

Assembly Bill 1958

The California Racial Justice Act: Procedures and Disparity Claims

Assembly Member Ash Kalra

SUMMARY

Assembly Bill (AB) 1958 makes several clarifying changes to the procedures for establishing a disparity claim under the California Racial Justice Act (RJA). Specifically, the bill makes clear there are multiple ways to establish a disparity claim and that to refute a disparity claim, the prosecution must produce evidence showing the disparities are explained by race-neutral factors. AB 1958 also clarifies the disclosure requirements, makes it explicit that no part of the criminal process is insulated from the RJA.

In doing so, this bill will streamline litigation, reduce delays, provide consistent guidance to courts across the state, and increase judicial efficiency.

BACKGROUND

In 2020, the Legislature passed AB 2542 (Kalra, Chapter 317, Statutes of 2020), the California Racial Justice Act (RJA), to address racial discrimination and bias in criminal proceedings. Under existing law, the RJA allows individuals two paths to relief: 1) show bias directed at the individual or use of “racially discriminatory language” in court, or 2) demonstrate a showing of disparate treatment between similarly situated people from different racial groups in the same county where they were charged or sentenced.

Since the RJA’s passage over five years ago, it appears that only four disparity claims using that second path of relief have been litigated to conclusion, and in only one of those cases, a trial court found that a violation had been established. In another handful of cases, individuals have established a prima facie violation and evidentiary hearings are pending, but the litigation has taken years.

This scarcity in completed cases can be attributed to several barriers to presenting a successful disparity claim. First, defendants face difficulty obtaining

relevant data, with district attorneys claiming it will take years to assemble the requested data or that their systems do not capture it. Second, defense attorneys have to repeat the resource-intensive litigation to request nearly identical data sets in different cases across the county, rather than relying on already produced data. Third, courts have been inconsistent regarding whether a claim requires both a statistical analysis and nonstatistical evidence. Fourth, courts are unclear on when a district attorney is supposed to present race-neutral reasons or how to analyze race-neutral reasons, leading to prolonged discovery and prima facie hearings.

In addition, there continue to be other procedural inconsistencies in applying the RJA. One such example is that while the RJA was intended to capture the entirety of the criminal process, some district attorneys have argued that disparities in plea offers cannot form the basis of an RJA claim and that acceptance of a plea is a waiver of the RJA. This problematic notion is inconsistent with the original intent of the RJA.

SOLUTION

AB 1958 builds upon the Legislature’s work to address racial discrimination and bias in the criminal legal system by clarifying the means by which disparity claims can be proven and issuing clearer procedural guidance to the courts.

Specifically, this bill:

- Clarifies that to establish a PEN § 745 (a)(3) or (a)(4) claim, the defendant is not required to conduct both a statistical analysis and present nonstatistical evidence;
- States that in refusing an (a)(3) or (a)(4) claim, the prosecution must prove by a preponderance of the evidence that the disparity can be explained by race-neutral factors;
- Allows counsel to request previously produced data in comparable cases to decrease duplicative litigation;

- Makes explicit that no part of the criminal process is insulated from the RJA, including plea bargains; and

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