App.5th 138, 159 (2022).

[65] *In re Mendoza*, S287251, December 18, 2024 (dissenting statement by Justice Liu). The statement also noted that the Court's "inaction portends a silent evisceration of the RJA."

[66] Id.

[67] *In re Banks*, S2787476, January 15, 2025 (Liu, Kruger, Evans, JJ., would have granted the petition for review).

[68] *In re Banks*, S2787476, January 15, 2025 (dissenting statement by Justice Liu).

Scope of disclosure

An entitlement to disclosure after making a sufficient showing of "good cause" immediately presents the problems of exactly what must be disclosed. In cases involving statistical analysis, people raising RJA claims have requested voluminous information from prosecutor's offices — information they must obtain in order to determine if they are "similarly situated" and committed "similar conduct" to people who were treated less harshly because of their race.

The scope of disclosure is determined by a multi-part test known as the "*Alhambra* factors."[69] These factors include:

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.

A court has discretion in applying these factors, though "totally foreclos[ing]" disclosure will likely be an abuse of discretion.[70] No published appellate decision considered the application of these factors to a specific case.

Control of disclosure information

While the RJA disclosure provision covers material "in the possession or control of the state," no appellate court has addressed how deep into other agencies this disclosure provision reaches. And the RJA itself defines the "state" as "includ[ing] the Attorney General, a district attorney, or a city prosecutor."[71] In analogous scenarios, like the exculpatory evidence required to be disclosed by due process under the *Brady v. Maryland* line of cases, a prosecutor must disclose material

[69] *Young v. Superior Court,* 79 Cal.App.5th 138, 144–145 (2022) (citing *Alhambra v. Superior Court*, 205 Cal.App.3d 1118, 1134 (1988)).
[70] Id. at 169 (2022).
[71] Penal Code § 745(h)(5).

that is known only to the police.[72] A similar scope likely applies to RJA disclosure.[73]

3. Historical evidence of biased policing and prosecution

For statistics-based claims, the RJA specifies that courts "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."[74]

Among other issues, this provision helps courts address differences in criminal history that are relevant to determining whether people are similarly situated,[75] but no court has interpreted what this provision means or how it should be used.

4. Remedies

Dismissal is not a remedy

The RJA does not explicitly provide that a case can be dismissed as a remedy for a violation. And one appellate court has said that the RJA does not allow dismissal as a remedy.[76]

Remedy not required

The same appellate court has held that remedies are not mandatory for RJA violations and a court can only impose one of the remedies specified in the RJA.[77]

AB 1071 requires a remedy to be imposed whenever a court finds a violation of the RJA and expands the remedies available to a court.[78]

Death penalty

The California Supreme Court recently asked parties in three different death penalty cases to address whether a reversal of a death sentence under the RJA, without the possibility of imposing the sentence again would violate the "Briggs

[72] *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).
[73] Penal Code § 745(d) ("A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state."); AB 2542 (Kalra 2020) § 2(j) ("It is the further intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences.").
[74] Penal Code § 745(h)(1).
[75] Penal Code § 745(h)(6).
[76] *R.D. v. Superior Court*, 108 Cal.App.5th 1227, 1242 (2025).
[77] Id. at 1247.
[78] AB 1071 (Kalra).

Initiative" — a voter initiative (Proposition 7) approved in 1978 that provided for application of the death penalty.[79]

Misdemeanors

The RJA applies to pending misdemeanor cases[80]but its remedies are not well-tuned to dealing with misdemeanor cases, which make up the vast majority of all criminal prosecutions. Misdemeanor cases do not include enhancements or special allegations and will rarely be reducible to a lesser-included charge. Because the only appellate court to address remedies has held that only remedies specified in the RJA are applicable,[81] it is not clear what a court should do if it finds an RJA violation in a misdemeanor case, such as resisting arrest.[82]

5. Harmless error for (a)(1) and (a)(2) claims

Some courts have struggled with the RJA's mandate that the mere presence of biased language results in vacating a conviction in many cases, without requiring any finding of prejudice to the outcome of the case.[83]

