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### *Your Responsibility When Using the Information Provided Below:*

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that people in prison and jail and on parole or PRCS often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution or public law library.

## RACIAL JUSTICE ACT

November 2022

### **What is the Racial Justice Act?**

In 2021, a new California law called the “Racial Justice Act” (RJA) went into effect. The RJA 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.” The RJA also defined the types of actions that would violate the RJA and what people could do if their RJA rights had been violated. However, the RJA did *not* apply to cases in which sentencing had occurred prior to January 1, 2021. (Penal Code §§ 745 and 1473(f), as enacted by Stats. 2020, c. 317, § 3.5 [AB 2542].)

In September 2022, the RJA was amended by the “Racial Justice for All Act.” The amendments allow people who were sentenced for criminal convictions or juvenile adjudications prior to January 1, 2021 to file petitions or motions seeking relief for violations of the RJA. The amendments will go into effect in phases between January 1, 2023 and January 1, 2026, with different dates for different types of cases. (Penal Code §§ 745 and 1473, as amended by Stats. 2022, c. 739, §§ 1-4 [AB 256].)

### **What Types of Actions Violate the Racial Justice Act?**

Penal Code § 745(a) describes the four categories of acts that violate the RJA:

- ◆ the judge, an attorney involved in the case, a law enforcement officer involved in the case, an expert witness, or a juror showed bias or “animus” (hostility or ill will) toward you because of your race, ethnicity, or national origin; OR

- ◆ during in-court trial proceedings, the judge, an attorney involved in the case, a law enforcement officer involved in the case, an expert witness, or a juror used discriminatory language about your race, ethnicity, or national origin or otherwise showed bias or animus because of your race, ethnicity, or national origin, whether or not purposeful; OR
- ◆ you were charged with or convicted of a more serious offense than people of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, *and* the county prosecutor more frequently seeks or gets convictions against people of your race, ethnicity, or national origin; OR
- ◆ you got a longer or more severe sentence than was imposed on similarly situated people convicted of the same offense *and*, in that county, longer or more severe sentences are more frequently imposed for the same offense either (1) on people of your same race, ethnicity, or national origin or (2) in cases with victims of a particular race, ethnicity, or national origin.

You must prove that it is more likely than not that the RJA was violated in your case; this is called proof by a “preponderance of the evidence.” You do not have to prove intentional discrimination. (Penal Code § 745(c)(2).) However, if you were sentenced before January 1, 2021 and you are claiming that someone involved in your case showed bias or animus or used discriminatory language, then the court will give the prosecutor an opportunity to try to prove beyond a reasonable doubt that the bias, animus, or discriminatory language did not affect the outcome of your case. If the prosecutor meets this burden, the court will not vacate or modify your conviction or sentence. (Penal Code § 745(k).)

### **When Do the Amendments to the Racial Justice Act Take Effect?**

Penal Code § 745(j) sets the dates on which the 2022 amendments to the RJA take effect. Those amendments are being phased in with different effective dates for different types of cases.

The RJA applies immediately if your case is not final because it is still open for trial or sentencing or is still on direct appeal.

If your case is already final, the date that the law takes effect is:

- ◆ January 1, 2023: if you have a death sentence or if you are out of custody and facing actual or potential immigration consequences for your conviction or sentence, regardless of when your judgement became final;
- ◆ January 1, 2024: if you are currently serving a sentence in prison, jail, or DJJ, regardless of when your case became final;
- ◆ January 1, 2025: if your case became final on or after January 1, 2015, even if you are no longer incarcerated;

- ♦ January 1, 2026: if your case became final before January 1, 2015, even if you are no longer incarcerated.

You should wait until the effective date that applies to your case before you file a petition or motion raising an RJA claim. However, it is a good idea to contact the public defender's office, your private trial attorney, or your criminal appeal attorney as soon as possible to seek advice and assistance so that you will be ready to file your RJA claim as soon as you are eligible.

### What Should I Do if I Think I Have a Claim Under the Racial Justice Act?

If you think the RJA was violated in your case, you should contact the public defender or private attorney who represented you at your trial, plea, and/or sentencing. You may also want to contact any attorney who represented you on appeal. Those attorneys may be able to give you advice or information specific to your case and/or may be able to assist you in filing an RJA claim.

The type of action that you can file to raise an RJA claim depends on whether your case is still open and whether you are still in custody or on supervised release.<sup>1</sup> If your case is already final, the two possible types of actions are:

- ♦ a **petition for writ of habeas corpus** can be filed if *you are still in prison or jail or still on parole, PRCS, probation, or mandatory supervision*. The petition should be filed in the court that held the trial or plea proceedings and sentencing in your case. There is no set timeline for filing a habeas corpus petition, but a court can dismiss your petition if you delay for a long time without a good reason. (Penal Code §§ 745(b), 1473(f).)
- ♦ a **motion to vacate your conviction or sentence** can be filed if *you are not in prison or jail and not on parole, PRCS, probation, or mandatory supervision*. The motion should be filed in the court that held the trial or plea proceedings and sentencing in your case. There is no set timeline for filing motion to vacate, but a court can dismiss your motion if you delay for a long time without a good reason. (Penal Code §§ 745(b), 1473.7.)

If your habeas corpus petition or motion to vacate is based on conduct or statements by the judge, the judge must disqualify themselves, and a different judge will be assigned to hear your RJA claim. (Penal Code § 745(b).) If your petition or motion shows that there is a “substantial likelihood” (more than a mere possibility) that the RJA was violated, the court must hold a hearing. (Penal Code § 745(c), (h)(2).) If the court decides that you have not shown a substantial likelihood of an RJA violation, then the court must state the facts and law that it is using to deny your petition or motion. (Penal Code § 1473(f).)

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<sup>1</sup> If you have *not yet been sentenced*, or if your case *is still on direct appeal*, you should discuss your concerns with the attorney who is representing you at your trial, plea, or sentencing or who is representing you on your direct appeal, so that they can consider whether and how to raise an RJA issue on your behalf. (See Penal Code § 745(b).)

If the court decides to hold a hearing, the court must appoint an attorney to represent you if you cannot afford to hire one. (Penal Code § 1473(f); *People v. Frybaat* (2019) 35 Cal.App.5th 969.) To prepare for the hearing, the attorney can file a motion for an order requiring the prosecutor to disclose all evidence or records relevant to your RJA claim. (Penal Code § 745(c)(1).) At the hearing, both your attorney and the prosecutor can present evidence, including data and statistics about how cases are handled in that county, expert witnesses, other witnesses, and reliable hearsay evidence. (Penal Code § 745(c)(1).) Depending on the circumstances, you may be allowed to attend the hearing, though your attendance may be by video or audio. (Penal Code §§ 1473(f), 1473.7(d).)

If the court decides you have proven an RJA violation, the court can vacate your conviction and order new trial or plea proceedings, can modify your conviction to a lesser offense, or can vacate your sentence and impose a new sentence. The remedy will depend on what type of RJA violation occurred. Note that if you are resentenced, you cannot get a longer or harsher sentence than you already had before you filed your petition or motion. (Penal Code § 745(e)(2).)

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Forms for filing a petition for writ of habeas corpus (HC-001) or a motion to vacate a conviction or sentence (CR-187) are available on the California Courts website at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm). You may also be able to get forms at a law library or by writing to the county court clerk. In addition, you can write to Prison Law Office to request a free manual and forms for state habeas corpus petitions. That manual is also available on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).