



## PRISON LAW OFFICE

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### Your Responsibility When Using This Information:

We did our best to give you useful and accurate information. We know incarcerated people often have trouble getting legal information, but we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use the information below or included here, it is your responsibility to make sure that the laws have not changed and still apply to your situation. Most of the materials you need should be available in the law library, including the law library materials on the CDCR electronic tablets.

## RACIAL JUSTICE ACT

April 2024

We received your request for information or help concerning a Racial Justice Act (“RJA”) issue. The RJA is a recent law that allows people to challenge racism in their California state criminal convictions or sentences. The law has been amended several times.

We cannot provide you with specific information or individual assistance, but we are attaching a letter and booklet that we hope will help answer your questions and point you to additional resources. The booklet was published in late 2023 by the Ella Baker Center for Human Rights and is called “RJA 4 ALL: Information about the Racial Justice Act 4 All.” It has information about the RJA and what steps you can take to raise an RJA claim, even if you were convicted and sentenced before the RJA took effect. The letter includes a summary of the RJA, supplemental information, and an update on resources. You can get more information about the Ella Baker Center and its resources by writing to Ella Baker Center for Human Rights, 1419 34th Ave, Suite 202, Oakland, CA 94601 or (for people with internet access) emailing [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org) or visiting the website at <https://ellabakercenter.org/contact-us/>. However, Ella Baker Center cannot provide legal advice or representation related to RJA claims.

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There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at [www.prisonlaw.com](http://www.prisonlaw.com). As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.



**Re: New Racial Justice Act (RJA) Guide**

Dear friend,

Thank you for writing to us and requesting resources on the Racial Justice Act. Enclosed is our new law guide: *RJA 4 All: Information about the Racial Justice Act 4 All (AB 256 - Kalra)*. This guide explains the law, its phased-in implementation, and a few cases where the courts have interpreted the law. Our guide is now also available in Spanish: *La Ley de Justicia Racial Para Todos: Información sobre la Ley de Justicia Racial Para Todos (AB 256 - Kalra)*.

The RJA prohibits the state from seeking or obtaining a conviction, or imposing a sentence based on race, ethnicity or national origin. The law empowers folks to challenge that bias against them by raising in court that a violation of the Act occurred in their case and requiring the court to apply a remedy when that violation is proven. Four categories of behavior are violations of the Act:

1. A judge, attorney, police officer, or expert witness showed bias towards the defendant because of their race, ethnicity or national origin;
2. Racially coded statements against the defendant said at trial;
3. The prosecution sought more severe charges against the defendant compared to other similarly situated cases in that county;
4. The court imposed a more severe sentence on the defendant compared to other similarly situated cases in that county.

Ella Baker Center and our allies are currently working on legislation to make the RJA an even more effective tool in our courts. **AB 1118 (Kalra) has been signed into law by the Governor and will go into effect on January 1, 2024!** This bill will apply technical fixes that make it easier for individuals to file RJA claims and make the process for appeals under the RJA simpler.

If you have a capital sentence, there are potential risks with filing an RJA petition due to special rules imposed by Prop 66. Filing an RJA petition will likely prevent you from raising any other habeas claims that you have not raised already. If you are under a sentence of death and thinking about filing a pro per RJA petition or have questions about the RJA, please reach out to your contact at the California Appellate Project (CAP), or your currently appointed attorney prior to filing. Even in non-capital cases, there is a strong preference that all habeas claims be raised at the same time and litigated together. If you believe that you may also have a claim for ineffective assistance of counsel, prosecutorial misconduct, or any other issue that may be challenged in a habeas petition, it is recommended that you compile and file all of that information at the same time as part of the same habeas petition.



She led. So can you.

Many folks are requesting assistance in collecting county-level data to support their initial RJA petitions. We understand that this information necessary to support your RJA claim is often difficult to obtain and we share your frustration. We hope that reviewing our RJA Guide helps answer some of your questions. The ACLU has been using the California Public Records Act to request information from county District Attorneys throughout the state. To get access to the data that they have obtained and to get more information, your loved ones can visit <https://www.aclunc.org/documents-related-implementation-racial-justice-act>.

