

Introduced by Senator Caballero

February 21, 2025

An act to amend Section 745 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as introduced, Caballero. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Existing law authorizes a defendant to file a motion in the trial court or, if judgment has been imposed, to file a petition for writ of habeas corpus to allege a violation of this prohibition.

This bill would require the defendant to provide notice of a hearing pursuant to these provisions to any person accused of bias or racial animus in the proceeding, and would require the person accused of bias or racial animus to be given the right to representation during the hearing, including, but not limited to, the right for their representative to test the sufficiency of the evidence by asking questions of the witnesses.

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. Section 745 of the Penal Code is amended to
- 2 read:
- 3 745. (a) The state shall not seek or obtain a criminal conviction
- 4 or seek, obtain, or impose a sentence on the basis of race, ethnicity,

1 or national origin. A violation is established if the defendant proves,
2 by a preponderance of the evidence, any of the following:

3 (1) The judge, an attorney in the case, a law enforcement officer
4 involved in the case, an expert witness, or juror exhibited bias or
5 animus towards the defendant because of the defendant's race,
6 ethnicity, or national origin.

7 (2) During the defendant's trial, in court and during the
8 proceedings, the judge, an attorney in the case, a law enforcement
9 officer involved in the case, an expert witness, or juror, used
10 racially discriminatory language about the defendant's race,
11 ethnicity, or national origin, or otherwise exhibited bias or animus
12 towards the defendant because of the defendant's race, ethnicity,
13 or national origin, whether or not purposeful. This paragraph does
14 not apply if the person speaking is relating language used by
15 another that is relevant to the case or if the person speaking is
16 giving a racially neutral and unbiased physical description of the
17 suspect.

18 (3) The defendant was charged or convicted of a more serious
19 offense than defendants of other races, ethnicities, or national
20 origins who have engaged in similar conduct and are similarly
21 situated, and the evidence establishes that the prosecution more
22 frequently sought or obtained convictions for more serious offenses
23 against people who share the defendant's race, ethnicity, or national
24 origin in the county where the convictions were sought or obtained.

25 (4) (A) A longer or more severe sentence was imposed on the
26 defendant than was imposed on other similarly situated individuals
27 convicted of the same offense, and longer or more severe sentences
28 were more frequently imposed for that offense on people that share
29 the defendant's race, ethnicity, or national origin than on
30 defendants of other races, ethnicities, or national origins in the
31 county where the sentence was imposed.

32 (B) A longer or more severe sentence was imposed on the
33 defendant than was imposed on other similarly situated individuals
34 convicted of the same offense, and longer or more severe sentences
35 were more frequently imposed for the same offense on defendants
36 in cases with victims of one race, ethnicity, or national origin than
37 in cases with victims of other races, ethnicities, or national origins,
38 in the county where the sentence was imposed.

39 (b) A defendant may file a motion pursuant to this section, or
40 a petition for writ of habeas corpus or a motion under Section

1 1473.7, in a court of competent jurisdiction, alleging a violation
2 of subdivision (a). For claims based on the trial record, a defendant
3 may raise a claim alleging a violation of subdivision (a) on direct
4 appeal from the conviction or sentence. The defendant may also
5 move to stay the appeal and request remand to the superior court
6 to file a motion pursuant to this section. If the motion is based in
7 whole or in part on conduct or statements by the judge, the judge
8 shall disqualify themselves from any further proceedings under
9 this section.

10 (c) If a motion is filed in the trial court and the defendant makes
11 a prima facie showing of a violation of subdivision (a), the trial
12 court shall hold a hearing. A motion made at trial shall be made
13 as soon as practicable upon the defendant learning of the alleged
14 violation. A motion that is not timely may be deemed waived, in
15 the discretion of the court.

16 (1) At the hearing, evidence may be presented by either party,
17 including, but not limited to, statistical evidence, aggregate data,
18 expert testimony, and the sworn testimony of witnesses. The court
19 may also appoint an independent expert. For the purpose of a
20 motion and hearing under this section, out-of-court statements that
21 the court finds trustworthy and reliable, statistical evidence, and
22 aggregated data are admissible for the limited purpose of
23 determining whether a violation of subdivision (a) has occurred.

24 (2) The defendant shall have the burden of proving a violation
25 of subdivision (a) by a preponderance of the evidence. The
26 defendant does not need to prove intentional discrimination.

27 (3) *Any person accused of bias or racial animus in a proceeding*
28 *pursuant to this section shall be provided notice of the allegations*
29 *by the defendant, and be given the right to representation during*
30 *the hearing, including, but not limited to, the right for their*
31 *representative to test the sufficiency of the evidence by asking*
32 *questions of the witnesses.*

33 ~~(3)~~

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

36 (d) A defendant may file a motion requesting disclosure to the
37 defense of all evidence relevant to a potential violation of
38 subdivision (a) in the possession or control of the state. A motion
39 filed under this section shall describe the type of records or
40 information the defendant seeks. Upon a showing of good cause,

1 the court shall order the records to be released. Upon a showing
2 of good cause, and in order to protect a privacy right or privilege,
3 the court may permit the prosecution to redact information prior
4 to disclosure or may subject disclosure to a protective order. If a
5 statutory privilege or constitutional privacy right cannot be
6 adequately protected by redaction or a protective order, the court
7 shall not order the release of the records.

