



## **DUE PROCESS AND CRIMINAL TRIALS - ADDITIONAL MATERIALS**

### **“The California Racial Justice Act of 2020, Explained”**

o April 22, 2024 By Hoang Pham & Amira Dehmani

**\*\*The following article has been edited for length\*\***

The [Racial Justice Act (RJA)] allows for the reversal or modification of a conviction or sentence even without the racial bias being shown to have altered the trial outcome. [A recent ruling has] generated optimism from supporters of reform, who expect the law to help reduce the impact of racism in the state’s justice system. But the RJA has also been criticized harshly by those who believe it will clog the court system, produce unjust outcomes for victims, and treat defendants differently based on their race.

#### **What is the California Racial Justice Act of 2020?**

Challenging criminal convictions or sentences as racially discriminatory is very difficult, due in part to the seemingly impossible standard set in 1987 by the U.S. Supreme Court in *McCleskey v. Kemp*. That decision established that a defendant must “prove that the decisionmakers in *his* case acted with discriminatory purpose” and cannot rely solely on statistical studies showing discrimination broadly. The defendant must offer evidence “specific to his own case that would support an inference that racial considerations played a part in his sentence.” Defendants are rarely successful in meeting that standard. However, because Supreme Court decisions establish a “constitutional floor”, states have the power to legislate and provide greater protections—which California did in 2020 with the RJA.

The RJA, or AB 2542, states 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.” Specifically, a violation under the RJA can be established [by relying on statistical data and] when:

- a judge, attorney, law enforcement officer, expert witness, or juror in the case “exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin”;
- racially discriminatory language about the defendant’s race, ethnicity, or national origin was used in the criminal legal process, “or [a judge, attorney, law enforcement officer, expert witness, or juror] otherwise exhibited bias or animus towards the defendant . . . whether or not purposeful”;
- race was a factor in the usage of peremptory challenges;
- the defendant was charged or convicted of more serious offenses than defendants of other races who commit similar offenses, 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”; or



- when a longer or more severe sentence was imposed on the defendant when compared to other 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.”

Under the RJA, if a court finds a violation, they are required to impose a remedy specific to the violation from a set list of remedies:

- If a judgment has not yet been entered, the court may: reseal a juror removed by use of a peremptory challenge; declare a mistrial; empanel a new jury; and in the interest of justice, “dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.”
- If a judgment has been entered and the court finds 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.

Once a violation has been established, a prosecutor can no longer seek the death penalty. . . .

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### **What do supporters say about the Racial Justice Act?**

Assemblymember Ash Kalra (D-San Jose), the RJA’s primary author, suggested that the law serves as a “countermeasure” to *McCleskey*, arguing that the decision “established an unreasonably high standard for victims of racism in the criminal legal system that is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted.” The RJA would therefore help the state of California “take an important step in prohibiting the use of race and ethnicity as a factor in the state’s justice system across the board.”

Kalra and other supporters believe the RJA will reduce racial disparities in California’s criminal justice system—disparities which are well documented. For example, according to a 2021 report by the California Budget & Policy Center, people of color continue to be overrepresented in state prisons. The report notes that despite reforms to California’s criminal laws, such as Proposition 47 which reclassified certain drug and property crimes as misdemeanors, disparities have actually widened for Black men, who were incarcerated at a rate 9.6 times that of White men in 2019 as compared to 9.1 in 2010.

Furthermore, research by Professors Colleen Chien, W. David Ball, and William Sundstrom reported that “Black Californians are nearly three times as likely to have an arrest record as White Californians, four times as likely to have at least one felony conviction, and six times as likely to have received at least one incarceration sentence.” The authors said the RJA “gives by state statute what the *McCleskey* decision foreclosed constitutionally—a pathway to relief based solely on evidence of unexplained racial disparity.”



## What do critics say about the Racial Justice Act?

While the RJA has been considered a win for advocates, there remains much criticism. Heather Mac Donald, a fellow at the Manhattan Institute, has argued that the RJA “will produce unequal justice for victims as well as offenders.” She posits that racial disparities in incarceration reflect disparities in who is more likely to commit criminal offenses. Citing police department data, Mac Donald said, “In Los Angeles, Blacks are 21 times as likely as Whites to commit a violent crime, 36 times as likely to commit a robbery, and 57 times as likely to commit a homicide.” She further argued that the RJA will have a disproportionate impact on Black victims, stating that the victims and witnesses who contribute to police department data are “themselves disproportionately Black . . . [and] are 17 times as likely to be homicide victims as Whites.”

Some have also claimed that the RJA perpetuates reverse discrimination towards White defendants. . . . [For example, c]onsider a Black and White person who together commit the same crime, and are charged exactly the same—both with more serious offenses than others who commit a similar crime. Under the RJA, the Black defendant may be able to use statistical data to argue that the prosecution more frequently sought these types of convictions against other Black defendants, while that argument might be foreclosed for the White defendant if the same disparity doesn’t exist for other White defendants. In this scenario, although the Black defendant would be entitled to remedies under the RJA, the White defendant would not—even though they were both charged with the same crime.

As the bill made its way through the California legislature, the California District Attorneys Association (CDAA) and California State Sheriffs’ Association stood in opposition to the RJA. Specifically, the CDAA argued that the bill would require “lengthy and costly evidentiary hearings involving the testimony of attorneys, law enforcement officers, jurors, experts, or other members of the criminal justice system,” which would “grind the system to a halt.” These practical concerns are why they were particularly opposed to the bill not requiring a showing of intentional discrimination.

Criticism didn’t just come from prosecutors. At the recent California Racial Justice Act Symposium hosted by Berkeley Law, Lisa Romo, an attorney at the Office of the State Public Defender, noted, “There’s not enough money; we have defenders who are overwhelmed and not enough staff to process all the requests coming in. We desperately need more resources. The legislature just appropriated \$2 million just for retroactive RJA claims, which is appreciated, but that’s just a drop in the bucket because so many people need assistance.” Additionally, UC Berkeley Goldman School of Public Policy Professor Mia Bird suggested that because data is so heavily decentralized, “It’s not assembled in a way that can be used for research purposes, and may fail to account for differences at earlier stages of the criminal legal process.”



For an example of how the RJA has been used in a recent case, listen to this episode of the podcast, The Bay. Warning: A single instance of profanity is used in this podcast.

[How the Racial Justice Act Could Shake Up California's Criminal Court System | KQED](#)

### **Critical Thinking Questions for podcast**

- 1) Do you think the RJA will reduce discrimination in our justice system? Why or why not?
- 2) How difficult do you think it will be to obtain the data to support an RJA claim?

Now think of the details of the murder case in Antioch:

- 3) Four men were charged with murder and attempted murder with gang enhancements. How do the gang enhancements relate to the RJA?
- 4) How did lawyers get the enhancements dropped using RJA?
- 5) How do the text messages have an impact on the case? What does the judge decide to do?
- 6) What are some of the things that will slow down use of the RJA?
- 7) What is the response of the victim's mom? How does race play a role here for her?