The USF Law Racial Justice Clinic is now accepting intake forms for RJA claims! If you have reviewed our RJA Guide and believe that you have a potential RJA claim, feel free to contact us and we would be happy to send you a copy of the intake form. **Please, be advised that the Clinic will accept intake forms from all individuals, but may prioritize those serving LWOP sentences.**

Please, send us any additional feedback or questions, and I hope that you find this information useful in your continued advocacy. Your loved ones can reach out to [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org) with questions or comments about the Guide or the Racial Justice Act for All. Our RJA 4 All Guide and our latest RJA Guide training are available online at: <https://ellabakercenter.org/rja-info/>.

We appreciate you taking the time to contact us. We hope the information in this Guide will help you and all our folks advocate for themselves as we confront racism in our criminal legal system.

In community,

Morgan Zamora  
Prison Advocacy Coordinator

Enclosures: RJA 4 All Guide

# RJA 4 ALL

**INFORMATION ABOUT THE RACIAL  
JUSTICE ACT 4 ALL (AB 256 - KALRA)**



**ELLA BAKER  
CENTER for  
HUMAN RIGHTS**

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# I. INTRODUCING THE CALIFORNIA RACIAL JUSTICE ACT.



## THE RACIAL JUSTICE ACT (RJA)

California steps forward on racial justice! The California Racial Justice Act (RJA), first enacted in Assembly Bill 2542, Kalra (2020 Cal. Stat. Ch. 317), extends civil rights in the courtroom to empower individuals to challenge racist conduct against them in their criminal court proceedings. Now, with its successor, Assembly Bill 256, Kalra (2022 Cal. Stat. Ch. 739), signed into law in 2022, everyone can use the RJA to challenge racism in their California state convictions or sentences.

The RJA prohibits the state from seeking or obtaining a conviction, or imposing a sentence based on race, ethnicity or national origin.<sup>1</sup> The law describes four categories of behavior that violate the Act:

- (1) a judge, attorney, police officer, or expert witness showed bias towards the defendant because of their race, ethnicity or national origin;
- (2) racially coded statements against the defendant said at trial;
- (3) the prosecution sought more severe charges against the defendant compared to other similarly situated cases in that county;
- (4) the court imposed a more severe sentence on the defendant compared to other similarly situated cases in that county.<sup>2</sup>

The law also applies to adjudications, dispositions in the juvenile system, and transfers of juveniles to adult court.<sup>3</sup>

As originally enacted, the RJA's protections took effect in 2021 and applied to state criminal cases where a judgment was not entered (including sentences that have been recalled by the court for resentencing).<sup>4</sup>

1. Penal Code § 745(a)

2. Penal Code § 745; see also *Young v. Superior Court of Solano County*, 79 Cal. App. 5th 138, 163 (2022)

3. Penal Code § 745(f)

4. Penal Code § 745(j)



Thanks to AB 256, the RJA will also apply retroactively to all state criminal cases, regardless of when judgment was entered.<sup>5</sup> Retroactive application will be phased-in as follows:

- Starting **January 1, 2023**: Anyone who was sentenced to death or is facing immigration consequences related to the conviction, regardless of the date of conviction.
- Next, **January 1, 2024**: Anyone currently serving a sentence for a felony offense in jail, state prison, or Department of Juvenile Justice (DJJ), regardless of the date of conviction or disposition.
- Then, **January 1, 2025**: Anyone who was convicted of a felony or committed to DJJ on or after January 1, 2015, including those who were not or are no longer incarcerated.
- Finally, **January 1, 2026**: Anyone who was convicted of a felony or committed to DJJ, regardless of the date of conviction or disposition.<sup>5</sup>

The Racial Justice Act was introduced before the events that would shock us in 2020 – the novel coronavirus pandemic, and the racist killings of Breonna Taylor, Ahmaud Arbery, and George Floyd. The Act passed because of the enlightenment sparked by those tragedies that carried people into the streets to demand better from our institutions. People-power demanded that we no longer tolerate racism in our systems of justice, and that opened the door for this bill to become reality. With the RJA we proclaim that we can heal from our past by upholding respect for our shared humanity. By extending its protections retroactively, we affirm that our healing will leave no one behind.

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5. Penal Code § 745(j)





## II. OVERVIEW OF WHAT IS IN THE RJA STATUTE.

### THE INTENT OF THE RACIAL JUSTICE ACT

The RJA was designed in part to undo the precedent the United States Supreme Court set in 1987 with *McCleskey v. Kemp*, where it ruled that no matter how much evidence a defendant showed of racist effects in their case, they also had to show that discrimination was purposeful before the court would step in to address it.<sup>6</sup> The Court upheld a long-standing notion in our criminal legal system, that racism was inevitable, even “harmless” within our justice system, and made it nearly impossible for our courts to address the discrimination happening there.

