

AMENDED IN ASSEMBLY MAY 24, 2021

AMENDED IN ASSEMBLY MARCH 16, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 256

**Introduced by Assembly Members Kalra, Kamlager, Robert Rivas,
and Santiago**

(Principal coauthor: Assembly Member McCarty)

(Principal coauthors: Senators Bradford and Gonzalez)

**(Coauthors: Assembly Members Bonta, Carrillo, Friedman, Lee,
Levine, Stone, and Ting)**

(Coauthors: Senators Durazo, Laird, Skinner, and Wiener)

January 14, 2021

An act to amend Sections 745 and 1473 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 256, as amended, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, ~~modifying the judgment and resentencing the defendant.~~ *vacating the conviction or sentence and ordering new proceedings.*

This bill would authorize that petition to be filed for cases in which a judgment was entered prior to January 1, ~~2021.~~ *2021, as specified.* *The bill would, if a motion under these provisions is based on the*

conduct or statements by the judge, require the judge to disqualify themselves from those proceedings. The bill would additionally make other technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to apply the
 2 California Racial Justice Act of 2020 retroactively, to ensure equal
 3 access to justice for all.

4 (b) It is the intent of the Legislature that, except as described
 5 in subdivision (a), all other amendments made by this act are to
 6 clarify existing law.

7 ~~SECTION 1.~~

8 SEC. 2. Section 745 of the Penal Code is amended to read:

9 745. (a) The state shall not seek or obtain a criminal conviction
 10 or seek, obtain, or impose a sentence on the basis of race, ethnicity,
 11 or national origin. A violation is established if the defendant proves,
 12 by a preponderance of the evidence, any of the following:

13 (1) The judge, an attorney in the case, a law enforcement officer
 14 involved in the case, an expert witness, or juror exhibited bias or
 15 animus towards the defendant because of the defendant’s race,
 16 ethnicity, or national origin.

17 (2) During the defendant’s trial, in court and during the
 18 proceedings, the judge, an attorney in the case, a law enforcement
 19 officer involved in the case, an expert witness, or juror, used
 20 racially discriminatory language about the defendant’s race,
 21 ethnicity, or national origin, or otherwise exhibited bias or animus
 22 towards the defendant because of the defendant’s race, ethnicity,
 23 or national origin, whether or not purposeful. This paragraph does
 24 not apply if the person speaking is describing language used by
 25 another that is relevant to the case or if the person speaking is
 26 giving a racially neutral and unbiased physical description of the
 27 suspect.

28 (3) The defendant was charged or convicted of a more serious
 29 offense than defendants of other races, ethnicities, or national
 30 origins who commit similar offenses and are similarly situated,
 31 and the evidence establishes that the prosecution more frequently
 32 sought or obtained convictions for more serious offenses against

1 people who share the defendant’s race, ethnicity, or national origin
2 in the county where the convictions were sought or obtained.

3 (4) (A) A longer or more severe sentence was imposed on the
4 defendant than was imposed on other similarly situated individuals
5 convicted of the same offense, and longer or more severe sentences
6 were more frequently imposed for that offense on people that share
7 the defendant’s race, ethnicity, or national origin than on
8 defendants of other races, ethnicities, or national origins in the
9 county where the sentence was imposed.

10 (B) A longer or more severe sentence was imposed on the
11 defendant than was imposed on other similarly situated individuals
12 convicted of the same offense, and longer or more severe sentences
13 were more frequently imposed for the same offense on defendants
14 in cases with victims of one race, ethnicity, or national origin than
15 in cases with victims of other races, ethnicities, or national origins,
16 in the county where the sentence was imposed.

17 (b) A defendant may file a motion in the trial court or, if
18 judgment has been imposed, may file a petition for writ of habeas
19 corpus or a motion under Section 1473.7 in a court of competent
20 jurisdiction, alleging a violation of subdivision (a). *If the motion*
21 *is based in whole or in part on conduct or statements by the judge,*
22 *the judge shall disqualify themselves from any further proceedings*
23 *under this section.*

24 (c) If a motion is filed in the trial court and the defendant makes
25 a prima facie showing of a violation of subdivision (a), the trial
26 court shall hold a hearing.

27 (1) At the hearing, evidence may be presented by either party,
28 including, but not limited to, statistical evidence, aggregate data,
29 expert testimony, and the sworn testimony of witnesses. The court
30 may also appoint an independent expert.

31 (2) The defendant shall have the burden of proving a violation
32 of subdivision (a) by a preponderance of the evidence.

33 (3) At the conclusion of the hearing, the court shall make
34 findings on the record.

