

RESTORING FINALITY: Correcting California's Recent Legal Rewrite

Greg Totten

PACIFIC RESEARCH INSTITUTE

Restoring Finality: Correcting California's Recent Legal Rewrite
by Greg Totten

October 2026

Pacific Research Institute
P.O. Box 60485
Pasadena, CA 91116

www.pacificresearch.org

Nothing contained in this report is to be construed as necessarily reflecting the views of the Pacific Research Institute or as an attempt to thwart or aid the passage of any legislation. The views expressed remain solely the authors'. They are not endorsed by any of the authors' past or present affiliations.

©2026 Pacific Research Institute. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopy, recording, or otherwise, without prior written consent of the publisher.

I don't know what's wrong with these crazy politicians hellbent on so-called criminal justice reform—they seem to have forgotten the victims.

— Harriet Salarno, Founder, Crime Victims United[1]

Introduction

The sheer volume and breadth of criminal justice reforms enacted in California over the last decade cannot be reconciled with any rational empathy or concern for crime victims. Instead, state policymakers have approved sweeping changes that directly benefit the criminal by reducing sentences, allowing early release, and granting increased procedural rights. These changes have endangered the public, overburdened the administration of justice, and—most significantly for this article—eroded the finality of criminal judgments.

Ironically, this focus on the criminal and disregard for the victim mirrors an all-too-common occurrence at the case level. Psychiatrist and author Willard Gaylin aptly described this shift in a book about the legal and ethical issues at trial following the 1977 murder of Bonnie Garland in Scarsdale, New York:

> When one person kills another, there is an immediate revulsion at the nature of the crime. But in a time so short as to seem indecent to the members of the personal family, the dead person ceases to exist as an identifiable figure. To those individuals in the community of goodwill and empathy, warmth and compassion, only one of the key actors in the drama remains with whom to commiserate; and that is always the criminal. The dead person ceases to be a part of everyday reality; ceases to exist. She is only a figure in a historic event. And we inevitably turn away from the past towards the ongoing reality. And the ongoing reality is the criminal; trapped, anxious, now helpless, isolated, perhaps badgered, perhaps bewildered. He usurps the compassion that is justly the victims. And he will steal his victim's moral constituency along with her life.[2]

In the trial court, this tendency to forget can often be overcome through evidence and effective advocacy that humanizes the victim. However, the challenge is much greater when an entire branch of government, such as the legislature, systematically forgets the victim by enacting laws that weaken accountability and make conviction and sentencing little more than provisional exercises, always subject to reconsideration and change.

The finality of judgment and sentence has long been important to victims. In 2008, victims and survivors championed a ballot initiative called *Marsy's Law,* which, among other provisions, amended the California Constitution to expressly grant victims of crime the right to "finality" of the offender's conviction and sentence in criminal cases.[3] Sadly, many of today's policymakers view this constitutional right as a mere suggestion rather than a requirement.

This article focuses on one foundational issue: the destabilization of finality, a bedrock principle of the criminal justice system and a core expectation of victims. In doing so, the scope and policy behind this judicial principle is examined. Within this context, several recent criminal justice reforms are critically analyzed to demonstrate the harm these policies have caused to finality and the administration of justice. Finally, this article calls for a changed focus in California that respects the importance of finality and never overlooks the impact of policy changes on victims.

Background: The Shifting Sands of California's Criminal Justice Policies

California's criminal justice landscape has undergone dramatic shifts over the past four decades. Between 1982 and 2008, voters approved five statewide criminal justice reform initiatives. These policy changes collectively increased the consequences for violent and habitual offenders, strengthened victims' rights, and expanded substantive and procedural criminal law. The reforms coincided with an historic decline in crime—California's violent crime rate fell at more than twice the national rate strongly suggesting that enhanced accountability contributed to improved public safety.[4]

But these changes also strained the state's correctional infrastructure. Even before the "tough on crime" era, California failed to build sufficient prison capacity to house its growing inmate population. The new sentencing laws intensified overcrowding, ultimately culminating in *Brown v. Plata*,[5] where the U.S. Supreme Court held that California's prison conditions violated the Eighth Amendment. This decision required the state to reduce its prison population to 137.5% of its design capacity, in accordance with an earlier three-judge panel order. This equated to a reduction of more than 40,000 inmates.[6]

The *Plata* decision became a catalyst for a new wave of criminal justice reform. The reform advocates invoked overcrowding as justification for sweeping legislative and ballot-driven changes that dramatically shortened sentences, expanded early release, and created a virtual cottage industry of post-conviction and sentencing litigation, in which cases resolved years or even decades earlier by plea or verdict are returned to court for rehearing and resentencing. And while the state first met the prison capacity requirement under *Plata* on February 17, 2015,[7] the pace of criminal justice reform never paused or slowed. In all, between 2011 and 2025, more than 70 major policy changes have been enacted; many reopen cases long considered final, impose retroactive resentencing obligations, and create new procedural and early-release rights for individuals whose convictions and sentences were lawful when entered.

In doing so, the Legislature simply ignored the requirements of Article I, section 28(f)(5), which provides in pertinent part:

> Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the courts' sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall ensure sufficient funding to adequately house inmates for the full terms of their sentences....