Racism is never harmless, especially in our courtroom. Generations of Black, Brown, indigenous and foreign-born people have seen worse outcomes in our legal system because of the color of their skin and the biases held by others. The RJA is intended to give California a tool to confront racism with eyes open to the effects of centuries of racism on our society. With the RJA, we no longer tolerate discrimination and racist disparities as inevitable.

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6. 481 U.S. 279 (1987)



## OVERVIEW OF BRINGING A CLAIM: AT TRIAL OR WHILE IN CUSTODY

An RJA claim generally has two parts. First, a *prima facie* stage where facts from your case show that there is a substantial likelihood that a violation of the RJA occurred.<sup>7</sup> Second, an evidentiary hearing is held to prove that the violation occurred and that you are entitled to relief.<sup>8</sup> To begin your claim, you may file a motion at trial. If a judgment was already entered in your case, you may begin by filing a writ for habeas corpus before your *prima facie* claim.<sup>9</sup>

If you are currently facing trial, your current attorney can help prepare your RJA claim. If you notice discriminatory behavior in court proceedings or other court conduct that “doesn’t sit right” or that you have a gut feeling about, it is important to reach out to your attorney or public defender where you went to trial in order to address a potential violation. The court may waive a motion at trial that is not made “as soon as practicable” or as soon as the defendant learns about the potential violation.<sup>7</sup>

People who were already sentenced may request an attorney through a habeas petition before they make their *prima facie* showing.<sup>10</sup> The standard of proof here is lower than the “substantial likelihood” of a violation that you would need to show at the *prima facie* stage.<sup>11</sup> The habeas petition to request an attorney solely needs to allege facts that would establish a violation occurred.<sup>10</sup> The Office of the State Public Defender (OSPD) can also request an attorney for your RJA claim.<sup>10</sup>

Legal representation is very important to ensuring a successful RJA claim. If your case has a potential violation of the RJA it is important that you contact the attorney who represented you at trial, or the public defender’s office in the county where you were tried.

7. Penal Code § 745(c)

8. Penal Code § 745(c); also Penal Code § 1473(f)

9. Penal Code § 745(b)

10. Penal Code § 1473(f)

11. Penal Code § 745(h)(2)

## 1. THE PRIMA FACIE STAGE

At the first stage, the *prima facie* stage, an individual must show through a statement of facts and evidence that there's a substantial likelihood that they were discriminated against in their criminal court proceedings.<sup>12</sup> "*Prima facie*" is a legal term for an initial allegation showing facts or evidence that if true point to a legal claim.<sup>13</sup> The standard of proof here is a "substantial likelihood," meaning there is "more than a mere possibility" that a violation occurred based on the facts you bring forward.

To support your challenge, the RJA empowers you to request evidence held by the state that is relevant to your claim.<sup>14</sup> By making a motion to the court and showing a good reason for the materials requested, the court can that evidence be released to your defense.<sup>14</sup>

## 2. THE RJA EVIDENTIARY HEARING

At the second stage, if the *prima facie* showing indicates that there's a substantial likelihood that a violation occurred, a hearing is held on the violation.<sup>15</sup> The standard of proof is higher for this hearing than it was at the initial showing.<sup>12</sup> At this hearing, the defendant must prove a violation by a preponderance of the evidence, showing that more likely than not the violation occurred.<sup>16</sup> At this hearing, both you and the state can present evidence including statistical evidence, testimony from credible sources, and expert witnesses.<sup>17</sup> The court will state its findings and basis for granting or denying a claim on the record.<sup>18</sup>

If the violation is proven, the court then applies a remedy tailored to the violation, including reducing charges, declaring a mistrial, or resentencing the individual.<sup>19</sup>

For certain retroactive claims where judgment was entered before 2021, the prosecution gets a chance to rebut.<sup>20</sup> If the prosecution chooses to oppose a retroactive RJA claim that's based on biased conduct towards the defendant or implicit bias and racist statements at trial (the first and second categories described below), the state can block relief if it proves that the violation that happened had no effect on the sentence that was imposed.<sup>20</sup> The state must prove there was no impact beyond a reasonable doubt, the highest standard of proof.<sup>20</sup>

Nothing in the RJA statute requires proving "prejudice" or otherwise showing that there was an unfair trial.<sup>21</sup> Discrimination itself creates an error in the proceedings that needs to be addressed.