8 (e) Notwithstanding any other law, except as provided in
9 subdivision (k), or for an initiative approved by the voters, if the
10 court finds, by a preponderance of evidence, a violation of
11 subdivision (a), the court shall impose a remedy specific to the
12 violation found from the following list:

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

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

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

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

20 (2) (A) After a judgment has been entered, if the court finds
21 that a conviction was sought or obtained in violation of subdivision
22 (a), the court shall vacate the conviction and sentence, find that it
23 is legally invalid, and order new proceedings consistent with
24 subdivision (a). If the court finds that the only violation of
25 subdivision (a) that occurred is based on paragraph (3) of
26 subdivision (a), the court may modify the judgment to a lesser
27 included or lesser related offense. On resentencing, the court shall
28 not impose a new sentence greater than that previously imposed.

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

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

38 (4) The remedies available under this section do not foreclose
39 any other remedies available under the United States Constitution,
40 the California Constitution, or any other law.

1 (f) This section also applies to adjudications and dispositions
2 in the juvenile delinquency system and adjudications to transfer a
3 juvenile case to adult court.

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

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

7 (1) “More frequently sought or obtained” or “more frequently
8 imposed” means that the totality of the evidence demonstrates a
9 significant difference in seeking or obtaining convictions or in
10 imposing sentences comparing individuals who have engaged in
11 similar conduct and are similarly situated, and the prosecution
12 cannot establish race-neutral reasons for the disparity. The evidence
13 may include statistical evidence, aggregate data, or nonstatistical
14 evidence. Statistical significance is a factor the court may consider,
15 but is not necessary to establish a significant difference. In
16 evaluating the totality of the evidence, the court shall consider
17 whether systemic and institutional racial bias, racial profiling, and
18 historical patterns of racially biased policing and prosecution may
19 have contributed to, or caused differences observed in, the data or
20 impacted the availability of data overall. Race-neutral reasons shall
21 be relevant factors to charges, convictions, and sentences that are
22 not influenced by implicit, systemic, or institutional bias based on
23 race, ethnicity, or national origin.

24 (2) “Prima facie showing” means that the defendant produces
25 facts that, if true, establish that there is a substantial likelihood that
26 a violation of subdivision (a) occurred. For purposes of this section,
27 a “substantial likelihood” requires more than a mere possibility,
28 but less than a standard of more likely than not.

29 (3) “Relevant factors,” as that phrase applies to sentencing,
30 means the factors in the California Rules of Court that pertain to
31 sentencing decisions and any additional factors required to or
32 permitted to be considered in sentencing under state law and under
33 the state and federal constitutions.

34 (4) “Racially discriminatory language” means language that, to
35 an objective observer, explicitly or implicitly appeals to racial bias,
36 including, but not limited to, racially charged or racially coded
37 language, language that compares the defendant to an animal, or
38 language that references the defendant’s physical appearance,
39 culture, ethnicity, or national origin. Evidence that particular words
40 or images are used exclusively or disproportionately in cases where

1 the defendant is of a specific race, ethnicity, or national origin is
2 relevant to determining whether language is discriminatory.

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

5 (6) “Similarly situated” means that factors that are relevant in
6 charging and sentencing are similar and do not require that all
7 individuals in the comparison group are identical. A defendant’s
8 conviction history may be a relevant factor to the severity of the
9 charges, convictions, or sentences. If it is a relevant factor and the
10 defense produces evidence that the conviction history may have
11 been impacted by racial profiling or historical patterns of racially
12 biased policing, the court shall consider the evidence.

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

16 (j) This section applies as follows:

17 (1) To all cases in which judgment is not final.

18 (2) Commencing January 1, 2023, to all cases in which, at the
19 time of the filing of a petition pursuant to subdivision (e) of Section
20 1473 raising a claim under this section, the petitioner is sentenced
21 to death or to cases in which the motion is filed pursuant to Section
22 1473.7 because of actual or potential immigration consequences
23 related to the conviction or sentence, regardless of when the
24 judgment or disposition became final.

25 (3) Commencing January 1, 2024, to all cases in which, at the
26 time of the filing of a petition pursuant to subdivision (e) of Section
27 1473 raising a claim under this section, the petitioner is currently
28 serving a sentence in the state prison or in a county jail pursuant
29 to subdivision (h) of Section 1170, or committed to the Division
30 of Juvenile Justice for a juvenile disposition, regardless of when
31 the judgment or disposition became final.

32 (4) Commencing January 1, 2025, to all cases filed pursuant to
33 Section 1473.7 or subdivision (e) of Section 1473 in which
34 judgment became final for a felony conviction or juvenile
35 disposition that resulted in a commitment to the Division of
36 Juvenile Justice on or after January 1, 2015.

37 (5) Commencing January 1, 2026, to all cases filed pursuant to
38 Section 1473.7 or subdivision (e) of Section 1473 in which
39 judgment was for a felony conviction or juvenile disposition that

1 resulted in a commitment to the Division of Juvenile Justice,
2 regardless of when the judgment or disposition became final.

3 (k) For petitions that are filed in cases for which judgment was
4 entered before January 1, 2021, and only in those cases, if the
5 petition is based on a violation of paragraph (1) or (2) of
6 subdivision (a), the petitioner shall be entitled to relief as provided
7 in subdivision (e), unless the state proves beyond a reasonable
8 doubt that the violation did not contribute to the judgment.

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