The California Supreme Court recently, on its own motion, ordered briefing on this issue in a trio of death penalty appeals.[84] The question is whether a requirement in the California Constitution — that permits setting aside judgments only if a court finds that an error has resulted in a "miscarriage of justice" — requires courts to do more than identify an RJA error before they can grant relief.[85]

The Legislature addressed this issue by specifying in the RJA's findings and declarations that "racism in any form or amount … is a miscarriage of justice

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[79] *People v. Bankston*, S044739; *People v. Barrera*, S103358; *People v. Chhuon and Pan*, S105403, June 12, 2025.

[80] *Gonzales v. Superior Court*, 108 Cal.App.5th Supp.36 (2024).

[81] See *R.D.*, 108 Cal.App.5th at 1247.

[82] Penal Code § 148(a)(1).

[83] Dan Sutton, *Data, Disparities, and Discrimination*: *How California's Racial Justice Act creates New Pathways to Challenge and Evaluate Bias*, Stanford Center for Racial Justice, April 2025, 5. See also *People v. Stubblefield*, 107 Cal.App.5th 896, 920 (2024), review granted March 12, 2025 (the Court of Appeal noted that while the RJA did not require showing how the prosecutor's appeal to racial bias in closing argument might have impacted the defendant's trial, the court nonetheless described how it did so).

[84] *People v. Bankston*, S044739. *People v. Barrera*, S103358. *People v. Chhuon and Pan*, S105403 (week of June 9, 2025).

[85] Until 1911, California appellate courts presumed that any error, however trivial, required reversal. *People v. Watson*, 46 Cal.3d 818, 834 (1956). The public then voted a harmless error provision into the constitution and Article VI, section 13 has only permitted reversal if the court is of the opinion that the error has resulted in a "miscarriage of justice." The California Supreme Court has interpreted this to mean that a court may only reverse a conviction if after examining all of the evidence, the court first finds that the result probably would have been different had the error not occurred. *Watson*, 46 Cal.3d at 836.

under Article VI of the California Constitution."[86] But whether this legislative statement satisfies the California Constitution or whether only a court can determine if a miscarriage of justice has occurred is an open question that the California Supreme Court may soon decide.[87]

6. Appellate procedures

The appellate procedures for the RJA created by AB 1118 in 2023 — which allow appellate courts to "stay and remand" an RJA claim and ostensibly grant defendants the ability to raise some claims on direct appeal for the first time[88] — are unusual in appellate practice and have faced some measure of resistance from courts.

Stay-and-remand

The California Supreme Court denied a motion for stay-and-remand in a capital case because it was not "necessary" as the defendant was entitled to pursue a habeas proceeding simultaneously with the direct appeal.[89] Justices Evans and Liu dissented, arguing that the majority "supplants the Legislature's demand to swiftly rid the criminal justice system of racism" by funneling the defendant's claim to a habeas process "riddled with delay."[90] The two Justices dissented in another capital case denying a motion for stay and remand, noting that the Legislature explicitly intended to provide an efficient and effective remedy by adding the stay-and-remand procedure.[91]

AB 1071 (Kalra) would revise the stay-and-remand procedures to make them mandatory "upon a defendant's request and attestation that the alleged violation needs further development through no fault of the defendant, and the defendant alleges a plausible claim for relief."[92]

Forfeiture

General appellate rules hold that a defendant forfeits a claim on appeal unless the issue has been raised at trial. Appellate courts have continued to apply the

[86] AB 2542 (Kalra 2020) § 2(i).

[87] In 2023, a lone dissenting justice in the Court of Appeal asserted that the Legislature "usurped the judiciary's authority to determine what constitutes a 'miscarriage of justice' within the meaning of Article VI." *People v. Simmons,* 96 Cal.App.5th 323, 340–345 (2023) (Yegan, J. dissenting). The justice further explained: "The Legislature's goal [with the RJA] is laudable, but to achieve that goal it has resorted to an extreme unconstitutional measure that may wreak havoc on the criminal justice system." Id. at 345.