12. Penal Code § 745(h)(2)

13. Legal Information Institute (LLI), [https://www.law.cornell.edu/wex/prima\\_facie](https://www.law.cornell.edu/wex/prima_facie) (last visited Jan. 9, 2023)

14. Penal Code § 745(d)

15. Penal Code § 745(c)  
16. Penal Code § 745(c)(2)  
17. Penal Code § 745(c)(1)

18. Penal Code § 745(c)(3), and § 1473(f)

19. Penal Code § 745(e)  
20. Penal Code § 745(k)  
21. Penal Code § 745



### III. BEHAVIOR THAT VIOLATES THE RACIAL JUSTICE ACT.

## CATEGORIES AND TYPES OF EVIDENCE FOR RJA CLAIMS

The RJA created Penal Code section 745 to outline four types of evidence that can be brought to show a discriminatory violation.<sup>22</sup> Generally, the first and second categories cover explicit and implicit biased behavior in the proceedings. The third and fourth cover systemic bias seen in statistical disparities in charging and sentencing. If the claim is based on conduct or statements by the judge, the RJA requires that judge to disqualify themselves so a different judge may hear the claim.<sup>23</sup>

There is no need for anyone bringing an RJA claim to prove intentional discrimination,<sup>24</sup> only that it was directed at the defendant. In enacting the RJA the Legislature recognized that though discrimination is widely condemned, the legal precedent before the RJA required a showing of purposeful intentional discrimination that set a standard too difficult for courts to recognize in any context.<sup>25</sup>

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22. Penal Code § 745(a)  
23. Penal Code 745(b)

24. Penal Code § 745(c)(2)  
25. 2020 Cal. Stat. 317 § 2(c)

## 1. BIAS EXHIBITED TOWARDS THE DEFENDANT

The first category of evidence described in Penal Code section 745, also known as “(a)(1) claims,” involve explicit racism directed at the defendant from any of the major actors in their case. An (a)(1) claim can be brought if “[t]he 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.”<sup>26</sup>

Importantly, the RJA empowers the court to recognize racial profiling, for example in police stops, where courts are less able to under the 14th Amendment.<sup>27</sup> In this case, the petitioner Young alleges that his arrest was racially motivated because he was stopped for a traffic infraction, but never cited for any infraction. According to Young he was stopped, forcibly removed from his car, and beaten for watching the officers stop another vehicle, but in this case the officer that stopped him approached from the front and so had “ample opportunity to observe him and take note of his skin color.”<sup>28</sup> Young raised an RJA claim to challenge racial disparities in Solano County arrests and the downstream racially disparate charging decisions resulting from the stops.<sup>29</sup> The Court of Appeals here noted that though “[this] kind of racial profiling charge has never been recognized under the equal protection clause, it is now cognizable under section 745, subdivision (a)(1) of the Racial Justice Act.”<sup>30</sup>

No amount of racism is tolerable in our institutions, but especially in a fair and just criminal justice system. The RJA affirms this core value.

## 2. RACIST STATEMENTS SAID AT TRIAL AND IMPLICIT BIAS

The second category of evidence describes racist statements said at trial. An “(a)(2) claim” can be raised if “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 . . . whether or not purposeful.”<sup>31</sup> “Racially discriminatory language” includes racially charged statements, racially coded language, or statements that compare the defendant to an animal.<sup>32</sup>

This section of the RJA makes an exception for describing or repeating statements used by others that are relevant to the case.<sup>31</sup> For example, an attorney in a hate crimes case describing language used by someone else. It also does not apply for physical descriptions of the defendant that are not biased.<sup>31</sup>

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26. Penal Code 745(a)(1)

27. *Young v. Superior Court*, 79 Cal. App. 5th 138, 163 (2022)