The full impact of these new laws is beyond the scope of this article, and no single commentary could adequately address the breadth of the changes they have produced. Instead, this article focuses on three areas of the criminal justice system that have been the subject of significant reform: procedural barriers to conviction and sentencing, early parole, and sentence recall and resentencing. Examined within these areas are three reforms that exemplify these developments: recall and resentencing statutes, which authorize the reopening and reduction of otherwise final sentences; the Racial Justice Act, which created new procedural challenges to convictions and sentences; and youth and elderly offender parole provisions, which expand opportunities for early release. Each of these reforms presents significant concerns when viewed against the longstanding doctrine of finality.

"Finality": A Core Principle of Justice

In criminal justice, finality is the principle that once a conviction and sentence have been fully reviewed and upheld in the courts, the case is conclusively resolved and cannot be endlessly reopened or relitigated. This core principle has been a cornerstone of American justice, ensuring closure for all parties, including victims, conserving judicial resources, and reinforcing public confidence in the stability of court judgments.

The United States Supreme Court has repeatedly recognized that the State has a powerful interest in the finality of its judgments. The interest is particularly strong in criminal cases because "[w]ithout finality, the criminal law is deprived of much of its deterrent effect."[8]

Generations ago, Justice John Marshall Harlan offered the following trenchant and timeless comment on the importance of this doctrine:

> No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation.[9]

The California Supreme Court has also cited this authority in emphasizing the importance of finality, as it relates to writs of habeas corpus, a remedy guaranteed by the Constitution:

> "[o]ur cases have long emphasized that habeas corpus is an extraordinary remedy 'and that the availability of the writ properly must be tempered by the necessity of giving due consideration to the interest of the public in the orderly and reasonably prompt implementation of its laws and to the important public interest in the finality of judgment.'"[10]

Thus, finality is not a bureaucratic technicality; it is the spine of the criminal legal order—the safeguard that ensures verdicts have meaning, that justice eventually comes to rest, and that the system retains credibility not only for defendants but also for victims and the public.

In California, "a judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court have expired."[11] While a new statute is ordinarily presumed to operate prospectively,[12] "[w]hen new legislation reduces the punishment for an offense, we presume that the legislation applies to all cases not yet final as of the legislation's effective date."[13] This principle of legislative interpretation is commonly referred to as the *Estrada* Rule.[14] However, California courts have not extended this presumption of retroactivity to enactments unrelated to a defendant's sentence.[15] Our Supreme Court has also found that certain legislative enactments that reopen cases that are "final" run afoul of the Constitution's separation of powers doctrine.

> In criminal justice, finality is the principle that once a conviction and sentence have been fully reviewed and upheld in the courts, the case is conclusively resolved and cannot be endlessly reopened or relitigated.

The judicial doctrine of finality is rooted in three distinct policy considerations: (1) finality helps to conserve the scarce public resources available to the criminal justice system; (2) review that takes place years after the original judgment became final may produce less accurate results; and (3) a lack of finality threatens the laws' deterrent effect and public trust in the criminal justice system.[16]

Notwithstanding the importance of finality, decisional law, with limited exceptions, gives broad authority to the legislature to apply new laws to cases deemed final by the courts. Yet, over the last 15 years, the California Legislature has shown little regard for either judicial doctrine or Constitutional guarantees of finality. In fact, through repeated changes to substantive and procedural criminal law, finality has been largely undermined. Time and again, the Legislature enacts new laws that are fully retroactive, expressly permitting the reopening of long-concluded cases.

In doing so, the Legislature has imposed huge unfunded workload costs on the judicial system, harming its ability to promptly convict the guilty and acquit the innocent, while completely disrespecting victims with endless hearings and uncertainty. In all, these actions have eroded the very policies that undergird the value of finality in our justice system.

"The legislature has imposed huge unfunded workload costs on the judicial system, harming its ability to promptly convict the guilty and acquit the innocent, while completely disrespecting victims with endless hearings and uncertainty.

Our Founding Fathers warned of the dangers of this type of legislative overreach:

> The legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex. The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority.[17]

The specific examples below provide stark evidence that the California Legislature is "drawing all power into its impetuous vortex" of criminal justice reform.

Recall and Resentencing: A Cottage Industry for Neverending Litigation

Over the last decade, the Legislature has repeatedly weakened sentencing laws intended to protect the public by enhancing punishment for those who pose the greatest threat. Make no mistake: Many of these changes directly benefited recidivist and violent criminals. These sentencing reductions are too numerous to fully detail in this commentary, but some of the most troubling legislation is described below and offers compelling examples of this dangerous legislative trend. Moreover, these so-called "reforms" unequivocally demonstrate the Legislature's repeated devaluation of the finality of criminal sentences.

> "These so-called "reforms" unequivocally demonstrate the Legislature's repeated devaluation of the finality of criminal sentences.

In 2017, Senate Bill 180 (Mitchell) amended Health and Safety Code section 11370.2 to eliminate the three-year enhancement for drug dealers who have a prior conviction for drug dealing—unless the defendant uses a minor to sell drugs or induces a minor to use drugs. This change effectively treated a defendant with multiple drug sales convictions the same as a first-time offender.