35 (d) A defendant may file a motion requesting disclosure to the
36 defense of all evidence relevant to a potential violation of
37 subdivision (a) in the possession or control of the state. A motion
38 filed under this section shall describe the type of records or
39 information the defendant seeks. Upon a showing of good cause,
40 and if the records are not privileged, the court shall order the

1 records to be released. Upon a showing of good cause, the court
2 may permit the prosecution to redact information prior to
3 disclosure.

4 (e) Notwithstanding any other law, except for an initiative
5 approved by the voters, if the court finds, by a preponderance of
6 evidence, a violation of subdivision (a), the court shall impose a
7 remedy specific to the violation found from the following list:

8 (1) Before a judgment has been entered, the court may impose
9 any of the following remedies:

10 (A) Declare a mistrial, if requested by the defendant.

11 (B) Discharge the jury panel and empanel a new jury.

12 (C) If the court determines that it would be in the interest of
13 justice, dismiss enhancements, special circumstances, or special
14 allegations, or reduce one or more charges.

15 (2) (A) ~~When~~ *After* a judgment has been entered, if the court
16 finds that a conviction was sought or obtained in violation of
17 subdivision (a), the court shall vacate the conviction and sentence,
18 find that it is legally invalid, and order new proceedings consistent
19 with subdivision (a). ~~If the court finds that the only violation of~~
20 ~~subdivision (a) that occurred is based on paragraph (3) of~~
21 ~~subdivision (a) and the court has the ability to rectify the violation~~
22 ~~by modifying the judgment, the court shall modify the judgment~~
23 ~~to impose an appropriate remedy for the violation that occurred.~~
24 ~~On resentencing, the court shall not impose a new sentence greater~~
25 ~~than that previously imposed.~~

26 (B) ~~When~~ *After* a judgment has been entered, if the court finds
27 that only the sentence was sought, obtained, or imposed in violation
28 of subdivision (a), the court shall vacate the sentence, find that it
29 is legally invalid, and impose a new sentence. On resentencing,
30 the court shall not impose a new sentence greater than that
31 previously imposed.

32 (3) When the court finds there has been a violation of
33 subdivision (a), the defendant shall not be eligible for the death
34 penalty.

35 (4) The remedies available under this section do not foreclose
36 any other remedies available under the United States Constitution,
37 the California Constitution, or any other law.

38 (f) This section also applies to adjudications and dispositions
39 in the juvenile delinquency system.

1 (g) This section shall not prevent the prosecution of hate crimes
2 pursuant to Sections 422.6 to 422.865, inclusive.

3 (h) As used in this section, the following definitions apply:

4 (1) “*Juror*” means a prospective or sworn juror, including
5 alternate jurors.

6 (1)

7 (2) “More frequently sought or obtained” or “more frequently
8 imposed” means that statistical evidence or aggregate data
9 demonstrate a significant difference in seeking or obtaining
10 convictions or in imposing sentences comparing individuals who
11 have committed similar offenses and are similarly situated, and
12 the prosecution cannot establish race-neutral reasons for the
13 disparity.

14 (2)

15 (3) “Prima facie showing” means that the defendant produces
16 facts that, if true, establish that there is a substantial likelihood that
17 a violation of subdivision (a) occurred. For purposes of this section,
18 a “substantial likelihood” requires more than a mere possibility,
19 but less than a standard of more likely than not.

20 (3)

21 (4) “Racially discriminatory language” means language that, to
22 an objective observer, explicitly or implicitly appeals to racial bias,
23 including, but not limited to, racially charged or racially coded
24 language, language that compares the defendant to an animal, or
25 language that references the defendant’s physical appearance,
26 culture, ethnicity, or national origin. Evidence that particular words
27 or images are used exclusively or disproportionately in cases where
28 the defendant is of a specific race, ethnicity, or national origin is
29 relevant to determining whether language is discriminatory.

30 (4)

31 (5) “State” includes the Attorney General, a district attorney,
32 or a city prosecutor.

33 (i) A defendant may share a race, ethnicity, or national origin
34 with more than one group. A defendant may aggregate data among
35 groups to demonstrate a violation of subdivision (a).

