

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 256 (Kara) – As Amended March 16, 2021

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill makes the California Racial Justice Act of 2020 (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity or national origin, retroactive to cases where judgment was entered prior to January 1, 2021.

**FISCAL EFFECT:**

- 1) Costs (General Fund (GF)/Trial Court Trust Fund) of approximately \$21 million dollars in increased workload costs for fiscal years (FY) 2021-22 and 2022-23 and possibly ongoing to the trial courts to hear and adjudicate post-conviction petitions filed in accordance with the CRJA. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for staff and infrastructure. This is particularly true given that trial courts are still struggling to resolve hundreds of cases that were delayed during the COVID-19 pandemic. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing General Fund revenue for trial courts to continue addressing the backlog of cases and allow for timely access to justice.
- 2) Possible costs in excess of \$150,000 annually to the California Department of Corrections and Rehabilitation (CDCR) to supervise and transport petitioners housed at CDCR for hearings on CRJA petitions. Actual costs would be dependent on the number of individuals the department is required to transport and how many individuals CDCR could transport and supervise.
- 3) Costs (GF) of between \$8.9 million dollars and in FY 2021-22, \$42 million dollars in FY 2022-23, \$41 million dollars in 2023-24 and \$15 million dollars in 2024-25 to the Department of Justice (DOJ) in additional staff and infrastructure to litigate retroactive petitions for relief pursuant to the CRJA. DOJ estimates, based on Judicial Council's estimate, that approximately 100,000 petitions from past convictions may be filed in superior court pursuant to the CRJA. If petitioners are denied, they will then file petitions in the California Court of Appeal and California Supreme Court, where the DOJ's Appeals, Writ and Trials (AWT) Division will be required to respond. DOJ estimates the AWT Division will be required to respond to approximately 10% of the possible 100,000 petitions.

- 4) Possible savings (GF) to CDCR to the extent CRJA petitions are granted and inmates are re-sentenced to shorter terms or released from custody. The cost to CDCR to house an inmate per year is approximately \$84,000, so savings would depend on the number of inmates released early.

## COMMENTS:

- 1) **Purpose.** According to the author:

While California's leadership in passing the CRJA (AB 2542, Chapter 317, Statutes of 2020) was a major step in addressing institutionalized and implicit racial bias in our criminal courts, those with prior, racially biased convictions and sentences are barred from their right to challenge those judgements and seek justice.

- 2) **The CRJA.** Last year, the Legislature passed AB 2542 (Kara), Chapter 317, Statutes of 2020, known as the CRJA which allows a person convicted of a crime to file a motion alleging racial bias in the charging, conviction or sentencing of a conviction. Racial bias may be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races; or that longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin. Racial bias may also be shown by evidence that a judge or attorney, among others listed, associated with the defendant's case, exhibited bias towards the defendant, or, in court, used racially discriminatory language or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The CRJA does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case. The CRJA applies only to judgments of conviction occurring on or before January 1, 2021. This bill would make the CRJA applicable to all cases regardless of when judgment was entered.
- 3) **Impact on Trial Courts.** Judicial Council of the California (JCC) expressed several concerns about AB 2542 and the impact the CRJA would have on the trial courts. JCC estimated a cost of between \$9 million dollars and \$41 million dollars in increased workload to review and adjudicate petitions in accordance with the CRJA. AB 2542 was amended in the Senate Committee on Appropriations to be prospective only. For this bill, JCC estimates that, based on the historical number of criminal cases handled by the trial courts over the past 10 years, and assuming 1% of all criminal convictions are eligible for relief and 5% require additional hearings, the fiscal impact to the trial courts would be \$20.8 million in workload costs for the first two years. However, costs will likely be higher given that this bill allows a person to file a motion for relief on any conviction regardless of the date of conviction. JCC's estimate is based only on criminal convictions over the past ten years.

4) **Arguments in Support.** According to the 8th Amendment Project:

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. Those with prior, racially biased convictions and sentences deserve equal justice under the law and have waited long enough. Additionally, providing a mechanism for retroactive relief will allow the state to realize significant court and correctional savings.

5) **Arguments in Opposition.** According to the California District Attorneys' Association:

AB 256 would dramatically expand the scope of AB 2542 without seeing how any of these issues created by AB 2542 have been resolved. [The CRJA already] imposes [a] heavy costs on local counties without any reimbursement. Setting aside the costs of appeals, delays and interruptions of trials, and the costs of evidentiary hearings that necessarily will involve untold witnesses and expert testimony on both sides, the costs of having to review thousands of files is astronomical.

6) **Prior Legislation.**

- a) AB 2542 (Kara), Chapter 317, Statutes of 2020, prohibits the state from seeking or upholding a conviction or sentence, occurring on or after January 1, 2021, that is discriminatory based on race, ethnicity or national origin.
- b) AB 2200 (Kara) of the 2019-2020 Legislature, is largely identical to this bill and was never heard in the Assembly Committee on Public Safety.

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