In 2017, Senate Bill 620 (Bradford) removed the longstanding prohibition against a court striking firearm enhancement allegations that carried significant additional punishment, ranging from three additional years to "life," depending upon the severity of a defendant's use of a firearm during the commission of a crime. With the stroke of the Governor's pen signing this misguided legislation, California upended more than four decades of firearm laws mandating the imposition of enhancements for crimes committed with guns. These policies were rooted in the fact that firearms are the weapons used in most homicides. For example, in 2025, firearms were used in nearly 67% of all homicides committed in California.[18]

In 2018, Senate Bill 1393 (Mitchell) removed the longstanding prohibition against a judge striking mandatory five-year enhancements for prior "serious felony" convictions. "Serious felonies" include crimes like murder, rape, robbery, and child molestation.[19] This change profoundly altered a law that had been adopted by the voters in 1982 to ensure the imposition of enhanced sentences for serious and violent offenders who had previously been convicted of serious or violent offenses.

In 2018, Senate Bill 1437 (Skinner) significantly narrowed California's felony-murder rule and largely eliminated the use of the **"natural and probable consequences" doctrine** as a basis for murder liability. Before SB 1437, a person could be convicted of murder if they participated in inherently dangerous felonies (e.g., robbery or burglary) during which a death occurred, without regard to whether they were the actual killer or intended to kill anyone. The former law had been in place for generations and recognized that when one engages in a crime inherently dangerous to human life, they are liable for the natural and probable consequences of that crime, including homicide.

SB 1437 changed the law so that a person may only be convicted of felony murder if they: (1) were the **actual killer**; (2) **aided and abetted** the killing with the **intent to kill**; or (3) were a **major participant** in the underlying

felony and acted with **reckless indifference to human life**. The bill also amended Penal Code section 188 to provide that **malice cannot be imputed solely from participation in a crime**, thereby limiting murder convictions based on accomplice liability. Finally, SB 1437 created a process allowing individuals previously convicted of murder under the broader felony-murder or natural-and-probable-consequences theories to petition courts to have their convictions reviewed and, if eligible, vacated and resentenced.

This fully retroactive law applied to cases involving convictions by plea or verdict following trial. Given this scope, SB 1437 has resulted in significant post-conviction and sentencing litigation in which the prosecutor—often decades after the crime and conviction—must prove beyond a reasonable doubt that the defendant is ineligible for resentencing. Further, defendants may file successive petitions under this law notwithstanding previous denials of resentencing. According to the California Policy Lab, by the end of 2024, 1,172 people had been resentenced under the law, and 78% of those resentenced had since been released from prison.[20]

> “SB 1437 created a process allowing individuals previously convicted of murder under the broader felony-murder or natural-and-probable-consequences theories to petition courts to have their convictions reviewed and, if eligible, vacated and resentenced.

In 2019, Senate Bill 136 (Weiner) repealed the longstanding one-year enhancement for prior convictions that resulted in a term of imprisonment, with the only exception of prior imprisonments for sexually violent offenses. This proposal further erodes consequences for recidivists, essentially telling repeat offenders that their prior prison terms will not affect the sentences they receive for new crimes.

The 2021 Session produced another flurry of sentencing reductions.

- Assembly Bill 518 (Wicks) changed the law requiring judges to sentence a defendant on the most serious charge when the defendant is charged with multiple offenses, thus allowing courts to impose shorter sentences on less serious offenses when a single criminal act violates multiple criminal statutes. For example, under this dangerous law, defendants charged with attempted premeditated murder, which carries a life sentence, have requested that judges sentence them to the lesser-related offense of felony assault, which carries only a four-year sentence.
- Senate Bill 567 (Bradford) requires most aggravating factors used to justify a longer sentence to be admitted by the defendant or proven beyond a reasonable doubt at trial, thereby resulting in shorter prison terms for repeat and violent offenders.
- Senate Bill 483 (Allen) made the prior elimination of prison term enhancements and drug prior enhancements fully retroactive and required the court to resentence prior cases to reduce sentences.
- Assembly Bill 333 (Kamlager) significantly reformed California’s gang-enhancement laws under Penal Code section 186.22, making it more difficult for prosecutors to seek enhanced penalties based on alleged gang involvement.

- Assembly Bill 1540 (Ting) created **a presumption favoring recall and resentencing** when recommended by correctional authorities, parole officials, prosecutors, or other authorized agencies, making it more difficult for courts to deny resentencing requests. It also required courts to appoint counsel for eligible defendants and established additional procedures to facilitate resentencing hearings.
- Senate Bill 81 (Skinner) amended Penal Code section 1385 to require courts to give great weight to specified mitigating factors and created a strong presumption favoring dismissal of sentencing enhancements unless retaining them was necessary to protect public safety.
- Senate Bill 775 (Becker) extended the benefits of SB 1437 to those convicted of attempted murder or manslaughter under a felony-murder rule or natural and probable consequences theory.

In 2022, Assembly Bill 2167 (Kalra) added Penal Code section 17.2, requiring that in sentencing for any crime, the court seek to use the least restrictive means available. The measure also required the court to consider alternatives to incarceration, including, without limitation, collaborative justice programs, diversion, restorative justice, and probation.

In 2023, Assembly Bill 600 (Ting) authorized blanket recall and resentencing by courts without the concurrence of the district attorney or any proof of a miscarriage of justice for any case whenever sentencing laws at the time of the original sentence had been changed.

In 2024, Assembly Bill 2483 (Kalra) prohibits the district attorney, following post-conviction proceedings, from using any changes in the sentence as a basis for rescinding an earlier plea agreement.