36 (j) This section applies to all cases, regardless of when judgment
37 was entered, in cases in which judgment has not been entered prior
38 to January 1, 2021, and shall also apply retroactively as follows:

39 (1) Beginning January 1, 2022, in cases in which judgment was
40 entered prior to January 1, 2021, if the petitioner is sentenced to

1 *death or currently serving a sentence in state prison or in a county*
2 *jail pursuant to subdivision (h) of Section 1170, or committed to*
3 *the Division of Juvenile Justice for a juvenile disposition, or if the*
4 *motion is filed pursuant to Section 1473.7 because of actual or*
5 *potential immigration consequences related to the conviction or*
6 *sentence.*

7 (2) *Beginning January 1, 2023, in cases in which judgment was*
8 *entered for a felony conviction or juvenile disposition after January*
9 *1, 2013.*

10 (3) *Beginning January 1, 2025, in cases in which judgment was*
11 *entered for a felony conviction or juvenile disposition regardless*
12 *of the date of judgment.*

13 ~~SEC. 2.~~

14 SEC. 3. Section 1473 of the Penal Code is amended to read:

15 1473. (a) A person unlawfully imprisoned or restrained of
16 their liberty, under any pretense, may prosecute a writ of habeas
17 corpus to inquire into the cause of the imprisonment or restraint.

18 (b) A writ of habeas corpus may be prosecuted for, but not
19 limited to, the following reasons:

20 (1) False evidence that is substantially material or probative on
21 the issue of guilt or punishment was introduced against a person
22 at a hearing or trial relating to the person’s incarceration.

23 (2) False physical evidence, believed by a person to be factual,
24 probative, or material on the issue of guilt, which was known by
25 the person at the time of entering a plea of guilty, which was a
26 material factor directly related to the plea of guilty by the person.

27 (3) (A) New evidence exists that is credible, material, presented
28 without substantial delay, and of such decisive force and value
29 that it would have more likely than not changed the outcome at
30 trial.

31 (B) For purposes of this section, “new evidence” means evidence
32 that has been discovered after trial, that could not have been
33 discovered prior to trial by the exercise of due diligence, and is
34 admissible and not merely cumulative, corroborative, collateral,
35 or impeaching.

36 (c) Any allegation that the prosecution knew or should have
37 known of the false nature of the evidence referred to in paragraphs
38 (1) and (2) of subdivision (b) is immaterial to the prosecution of
39 a writ of habeas corpus brought pursuant to paragraph (1) or (2)
40 of subdivision (b).

1 (d) This section does not limit the grounds for which a writ of
2 habeas corpus may be prosecuted or preclude the use of any other
3 remedies.

4 (e) (1) For purposes of this section, “false evidence” includes
5 opinions of experts that have either been repudiated by the expert
6 who originally provided the opinion at a hearing or trial or that
7 have been undermined by later scientific research or technological
8 advances.

9 (2) This section does not create additional liabilities, beyond
10 those already recognized, for an expert who repudiates the original
11 opinion provided at a hearing or trial or whose opinion has been
12 undermined by later scientific research or technological
13 advancements.

14 (f) Notwithstanding any other law, a writ of habeas corpus may
15 also be prosecuted after judgment has been entered based on
16 evidence that a criminal conviction or sentence was sought,
17 obtained, or imposed in violation of subdivision (a) of Section
18 745, ~~regardless of when judgment was entered. if that section~~
19 *applies based on the date of judgement as provided in subdivision*
20 *(j) of Section 745.* A petition raising a claim of this nature for the
21 first time, or on the basis of new discovery provided by the state
22 or other new evidence that could not have been previously known
23 by the petitioner with due diligence, shall not be deemed a
24 successive or abusive petition. If the petitioner has a habeas corpus
25 petition pending in state court, but it has not yet been decided, the
26 petitioner may amend the existing petition with a claim that the
27 petitioner’s conviction or sentence was sought, obtained, or
28 imposed in violation of subdivision (a) of Section 745. The petition
29 shall state if the petitioner requests appointment of counsel and
30 the court shall appoint counsel if the petitioner cannot afford
31 counsel and either the petition alleges facts that would establish a
32 violation of subdivision (a) of Section 745 or the State Public
33 Defender requests counsel be appointed. Newly appointed counsel
34 may amend a petition filed before their appointment. The court
35 shall review a petition raising a claim pursuant to Section 745 and
36 shall determine if the petitioner has made a prima facie showing
37 of entitlement to relief. If the petitioner makes a prima facie
38 showing that the petitioner is entitled to relief, the court shall issue
39 an order to show cause why relief shall not be granted and hold
40 an evidentiary hearing, unless the state declines to show cause.

1 The defendant shall appear at the hearing by video unless counsel
2 indicates that their presence in court is needed. If the court
3 determines that the petitioner has not established a prima facie
4 showing of entitlement to relief, the court shall state the factual
5 and legal basis for its conclusion on the record or issue a written
6 order detailing the factual and legal basis for its conclusion.

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