# Assembly Bill 256

## California Racial Justice Act for All

Assembly Members Ash Kalra, Kamlager, Robert Rivas, Santiago
Principal Co-Authors: Assembly Member McCarty and Senators Bradford and Lena Gonzalez
Co-Authors: Assembly Members Bonta, Carrillo, Friedman, Lee, Levine, Stone, and Ting
Senators Laird, Skinner, and Wiener

### SUMMARY

The California Racial Justice Act (Act) prohibits the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based upon race, ethnicity or national origin (AB 2542 (Kalra, Chapter 317, Statutes of 2020).

While this landmark Act made it possible for a person charged or convicted of a crime to challenge racial bias in their case, it was prospective only, excluding judgments rendered prior to January 1, 2021.

This bill, AB 256, simply extends these commonsense and overdue protections to those who have already been impacted by unfair convictions and sentences. Providing for phased-in retroactivity will give these individuals an equal opportunity to pursue justice. The bill also makes technical corrections to the Act.

### BACKGROUND

On April 22, 1987, the US Supreme Court made a historic ruling, on a 5-4 vote, in a case that has had a profound and lasting negative impact on the presence of racial bias and prejudice in the American court system. The ruling, *McCleskey v. Kemp (No. 84-6811)*, known as the McCleskey case, established a precedent that left the courts unable to effectively address racial discrimination in criminal cases.

Originating in Georgia, the case involved an African American man (Warren McCleskey) who was accused of killing a white police officer during a robbery and faced the death penalty. Mr. McCleskey's attorneys presented strong statistical evidence demonstrating that African American defendants were more likely to receive a death sentence than any other defendant. They argued that this racial disparity violated Mr. McCleskey's 8th and 14th Amendment Rights.

Accepting this as true, writing for the majority, Justice Powell nevertheless ruled that statistical evidence was insufficient to show a constitutional violation, requiring instead that a defendant show "exceptionally clear proof" of discrimination under the facts of their own case. The majority's insistence on proof of intentional or purposeful discrimination established a legal standard that was nearly impossible to meet.

Writing in the minority, Justice Brennan clearly summarized the rationale for the majority's opinion; although racial discrimination is pervasive in our justice system, the Court was afraid of having to recognize the harm racism and discrimination have in other types of criminal cases. Hence, the Court was afraid of "too much justice."

The California Racial Justice Act (AB 2542 (Kalra, Chapter 317, Statutes of 2020) finally began to address this issue by clearly stating that racial discrimination is prohibited in seeking or obtaining criminal convictions or sentences in California.

While the Act was a significant first step, its prospective nature unfortunately excludes those who have already been harmed by the racial bias and discrimination that permeates our criminal legal system. Far too many Californians have had their convictions and sentences upheld despite:

- Blatantly racist statements by attorneys, judges, jurors and expert witnesses;
- The exclusion of all, or nearly all Black or Latinx people from serving on a jury; and
- Stark statistical evidence showing systemic bias in charging and sentencing.

Given the current economic situation, there may be fiscal concerns about making the Act retroactive. However ballooning public safety costs are rooted in the well-documented disparities in the judicial system. For example, Judicial Council reports indicate that after controlling for conviction history and current offense, Black men convicted of a felony were still 42 percent more likely to be sentenced to prison than a white man convicted of a felony. Similarly, Latino men convicted of a felony were 32.5 percent more likely to be sent to prison.

Even conservative projections indicate that the savings achieved from adopting this measure and making sentences and convictions more proportionate will greatly exceed the costs. This especially includes capital, life, and life without parole (LWOP) cases, in addition to many others.

*Court Savings*

According to the LAO analysis of Proposition 62 from 2016, the state spends $55 million annually on challenges to death sentences. Despite being just six percent of the state's overall population, African American men make up one-third of all people on death row. The estimated cost to house one person on death row is $142,000 annually. The savings for the state in legal and housing costs achieved by simply reducing the disparity in the number of Black men sentenced to death compared to their white counterparts, if taken proportionally, would likely be in the millions of dollars.

*Correctional Savings*

According to the Public Policy Institute of California, four out of every ten people incarcerated in state prison are African American men—ten times the imprisonment rate for white men, which is 422 per 100,000. Per the California Department of Corrections and Rehabilitation's (CDCR) Office of Research, the current total state prison population is just under 100,000 individuals.

According to the Judicial Council, criminal courts disposed of approximately 170,000 felony cases in 2019 alone. Making a conservative assumption, that if AB 256 results in just one percent of those cases having a more proportionate prison sentence equaling a prison term of one less year, the state would save $154.7 million savings in just one year.

## SOLUTION

California's leadership in passing the Racial Justice Act was a major step in addressing institutionalized and implicit racial bias in our criminal courts. However, if prohibiting racism in our courts and providing a person a means to remedy racial bias in their case is the right thing to do, it is the right thing to do for everyone.

To address workload concerns, AB 256 sets a just phase-in starting with those sentenced to death, incarcerated for a felony, or facing deportation to petition the court for relief starting in January 1, 2022. Additionally, providing a mechanism for retroactive relief will allow the state to realize significant correctional savings.

We must ensure that everyone is afforded an opportunity to pursue justice by making the Act retroactive. Doing so will affirm our commitment to eliminating the use of race, ethnicity or national origin in seeking or obtaining convictions or sentences.

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- American Civil Liberties Union
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- CA Coalition for Women Prisoners
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- Initiate Justice
- League of Women Voters of California
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## CONTACT

Ryan Guillen, Legislative Director
Ryan.Guillen@asm.ca.gov
(916) 319-2027