Although some might view one of these proposals in isolation as modest reform, when examined collectively, no one can reasonably claim that these reforms are anything other than a wholesale reduction in the consequences for crime. Policymakers have effectively capitulated to the criminal defense bar and other so-called reformers by enacting laws heralded as necessary for fairness, even as they encourage endless process and litigation while marginalizing the seriousness of the underlying crime and the gravity of the defendant's prior record. One sign of this dangerous trend is the heavy post-conviction workload created in one county alone, which identified more than 700 resentencing hearings on murder convictions that have been mandated by SB 1437.[21]

These reckless reforms also erode the finality of prior judgments by juries and courts in serious and violent criminal cases. If left unchecked, this legislative trend will cause permanent damage to public trust in the efficacy of the criminal justice system.

"These reckless reforms also erode the finality of prior judgments by juries and courts in serious and violent criminal cases.

In the case of *People v. Ruiz* (2023) 97 Cal.App.5th 1068, Justice Yegan, in a concurring opinion, addressed the issue of legislative overreach. In *Ruiz,* the defendant was convicted of a violent assault, including enhancements for use of a firearm, committing the offense for the benefit of a criminal street gang, and having suffered a prior serious felony conviction. The defendant appealed

his sentence three times, largely based on changes in law the legislature had approved. In his concurring opinion, Justice Yegan wrote:

> There is a price to be paid in the quest for perfect justice. Here, by reason of the Legislature's constant tinkering with sentencing rules, we are asked to reverse/remand for a fourth sentencing hearing. And, of course, if appellant is not satisfied, he will appeal for the fourth time. This is an undue burden upon the criminal justice system, the Superior Court and the Court of Appeal. It also adversely impacts the civil justice system. And, perfect justice, while an admirable goal, is unattainable despite our best efforts.
>
> This appeal is not an outlier. Resentencing issues now dominate our appellate calendars. There are, undoubtedly, jurists who believe that there should be no limitation on how many resentencing hearings and appeals should transpire. This is a purely academic view of criminal procedure. It ignores practical and "workable" sentencing procedures, as well as the California constitutional harmless error rule. It also erodes the concept of "Finality of Judgment."[22]

The Racial Justice Act: An Aspirational Title for a Troubling and Costly Experiment

In 2020, Assemblymember Ash Kalra, D-San Jose, authored Assembly Bill 2542, titled the California Racial Justice Act of 2020 (RJA). The expansive proposal upended longstanding substantive and procedural law governing challenges in criminal cases based on discrimination and racial bias by adopting a new statutory scheme that prohibits the state from seeking or obtaining a conviction or sentence "on the basis of race, ethnicity, or national origin." The RJA added Penal Code section 745 that created broad, mandatory remedies (up to vacating convictions and sentences) upon a showing by **a preponderance of the evidence of any of the following**:

- The judge, an attorney, a law enforcement officer, an expert witness, or a juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.
- During the trial, one of the above participants in the case used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, **whether or not purposeful**.
- Race, ethnicity, or national origin was a factor in the exercise of peremptory challenges excusing jurors, **regardless of whether purposeful discrimination** occurred in the use of those challenges.
- The defendant was charged with or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who commit similar offenses and are similarly situated, and the evidence establishes that the prosecutor more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.
- A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed on people who share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

> "The expansive proposal upended longstanding substantive and procedural law governing challenges in criminal cases based on discrimination and racial bias by adopting a new statutory scheme that prohibits the state from seeking or obtaining a conviction or sentence "on the basis of race, ethnicity, or national origin."

- A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

These provisions effectively created two primary pathways for individual defendants to seek relief under the RJA: (1) show bias directed at the individual or use of "racially discriminatory language," or (2) show disparate treatment between similarly situated people from different racial groups in the same county where they were charged or sentenced.

Penal Code section 745(h)(4) broadly defines "racially discriminatory language" as,

> language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

The measure additionally amended and expanded California procedural law to expressly permit the use of a writ of habeas corpus to seek relief under Penal Code section 1473 or a motion to vacate a conviction or sentence pursuant to Penal Code section 1473.7.

Legislative Expansion and Retroactivity

Initial versions of the legislative proposal made the law fully retroactive; however, amendments adopted in the Senate made the RJA prospective only, effective January 1, 2021. However, this limitation was short-lived, and in 2022, the Legislature approved Assembly Bill 256 (Kalra), retroactively opening RJA claims through a phased schedule culminating with full retroactivity effective January 1, 2026. This amendment also adopted a "harmless beyond a reasonable doubt" error standard for review of cases that predate the RJA's effective date. As will be discussed later, this provision proved important in the California Supreme Court's subsequent review of RJA claims in multiple decades-old capital murder cases.

Next, in 2023, the Legislature approved Assembly Bill 1118 (Kalra), another expansion of the RJA to allow defendants to raise the issue on direct appeal where it is based on the trial record. Then again, in 2025, the Legislature approved further changes to the RJA in Assembly Bill 1071 (Kalra), which, according to Assemblymember Kalra, were necessary to address "procedural barriers that impede incarcerated individuals' attempts to raise legitimate RJA claims."[23] Specifically, AB 1071 clarified the low threshold for appointment of counsel for a defendant or petitioner advancing an RJA claim, the right to discovery, the ability to raise the issue for the first time via a writ of habeas corpus, even when the issue was not raised at trial, while also broadening the remedies available for violations of the law.

