
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 256 (Kalra) - Criminal procedure: discrimination

Version: May 24, 2021

Urgency: No

Hearing Date: August 11, 2022

Policy Vote: PUB. S. 4 - 1

Mandate: No

Consultant: Matthew Fleming

Bill Summary: AB 256 would, among other things, apply retroactively, as specified, the prohibition on the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin.

***** ANALYSIS ADDENDUM – SUSPENSE FILE *****

The following information is revised to reflect amendments
adopted by the committee on August 11, 2022

Fiscal Impact:

- Courts: Judicial Council estimates increased workload costs between the following ranges resulting from this bill: \$1.4 million to \$2 million in the first year, \$1.1 million to \$1.7 million in the second year, and \$900,000 to \$1.4 million for the third and fourth years each. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The 2022-23 budget includes an ongoing annual allocation of \$151.5 million and a one-time allocation of \$10.3 million backfill from the General Fund in order to address declining revenue to the Trial Court Trust Fund.
- Department of Justice (DOJ): The DOJ reports estimated costs of \$509,000 in 2022-23 (3.0 PY), \$2.1 million in 2023-24 (8.0 PY), \$2 million in 2024-25 (8.0 PY), \$1.3 million in 2025-26 and 2026-27 (5.0 PY) (General Fund). Actual costs would depend on the number of petitions that would be filed and appealed.
- Transporting habeas petitioners: Unknown, potentially-significant workload costs in the thousands of dollars to the Department of Corrections and Rehabilitation (CDCR) to supervise and transport individuals in state custody to attend hearings related to this measure. Actual costs would depend on the number of incarcerated persons who file a petition and make a prima facie showing that they are entitled to relief and for whom remote/video appearances at the proceedings are not exercised. (General Fund)
- Incarceration savings: Unknown potentially savings annually in reduced state incarceration costs for individuals whom the courts resentence to a shorter term of imprisonment and/or release from state facilities resulting from the successful prosecution of a writ of habeas corpus. The estimated per capita cost to detain a person in a state prison for 2022-23 is \$111,446 annually, with an annual marginal rate per person of over \$13,000. Actual savings would depend on the number of individuals who are resentenced and who avoid incarceration in state prison

because of this measure. Aside from marginal cost savings per individual, however, CDCR would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing (General Fund).

Author Amendments:

- Amend the timeline for retroactive application of the Racial Justice Act, as follows:
 - Commencing January 1, 2023, to all cases in which the petitioner is sentenced to death or to cases in which there are actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgement or disposition became final.
 - Commencing January 1, 2024, to all cases in which, the petitioner is currently serving a sentence in state prison or in a county jail for a realigned felony offense, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgement or disposition became final.
 - Commencing January 1, 2025, to all cases in which judgement became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.
 - Commencing January 1, 2026, to all cases in which judgement was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgement or disposition became final.
- Narrow the definition of juror to only include sworn jurors in specified circumstances.
- Clarify that out-of-court statements that “the court finds trustworthy and reliable,” statistical evidence, and aggregate data are admissible for the purpose of proving a violation.
- Clarify that evidence to demonstrate that more serious charges were brought or obtained, or that longer or more severe sentence were imposed, may include statistical evidence, aggregate data, or nonstatistical evidence.
- Provide that the defendant does not need to prove intentional discrimination.
- Make other substantive, technical, and clarifying changes.

Committee Amendments:

- Provide that motions made at trial must be made as soon as practicable upon the defendant learning of the alleged violation and that untimely motions may be waived in the discretion of the court.
- Provide that for petitions that are filed in cases for which judgment was entered before January 1, 2021, and that are based on the actions or statements of a judge, attorney, law enforcement officer involved in the case, expert witness, or juror, then

the petitioner shall be entitled to relief unless the state proves the error was harmless beyond a reasonable doubt.

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