28. *Young* 161

29. *Young*

30. *Young* 161, 162

31. Penal Code § 745 (a)(2)

32. Penal Code § 745(h)(3)



**EXAMPLE:** An example of a challenge to the use of racially coded language comes from *People v. Bryant* (2022) in Contra Costa County, where after an RJA challenge, the court found that the prosecution’s use of the defendants’ rap lyrics, and repeated use of the n-word, among other terms, was racially discriminatory and demanded a retrial.<sup>33</sup> The two defendant’s in this case were rappers from the same neighborhood who were convicted of murder and sentenced with gun enhancements in 2017. Because their case was sent back to the trial court in 2021, their sentence was not final and the RJA could apply before retroactivity kicked in. (Reminder: before AB 256 (Kalra) was signed into law, the RJA only applied prospectively, to new cases after 2020.)<sup>34</sup> They used the Act to file a motion seeking a retrial based on the prosecutor and gang expert in their trial using racially coded phrases, discriminatory language, and use of their lyrics and music videos as criminal evidence. The court accepted their prima facie case and held a hearing where the court heard from experts on rap lyrics, music, and stereotypes, and heard an analysis of cases in the county that used rap lyrics. Their testimony helped challenge, among other things, the prosecution’s literal interpretation of rap lyrics as criminal evidence, and the repeated use of terms like “pistol whip” and “drug rip” which were terms the jury would not normally use but would create a racially stereotypical association and trigger implicit bias in the jury. The court ultimately found that the prosecution’s behavior, and use of the n-word especially, was a repeated trigger to subconscious judgment, meant to dehumanize the defendants and resulting in a lessening of respect.<sup>33</sup> The court also found that the use of the defendants’ rap lyrics and videos more likely than not triggered implicit bias against the two Black men. With a violation of the Act proven, the court vacated their convictions and sentences, and ordered a new trial.<sup>33</sup>

Racist statements inject bias into the court proceedings and also trigger implicit bias in everyone who hears them. For too long, courts have acknowledged these statements as “highly offensive and inappropriate,” but continued to uphold these convictions that dehumanize people, even comparing them to animals in court. Racist statements and other triggers of implicit bias are no longer accepted as harmless under the RJA.

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33. (05-152003-0 (Superior Court Contra Costa, filed October 3, 2022)

34. Penal Code § 745(j)

**For cases before 2021, the Prosecution gets an opportunity to rebut claims based on past explicit and implicit bias claims, (a)(1) & (a)(2) claims.**

For cases where judgment was entered before January 1, 2021, the prosecution can block a court from granting relief if it proves that the violation did not affect the outcome of those cases.<sup>34</sup> For these past claims, and only for these claims, the prosecution has an opportunity to prove “beyond reasonable doubt” that although there was a violation, the sentence imposed would still be the same if the violation hadn’t happened.<sup>35</sup> If the prosecution proves that there was no impact on the sentence, the court will not apply a remedy to address the violation.<sup>35</sup> This does not apply to new cases, or cases before 2021 that are not final due to the sentence being recalled.<sup>35</sup> This also does not apply to claims from that time based on the statistical disparities, discussed in the next two sections.

**Overview of the disparities claims: (a)(3) and (a)(4) claims.**

The third and fourth categories of behavior that violate the Act address racial disparities in charging and sentencing decisions. The (a)(3) and (a)(4) claims below require a defendant to show evidence that they were charged or sentenced more severely than others in their county who committed similar behavior.<sup>36</sup> Often, charging data is inaccessible because it is held by the state, but with the RJA you can also request evidence that points to a violation in your case under subsection (d) of the law. More on that under section IV - The Power to request relevant evidence for your RJA claim.

### 3. OVERCHARGING AND STATISTICAL DISPARITIES IN CHARGING DECISIONS - “(A)(3) CLAIMS”

Specifically, the third category under Penal Code section 745(a)(3) describes that a violation occurred when the prosecution sought higher charges in your case and data shows a pattern of higher charging for people sharing your race in the county where you were charged.<sup>37</sup> The language for this section of the law is here below:

*The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant’s race, ethnicity, or national origin in the county where the convictions were sought or obtained.*<sup>37</sup>

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35. Penal Code § 745(k)

36. Penal Code § 745(a)

37. Penal Code § 745(a)(3)

Prosecutors, rather than police or judges, have a lot of discretion to choose if charges are filed, and how similar behavior is charged. This discretion includes whether an alleged act is charged as a misdemeanor instead of a felony, and at the extremes, whether to seek a death-in-prison sentence or one that allows the possibility of parole. Anecdotally, public defenders have shared that the RJA has already had a chilling effect on aggressive charging, especially with the use of gang enhancements. These were charged nearly exclusively in cases with Black and Brown people, with 97% of those in California prison with the enhancements being non-white people.<sup>38</sup>

To bring a claim against overcharging in your case you must show a comparison of the charging in your case to the cases of other similarly situated individuals in that county to show that more severe charging applied in your case, and the prosecution in that county has a pattern of charging people who share your race, ethnicity or national origin more harshly than other groups in that county.<sup>39</sup> The “similarly situated” cases used for comparison do not need to be identical to yours, they merely need to share relevant factors behind charging or sentencing, like a similar conviction history.<sup>40</sup>