During the 2025–2026 legislative session, citing ongoing barriers to proving disparity claims under the RJA, Assemblymember Kalra once again pushed for amendments to the law in Assembly Bill 1958.

Assembly Bill 1958 sought to further expand RJA claims to "plea negotiations and settlements" while also authorizing a defendant or petitioner to "use qualitative evidence, quantitative evidence, or any other type of evidence [to prove a disparity claim]."[24] This proposal stalled when it failed to secure the necessary votes on the Assembly floor, most likely because the floor analysis raised significant concerns about the additional costs the bill would impose on the courts and other justice system participants.[25] Despite this setback, the proponents are unlikely to relent on this effort since many failed proposals are reintroduced in successive legislative sessions until some version is ultimately approved.

OPPOSITION AND CONSTITUTIONAL CONCERNS

Throughout the years-long debate over RJA policy, the California District Attorneys Association (CDAA) has been an ardent opponent of the law, often joined by other law enforcement associations such as the California State Sheriffs' Association and the California Police Chiefs Association. CDAA has consistently cited the following primary concerns as a basis for the opposition:

- The RJA runs afoul of Article VI, section 13 of the California Constitution, which prohibits reversal based on a trial error unless it resulted in a miscarriage of justice.[26]
- There is **no requirement that the defendant suffered any prejudice because of the alleged bias** or that the bias had any impact whatsoever on the outcome of the trial, or that the defendant was deprived of a fair trial.
- The law requires the court to hold costly **evidentiary hearings,** involving innumerable witnesses and massive amounts of statistical evidence based on a mere accusation of bias **without any required showing that the alleged bias was motivated by a discriminatory purpose or had any discriminatory effect on the proceedings**.[27]
- Full **retroactivity will overwhelm the criminal justice system and punish victims** by making the law applicable to virtually every conviction in California and by permitting the reopening of long-concluded cases.

> "Throughout the years-long debate over RJA policy, the California District Attorneys Association (CDAA) has been an ardent opponent of the law, often joined by other law enforcement associations such as the California State Sheriffs' Association and the California Police Chiefs Association.

- The RJA **overturns long-standing principles** that laws, including sentencing laws, do not violate the Constitution's equal protection clause unless that is the law's intended consequence.
- The law is **based on a patently false assumption** that different cognizable groups commit the same types of crime in the same proportions, and any disparities in prosecution are presumptively due to bias in charging policies and sentencing practices.

- The equal protection component of the U.S. Constitution's due process clause in the Fifth Amendment already precludes basing a decision to prosecute on an unjustifiable standard such as race, religion, or other arbitrary classification,[28] as does the Fourteenth Amendment and Article I, section 7(a) of the California Constitution.[29] The law also prevents convictions when a judge is shown to be biased based on harboring prejudices that prevent a fair trial[30] or sentencing,[31] or when a defendant is harmed as a result of a defense attorney being racially biased,[32] or when a juror is biased against a defendant based on race, ethnicity, or nationality.[33]

The most troubling of these objections was the RJA's mandate for harsh remedies—including vacatur relief for convictions and sentences—for purely technical violations of the law's very broad provisions.[34] The RJA effectively disregarded the California Constitution as well as the purpose and history of article VI, section 13 as a limit on the court's power to reverse convictions for minor errors. At the same time, by requiring the court to vacate convictions and sentences, the law intruded on the judiciary's foundational authority to interpret the Constitution and determine remedies for errors at trial. Finally, opponents were deeply concerned about the profoundly negative impact the law would have on victims and survivors of crime who would be subject to uncertainty and lengthy litigation years after the original conviction.

"After five years of experience with the law, the warnings offered by CDAA have proven correct, if not prescient, in predicting problems.

In the end, the legal and practical force of these objections did little to slow the RJA legislative freight train. Organizations from the American Civil Liberties Union (ACLU) and the defense bar to countless community groups quickly lined up to support each iteration of this seemingly altruistic proposal. After all, no one wanted to be against racial justice. But, as with so many complex legislative proposals, titles can be misleading, and the devil is often in the details. Now, after five years of experience with the law, the warnings offered by CDAA have proven correct, if not prescient, in predicting problems.

LIMITED RESOURCES AND LIMITED RESULTS

When Assembly Bill 256 was under consideration, the Judicial Council estimated that this measure would increase court costs in the first year of operation by $1.4 million to $2 million. However, the Judicial Council has now requested, for 2027–28, additional budget appropriations of $4.7 million for internal operations costs related to the RJA, $11.2 million to support capital and appellate court-appointed counsel for cases with RJA issues, and another $11.9 million for trial court costs related to the RJA.[35]

During the legislative debate, the Department of Justice estimated first-year costs of $509,000 that would grow to $2 million per year for fiscal years 2023–24 and 2024–25.[36] More significantly, the public defenders received appropriations of $50 million in each of the 2021, 2022, and 2023 state budgets for workload costs associated with RJA actions under Penal Code section 1473.7, among other post-judgment provisions.[37]