[88] Penal Code § 745(b).

[89] *People v. Wilson,* 16 Cal.5th 874, 943–963 (2024). See also *People v. Lashon,* 98 Cal.App.5th 804, 817 (2024).

[90] *Wilson,* 16 Cal.5th. at 963 (Evans, J., dissenting).

[91] *People v. Frazier,* 16 Cal.5th 814, 979 (2024).

[92] AB 1071 (Kalra) (§ 2, creating Penal Code § 745(b)(2)).

forfeiture rule to the RJA, finding that a failure to object at trial prevents a defendant from raising an RJA issue for the first time on appeal.[93]

This interpretation is difficult to square with AB 1118's changes to the RJA in 2023 — that "[f]or claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence"[94] — since requiring preservation by raising it in the trial court was already the rule.

Staff Recommendations

The Committee may wish to consider the following proposals to address the issues raised in this memorandum.

Note that this list does not include recommendations on issues addressed by AB 1071. If AB 1071 does not pass, the Committee should consider whether any of the changes proposed in that bill would be appropriate recommendations.

- **Reiterate the need to improve data access.**
  In 2023, the Committee recommended a variety of ways to improve access to data relevant to RJA claims, including expanding reports already produced by the California Department of Corrections, Department of Justice, and Judicial Council. Though a bill in 2024 (AB 2065 Kalra) would have implemented many of these improvements, the bill was not successful. The need for this data access remains and the Committee should reiterate this recommendation.

- **Clarify that disclosure obligations extend beyond prosecutor offices.**
  Though current language in the RJA likely already requires disclosure of all relevant law enforcement records, the RJA could be clarified to remove any doubt that police departments, sheriff's departments, and other law enforcement agencies are appropriate sources of disclosure.

- **Expand remedies.**
  Courts should, as they do in traditional habeas corpus proceedings,[95] have greater flexibility to fashion remedies that address RJA violations, including the ability to dismiss a case.

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[93] *People v. Wagstaff*, 111 Cal.App.5th 1207 (2025) (Attorney General conceded RJA violation but court still found forfeiture); *People v. Quintero*, 107 Cal.App.5th 1060, 1075–1079 (2024) (finding (a)(2) claim forfeited because trial counsel did not object to the prosecutor's language during closing argument).
People v. Singh, 103 Cal.App.5th 76, 116 (2024); *People v. Lashon*, 98 Cal.App.5th 804, 816 (2024).

[94] Penal Code § 745(b).

[95] *In re Duval*, 44 Cal.App.5th 401, 411 (2020) ("The scope of a court's authority in granting habeas corpus relief is quite broad.").

- **Formalize large-scale relief.**
  A successful statistics-based RJA claim could have applicability beyond the defendant that brought it. Instead of allowing litigating similar cases one-by-one, the RJA could contain a formal mechanism — similar to the class action process in civil cases — allowing relief to all people who should benefit.

- **Strengthen appellate review of (a)(1) and (a)(2) claims.**
  Build on existing language in the RJA[96] by adding a presumption that appellate courts should consider on the merits all RJA issues based on biased language, even if the claim did not follow the strict rules around preservation. The presumption should be overcome if there is evidence the claim was not pressed below in bad faith.

- **Develop a model process for determining statistics-based claims.**
  More than four years after the RJA became effective, there is no guidance from appellate courts on how statistics-based claims should be decided. The Committee should partner with researchers, including our colleagues at the California Policy Lab, to develop an accessible approach for how courts should consider these claims.

Conclusion

The Racial Justice Act has immense potential to begin to eliminate racial from California's criminal justice system. But the law is complex and many threshold issues have yet to be resolved by California's courts. The Committee should recommend updates to the RJA that help address these issues and unlock the power of the law.

Respectfully submitted,

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[96] Penal Code § 745(b).