Under the RJA statute, racial profiling may be a relevant factor.<sup>40</sup> The court shall consider “evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing.”<sup>40</sup> The *Young* case from Solano County mentioned above is raising the RJA to challenge discriminatory charging decisions as a result of discrimination by Solano County police officers in who they arrest.<sup>41</sup>

Recently, an appellate court decision showed how this protection can be used after charges are filed. Again in *Young v. Superior Court of Solano County*, the petitioner was raising the RJA to challenge discriminatory charging in his case and argued that it was a downstream effect of discriminatory arrests by Solano County police officers.<sup>41</sup> Besides just raising the RJA violation, he also requested data from the state on other cases in the county where people faced similar drug charges to his.<sup>42</sup> Though it is still early in the case (here, Young is gathering information for the initial *prima facie* stage of his RJA claim) this appellate ruling allowing the gathering of evidence to challenge selective prosecution practices affirms the intent of the Act to address discrimination in the courts, whether intentional or not.

Whether done consciously or subconsciously, these patterns of race-based charging outcomes are what the RJA is meant to address.

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38. Committee on Revision of the Penal Code, 2020 Annual Report P 45  
[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2020.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf)

39. Penal Code 745(3)

40. Penal Code 745 § (h)(6)

41. 79 Cal. App. 5th 138 (2022)

42. 79 Cal. App. 5th 145-146 (2022)





#### 4. OVER-SENTENCING AND STATISTICAL DISPARITIES IN SENTENCING DECISIONS - “(A)(4) CLAIMS”

The final category of discrimination described by the RJA addresses statistical disparities in sentence terms imposed by the courts. Like the (a)(3) claim for overcharging discussed in the previous section, a claim under this section compares the worse outcome for a defendant of a particular race or ethnicity compared to other similar cases in that county. However, this section goes further to include disparities based on the race of the victim. A violation under subsection (a)(4) is described in the statute in these two scenarios:

A) 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,

B) 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.<sup>43</sup>

Racist sentencing in California has fueled mass incarceration. In California, Black men are 9X more likely to be incarcerated than white men.<sup>44</sup> Bias appears based on the race, ethnicity or nationality of the person charged and also based on the race of the victim of a crime.

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43. Penal Code § 745(a)(4)

44. Ashley Nellis, Ph.D., *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project 9.10 (2021) <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>



**EXAMPLE:** For an example of how the race of a victim plays a role, we can turn again to the McCleskey Supreme court case. In that case, Professor David Baldus conducted a study of over 2,000 murder cases in Georgia and his analysis revealed that “prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims.”<sup>45</sup> Even after taking other variables into account, his study showed that defendants in cases with white victims were 4.3 times more likely to receive the highest punishment – the death penalty – than those cases involving Black victims.<sup>45</sup> In California, approximately two-thirds of the people on death row are people of color.<sup>46</sup>

The Legislative findings within the statute makes the goal of including this type of violation in the law: “to reject the conclusion that disparities in sentencing outcomes are inevitable, and to work to eradicate them.”<sup>47</sup>

45. *McCleskey*, 481 U.S. at 287

46. [www.deathpenalty.org/facts/](http://www.deathpenalty.org/facts/)

47. 2020 Cal. Stat. 317 §2(i).

## IV. THE POWER TO REQUEST RELEVANT EVIDENCE FOR YOUR RJA CLAIM.



Because often the evidence showing a violation is held by the state in police reports, court transcripts, and charging records, the RJA allows defendants to request this information to help prove that a violation happened in their case.<sup>48</sup> Defendants must show “good cause” for why the court should allow the information to be released.<sup>48</sup>

Mentioned previously, the decision in *Young* was a major decision that affirmed a defendant’s ability to seek evidence, or discovery, under the RJA. In that case, a Solano County man made a motion under the RJA alleging racial profiling in his arrest, and that the resulting charges were also tainted with racial bias. Challenging both his arrest and charges, Young sought discovery on police stops and county charging decisions by raising the RJA. The trial court denied the motion, but when Young appealed, the Court of Appeal decided two pivotal points on discovery under the RJA, outlined on the next page.