No additional funding was appropriated for prosecution costs related to defending claims under the RJA. Subsequently, six district attorneys filed test claims seeking state funding with the Commission on State Mandates for costs associated with responding to RJA petitions filed by the defense. The Commission, relying upon the language of the RJA statute, denied these claims. Their decision stands in stark contrast to the Commission's

earlier decision approving claims for the costs of appointing counsel to represent and file claims on behalf of inmates in state prison, the county jails, and juvenile detention facilities. Despite these appropriations and the RJA's expansive scope, including repeated broadening in subsequent legislation, there has been a glaring paucity of cases finding the racism the law seeks to remedy. One of the leading proponents of the policy described the rollout of the law as "disastrous" and further noted, "I think the Racial Justice Act is one of the most important pieces of legislation California has passed in the past decade. Sadly, almost nobody has received any benefit from its application."[38] Even the RJA's author, Assemblymember Kalra, has acknowledged the limited impact of the law's disparate treatment provision: "Since the passage of AB 2542 over five years ago, only four disparity claims … have been litigated to conclusion, and in only one of those cases did a trial [court] find a violation had been established.[39]

The Chief Justice of the California Supreme Court has also raised concerns about the massive backlog of RJA cases impacting the state's appellate courts.[40] Public defenders have even started refusing court appointments to handle writs under the law.[41]

Interestingly, the California Judicial Council conducted a 2025 survey of trial courts on the volume of RJA claims. The Council extrapolated the following: Trial courts will receive an estimated 5,000 claims in 2025, with claims expected to increase due to full retroactivity. The Council also reported that the work related to these claims is substantial for both trial and appellate courts. Complicated trial court cases require substantial research and judicial review. Findings from two rigorous time studies suggest that the statewide need to address RJA claims is the equivalent of 10 judicial officers and 45 staff in 2025. That number will likely increase in 2026.[42]

"Findings from two rigorous time studies suggest that the statewide need to address RJA claims is the equivalent of 10 judicial officers and 45 staff in 2025. That number will likely increase in 2026.

APPELLATE DECISIONS

Since the law first became operative on January 1, 2021, RJA claims have been raised in several published appellate court opinions, with mixed results.[43]

This issue—whether the RJA directly violates the California Constitution—was first addressed in 2023 in *People v. Simmons,*[44] where the majority held that the RJA did not violate article VI, section 13. However, the majority also joined dissenting Justice Yegan in calling for the California Supreme Court to review this issue:

> The California Racial Justice Act of 2020 (RJA; Penal Code § 745) seeks to eliminate racism from criminal trials in California. Here we decide the RJA does not violate article VI, section 13 of the California Constitution. We acknowledge the dissent's cogent argument that the RJA violates article VI because section 13 states that it is the province of the court to decide whether an error results in a miscarriage of justice. We are hopeful, indeed confident, that our Supreme Court will resolve this issue … soon.[45]

In his dissent, Justice Yegan concluded the RJA was a clear legislative intrusion into a determination that is solely within the province of the judiciary:

> The majority opinion upholds the Legislature's attempt to create an exception to the constitutional "miscarriage of justice" reversal requirement for violations of the California Racial Justice Act … As Justice Mosk said, "The Goddess of Justice is wearing a black arm-band today, as she weeps for the Constitution of California." "[T]he mythical Goddess of Justice … is depicted [as wearing a blindfold] to illustrate her impartiality and freedom from external influences."
>
> Justice Mosk noted: "James Madison, in the Federalist Papers … wrote, inter alia, 'The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It, therefore, belongs to them [the judges] to ascertain its meaning … .'"[46]

Justice Yegan also pointed out that the RJA violation in *Simmons* did not affect the outcome of the case:

> The violation here of the RJA cannot be characterized as a structural error of defect. It did not "affect the framework within which the trial proceeded …". It was "simply an error in the trial process itself." "The effect of this form of error can be quantitatively assessed in light of the evidence to determine whether the error was prejudicial or harmless." There is no doubt that any violation of the RJA is harmless in this case.
>
> Appellant was convicted not because of racial bias or discrimination, but because he attempted to murder his drug supplier for failing to deliver the marijuana he had purchased. There is no reason to believe that the offense was not committed or that the victim was mistaken in his identification of appellant. Accordingly, the prosecutor's comment about "appellant's complexion and 'ambiguous ethnic presentation'" did not result in a "miscarriage of justice" as that term has been construed by the courts. The People, witnesses and the trial court should not be subjected to the expense, delay, and burden of a retrial.[47]

Ultimately, Justice Yegan concluded that the RJA violated California's separation of powers doctrine:

> In enacting the RJA, the Legislature's goal was "to eliminate racial bias from California's criminal justice system," "to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing" and "to provide remedies that will eliminate racially discriminatory practices in the criminal justice system … ." The Legislature's goal is laudable, but to achieve that goal it has resorted to an extreme unconstitutional measure that may wreak havoc on the criminal justice system.
>
> I agree with Chief Justice John Marshall that "[i]t is emphatically the province and duty of the judicial department to say what the [constitutional] law is." It is therefore also emphatically the province and duty of the judiciary, *not the Legislature,* to determine what constitutes a "miscarriage of justice" within the meaning of article VI, section 13. The Legislature cannot dismantle California's separation of powers doctrine by dictating to the judiciary how the California Constitution should be construed.[48]

The Attorney General, who voted in favor of the RJA when he served as a member of the State Assembly, did not seek Supreme Court review of the appellate court's decision and reversal of *Simmons* conviction.

However, the California Supreme Court recently addressed the article VI, section 13 question as it relates to cases that predate the RJA in four capital cases involving RJA claims, among other issues: *People v. Barrera, People v. Bankston, People v. Chhuon and Pan, and People v. Demolle.*[49] The convictions and death sentences in each of these cases occurred long before the RJA was enacted. The facts of these cases are compelling for their sheer gravity, particularly when considered against the backdrop of claims the court addressed decades later under the RJA.

In the lead case, *People v. Anthony George Bankston*, defendant Bankston was convicted and sentenced to death in 1995 for two gang-related murders in 1991. In the first case, he was convicted of killing Benson Jones and the attempted murder of Benjamin Jones, the murder victim's brother. In a separate trial, he was also convicted of assault with a firearm against the brothers' sister, Linda Jones, and another gang-related murder that occurred one week earlier, in which he shot and killed Jesus Sanchez.

Bankston, described as a hardcore gang member, shot the Joneses in the afternoon on a street in the Firestone district of Los Angeles because he thought they were members of a rival street gang. He similarly shot Sanchez with an AK-47-type rifle as Sanchez left a Mother's Day barbecue in Compton, once again believing him to be a rival gang member.

> "The facts of these cases are compelling for their sheer gravity, particularly when considered against the backdrop of claims the court addressed decades later under the RJA.

On appeal to the California Supreme Court, Bankston raised several claims of RJA violations, including a gang expert's testimony about gang behavior and use of the term "hardcore gang member," the prosecutor's reference to Bankston's poetry regarding gang membership during closing argument in both guilt-phase trials, and the prosecutor's comparison of him to a Bengal tiger during argument in the penalty phase. The court affirmed the convictions but reversed the death sentence, finding that the prosecutor's Bengal tiger argument violated the RJA.

In *People v. Marcus Esquivel Barrera*, defendant Barrera was convicted and sentenced to death in 2001 for the torture/murder of his five-year-old son and two-year-old daughter. Their bodies were discovered buried in the foothills outside of Los Angeles by police officers who saw Barrera just after he had finished burying his son.

At trial, the pathologist testified to horrific child abuse. The pathologist stated that both children had multiple blunt-force injuries, including broken bones, damaged internal organs, and evidence of starvation. Further, shocking testimony at trial revealed that Barrera had regularly beaten both children every day with belts, electrical cable, broomsticks, and shoes. There was also testimony that Barrera threw the children against the wall and frequently left them tied up for days at a time.

On appeal to the California Supreme Court, Barrera raised several claims under the RJA, including statements by prospective jurors, his co-defendant's counsel asking prospective jurors about their ability to be impartial during the trial of a person of Mexican descent, and his counsel's questions of prospective jurors using the term "illegal-alien." He also claimed that the prosecutor violated the RJA by making unfavorable comments about his work as a street vendor during the opening statement and referring to him as an "animal" during the closing argument.

The court found that the comments of jurors and defense counsel, as well as the prosecutor's comments about his work as a street vendor, did not constitute a violation of the RJA. While disapproving of some of the prosecutor's language and use of the term "animal" during closing argument, the court held that even assuming that was a violation of the RJA, "we conclude any error was harmless."[50]

In People v. Chhuon and Pan, defendants Pan and Chhuon were convicted and sentenced to death for the Sacramento home invasion robbery and murder of a father and son. They were additionally convicted of the attempted murder of the victim's wife and mother, as well as a separate murder and attempted murder that occurred during a gang-related drive-by shooting in Pomona. Both defendants were members of a Cambodian street gang called the Tiny Rascals. Pan's street name was "Rusty," and Chhuon's was "Chaka."

At Chhuon's penalty-phase trial, the prosecution presented unchallenged evidence of seven other murders he committed that same year, including the torture murders of a mother and father in front of their young children in Seattle, and five murders during an incident in San Bernardino, when Chhuon and fellow gang members killed the entire Nguyen family except for a three-year-old child who was wounded but survived.

On appeal to the California Supreme Court, Chhuon raised several claims under the RJA, including the prosecutor's use of Chhuon's and other witnesses' nicknames during trial, use of anti-Asian racial stereotypes, and reference to him as a "predator" during closing argument. Chhuon also claimed that his counsel's comments during argument violated the RJA. The court held, "We conclude there was no prejudicial violation of the RJA," affirming Chhuon's conviction and sentence.[51]

In *People v. Demolle*, defendant Demolle was convicted and sentenced to death for the rape and murder of 11-year-old Jaquita Mack. On July 23, 1999, Jaquita went missing after leaving her house to ride her bike to the store. Her body was discovered the next day on a hillside about one mile from her parents' house. A subsequent autopsy determined she died from asphyxia due to strangulation, and vaginal swabs revealed the presence of sperm. DNA from those swabs matched Demolle, and he ultimately confessed to raping and murdering Jaquita.