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48. Penal Code § 745(d)

## 1. "GOOD CAUSE" THRESHOLD

Under the RJA, the “good cause” threshold for a court to release records is meant to be broad and flexible, and a low bar to meet for a defendant to gain access to evidence.<sup>49</sup> Here a defendant need only present to the court plausible specific facts showing a violation of the RJA “could or might have occurred” in their case.<sup>49</sup> For *Young* it meant that he did not first have to present some evidence of disparities in charging as “good cause” before the court would allow discovery on charging decisions that might prove his case.<sup>49</sup> The *Young* court found that the Legislature, in the RJA, meant to make this standard an easier one for defendants to meet, intending to create “a discovery-triggering standard that is low enough to facilitate potentially substantial claims.”<sup>49</sup>

## 2. GRANTING DISCOVERY

Courts will weigh seven factors, when deciding whether or not to grant discovery:

- (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;
- (6) whether the production of the records containing the requested information would place an unreasonable burden on the governmental entity involved and;
- (7) whether the defendant has shown a sufficient plausible justification for the information sought.**<sup>50</sup>

These factors were first established in a different case, *City of Alhambra v. Superior Court*.<sup>51</sup>

Once a defendant has made a plausible showing that a violation “could or might have occurred,” it is improper for a court to deny the motion.<sup>50</sup> However the court may use discretion to limit the form, scope, or timing of access to materials.<sup>50</sup>

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49. *Young*, 79 Cal. App. 5th at 159-63

50. *Young*, 79 Cal. App. 5th at 168-169

51. 205 Cal. App 3d 1118 (1988)



**V. REMEDIES  
AVAILABLE  
UNDER THE RJA.**

Bias can take many forms, and is often unconscious, or implicit. So, the intent of the remedies under the RJA is not to punish the person who exhibited that bias, but instead to remedy the impact that bias had on the defendant's case and address the stain that racism creates on the integrity of the system.<sup>51</sup> Appropriately, the Act allows courts to impose a remedy that is specific to the type of violation.

For cases where judgment has not been entered the court may apply the following remedies under the RJA:

- Declare a mistrial, if requested by the defendant.
- Discharge the jury panel and empanel a new jury.
- If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.<sup>52</sup>

For cases where a judgment has been entered, the court shall vacate the conviction and/or sentence and find the conviction or sentence legally invalid and order new proceedings—a do-over without the racism.<sup>53</sup> To remedy violations based on charging, “(a)(3) claims,” or sentencing “(a)(4) claims,” the RJA calls for the court to modify the judgment to a lesser charge or impose a new sentence that is not greater than the sentence previously imposed.<sup>53</sup> Additionally, when the court finds a violation of the RJA in a case, that person will not be eligible for the death penalty.<sup>54</sup>

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51. 2020 Cal. Stat. 317 § 2(j)

52. Penal Code § 745(e)(1)

53. Penal Code § 745(e)(2)

54. Penal Code § 745(e)(3)

## VI. RAISING YOUR RJA CLAIM

### FILING AN RJA CLAIM

Filing a claim is a formal presentation to the court that states specific facts that show there's a substantial likelihood that a violation happened. That is the prima facie claim that the court will review for sufficient elements of a violation and to decide whether a hearing to prove the violation is required. An RJA claim may be brought as a motion at trial.<sup>55</sup> If a sentence was already entered in the case, it starts as a petition for habeas corpus for people in custody, or a motion to vacate judgment for people no longer in custody.<sup>55</sup>

Using the *Young* case mentioned above again as an example for filing a claim, the petitioner Young presented facts that together suggest that race was a clear factor in the events that led to his being charged. Young based his claim against the prosecution's bias charging, an "(a)(3) claim", on (1) his being a Black motorist who was stopped and arrested in Solano County, (2) studies showing disparities in police stops against Black people in the state, and (3) the specific circumstances that led to his arrest—he was stopped for a traffic infraction by an officer who had clear opportunity to note his skin color, but was not cited for any infraction and was instead searched, beaten and arrested.<sup>56</sup> To prove the RJA violation, he also used the RJA to request arrest and charging data from the county.<sup>57</sup>

Remember, as mentioned in the section above, you can request disclosure of relevant evidence from the state with the RJA.<sup>58</sup>

55. Penal Code § 745(b)  
56. *Young* at 161

57. *Young* at 145-46  
58. Penal Code § 745(d)



## RAISING RJA HABEAS CLAIMS

People who are already sentenced may raise an RJA claim through a writ of habeas corpus.<sup>59</sup> A habeas writ is a legal challenge to the legal basis for your being held in custody.<sup>60</sup>

A wonderful resource explaining state habeas petitions is available from the Prison Law Office: *State Habeas Corpus Procedure: A Manual for California Prisoners*, available online.<sup>61</sup>

RJA habeas petitions should be filed in the county where you were sentenced.<sup>62</sup> This habeas petition is not your *prima facie* claim that requests an RJA hearing. This petition shows the court that there was probably a violation in your case and it should appoint a lawyer to help you develop your *prima facie* claim—your official claim for a hearing and relief under the RJA.<sup>59</sup>

Your habeas petition should state that you are requesting a lawyer and describe where in your proceedings a violation of the RJA happened.<sup>59</sup> If your petition presents facts that indicate that the RJA was violated in your case, the court will then appoint a lawyer if you cannot afford one or if the Office of the State Public Defender (OSPD) requests a lawyer for your *prima facie* claim.<sup>59</sup> Newly appointed lawyers can amend your petition to prepare the *prima facie* claim for RJA relief.<sup>59</sup>

The court will then review the *prima facie* claim. If the court denies your *prima facie* claim, it will state the basis of that denial on the record or through a written order.<sup>59</sup> If the *prima facie* claim shows that you are entitled to relief under the RJA, the court will hold a hearing on the claim and allow the state to show why relief should not be granted for your claim.<sup>59</sup> This hearing can be a video hearing and you can appear remotely unless your lawyer indicates why presence in court is needed.<sup>59</sup>

If your entitlement to relief is proven at this hearing, or if the state declines to oppose relief for your claim, the court will apply an appropriate remedy. These include removing the death penalty if it applies, vacating your sentence and ordering a do-over for part of your last trial, or imposing a new sentence or otherwise modifying the judgment to a lesser offense or sentence.<sup>63</sup>

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59. Penal Code § 1473(f)

60. Penal Code § 1473(a)

61. <https://prisonlaw.com/wp-content/uploads/2015/09/STATEHABEAS2008.pdf>

62. 5 California Criminal Defense Practice § 102.10 5 Cal Crim Def § 102.10(3)(b)

63. Penal Code §§ 745(e)(2), (3)

An illustration of a woman with dark hair, wearing a red dress with white vertical lines, holding a white sign above her head. The sign contains the text 'VII. CONCLUSION'. The background consists of large, overlapping, curved shapes in shades of pink and purple.

## VII. CONCLUSION

Racism is never harmless, especially when it happens in the courtroom. With the California Racial Justice Act, we no longer tolerate discrimination and racist disparities in our legal system as inevitable.

The Racial Justice Act (AB 2542, passed 2020) and Racial Justice Act for All (AB 256, passed 2022) were authored by California State Assemblymember Ash Kalra (San Jose) and were cosponsored by the following groups: American Friends Service Committee, AFSCME Local 3930, Asian Americans Advancing Justice (AAAJ), California Coalition of Women Prisoners (CCWP), Californians United for a Responsible Budget (CURB), Coalition for Humane Immigrant Rights (CHIRLA), the Ella Baker Center for Human Rights (EBC), Initiate Justice, League of Women Voters of California, Silicon Valley De-bug, Nextgen Policy, and United Domestic Workers (UDW). And also with major contributions from the Anti-Death Penalty Coalition, Bend the Arc, the California Alliance for Youth and Community Justice, Showing Up for Racial Justice (SURJ), Smart Justice California, among over one hundred organizations and the support of countless individuals.



## VIII. RESOURCES AND MORE INFORMATION



If you would like community support to help further understand how the RJA can impact your loved one's case, please have a family member or friend contact Silicon Valley De-Bug's Participatory Defense Network. You can write them at:

**Silicon Valley De-Bug**

Att: RJA Support  
701 Lenzen Ave.  
San Jose, CA 95126

The University of San Francisco Law School's Racial Justice Clinic will be the clearing house for requests for help for potential RJA retroactive cases. For inquiries, please reach out to Yohannes Moore, Assistant Professor & Supervising Attorney of the Racial Justice Clinic at [yjmoore@usfca.edu](mailto:yjmoore@usfca.edu). Or by mail at the address below:

**University School of Law, Racial Justice Clinic**

2130 Fulton Street, KN211  
San Francisco, CA 94117-1080

Please reach out to [policy@ellabakercenter.org](mailto:policy@ellabakercenter.org) with questions regarding the RJA and if you'd like us to send a copy of this document to your loved one behind bars. You can also write to us at this address:

**Ella Baker Center for Human Rights**

1419 34th Ave, Suite 202  
Oakland, CA 94601