On appeal to the California Supreme Court, Demolle raised several claims of RJA violations related to the prosecutor's closing argument in the penalty phase, in which he referred to him as a "predator" and "wolf in sheep's clothing." The court affirmed the conviction and death sentence, and discussed in detail the context of the prosecutor's remarks, holding:

> Based on this context, we conclude the prosecutor was not employing the term "predator" in a manner that "to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, that compares the defendant to an animal, or language that reference, the defendant's physical appearance, culture, ethnicity, or national origin. … Likewise, we are not persuaded that defendant has shown by a preponderance of the evidence that the prosecutor's use of the term "wolf in sheep's clothing" amounts to "language that … appeals to racial bias."[52]

RJA proponents wasted no time criticizing the court's decisions. An ACLU representative openly criticized the court's use of the harmless error standard:

> They added that the statute doesn't include that. That's sometimes referred to as constitutional avoidance. They didn't find a constitutional violation. They just said we presume the Legislature didn't want to come up close to a constitutional issue and so we will interpret the statute as

> giving a wide berth. The motivation for the RJA explicitly was the Legislature's frustration with the courts.[53]

Similarly, a Smart Justice representative, a leading supporter of the RJA, commented that the decisions left "a lot of questions unresolved. Most concerning, the majority of the court has missed a key principle underlying the Racial Justice Act: Racism is never harmless."[54]

These comments—from the very organizations that helped write this problematic law—marginalize the depth and thoughtfulness of the court's opinion. They also overlook the court's apparent effort to save the law from drafting flaws of constitutional magnitude. In this regard, *Bankston*—clearly intended as the lead case among the four decisions—warrants extensive discussion here for its focus on the article VI, section 13 miscarriage-of-justice issue.

In challenging his conviction and death sentence, Bankston relied heavily upon *People v. Simmons*, arguing that "[i]n any case in which a court finds an RJA violation, the only possible remedy is an automatic reversal of the judgment in its entirety, without regard to whether the violation was harmful."[55]

Writing for the majority, Justice Kruger took issue with this assertion, particularly as it related to cases occurring before the RJA was enacted. While the court did not disapprove *Simmons,* it noted that the case occurred after the RJA's enactment. In rejecting Bankston's argument that automatic reversal was required, the court largely relied on both the history and purpose of article VI, section 13 as well as a specific RJA provision prescribing harmless error review for cases where judgment was entered before the law's January 1, 2021, effective date:

> We conclude that, at least with respect to cases tried to judgment before the RJA took effect, the use of language that implicitly appeals to racial bias is not grounds for reversal if the People can show that the use of such language was harmless beyond a reasonable doubt.
>
> This conclusion avoids the serious constitutional questions that would arise were we instead to adopt the automatic reversal rule that Bankston urges. Under the California Constitution, we may reverse a lower-court judgment for legal error only if we conclude that the error has resulted in a miscarriage of justice. More than a century ago, voters acted to inscribe that rule in what is now article VI, section 13 of the California Constitution ….
>
> "Section 13 was adopted in 1966 as a part of general reorganization of the California Constitution. It derives from former article VI, section 4 ½ … which was added to the California Constitution in 1911 when the voters approved Senate Constitutional Amendment No. 26. Before the addition of former section 4 ½, appellate courts had restricted their role to reviewing pure question of law. They did not review the facts underlying judgments to determine whether they supported a conviction in spite of an error at trial. Consequently, most trial errors were reviewed under the functional equivalent of an automatic reversal rule. The addition of former section 4 ½ to the California Constitution changed the role of appellate courts by requiring review of 'the entire cause including the evidence' and permitting reversal only after finding a 'miscarriage of justice.'
>
> "In the 1911 Ballot Pamphlet, the proposed amendment's sponsor, Senator Boynton, said: 'The object of this amendment is to enable our courts of last resort to sustain verdicts in criminal cases unless there has been a miscarriage of justice, or putting it in another way, its purpose is to render it unnecessary for the higher courts to grant the defendant in a criminal case a new trial

> for unimportant errors. It is designed to meet the ground of common complaint that criminals escape justice through technicalities.'"[56]

While the court left open the question of whether the miscarriage of justice standard was also applicable to cases tried after the RJA's enactment, the majority noted potential concerns about adopting an automatic per se rule of reversal requirement for RJA violations and the importance of "context" in making such determinations:

> [W]e avoid the serious constitutional questions that would arise were we to conclude that the Legislature intended to override the court's assigned role in determining whether a miscarriage of justice has occurred. (*People v. Breverman* (1998) 19 Cal.4th 142, 178, fn. 26 [this court is the "final arbiter" of "the meaning of the 'miscarriage of justice' clause of the California Constitution," article VI, Section 13].) We understand Bankston's view that no violation of the RJA can ever be considered "minor or harmless" (Stats. 2025, ch.721, Section 1, subd. (e) (at least unless the Legislature has specifically and expressly said that it can be, as it did in subdivision (k)). But we also bear in mind that the RJA is written broadly—deliberately so—such that it covers a wide range of conduct and behaviors by a variety of actors who may have widely varying degrees of connection to the overall fairness and integrity of the criminal proceedings. There are appreciable differences in harm between instances of overt bias displayed by a presiding bench officer and subtle slights by a law enforcement officer who played no significant role in the investigation or trial of the case. So, too, are there appreciable differences between an argument that overtly and flagrantly appeals to racial bias—by, for instance, asking the jury to draw adverse inferences against the defendant because of his racial presentation (see, e.g., *Simmons supra,* 96 Cal.App.5th at p. 335; see id. at p. 339)—and the fleeting use of dehumanizing language in an effort to describe egregious harmful behavior.[57]

While ultimately affirming the conviction, the court reversed the death verdict, finding that the prosecutor's use of the Bengal tiger story during closing argument violated the RJA and was not harmless error. The prosecutor had asked the jury to imagine the defendant as an "enormous" Bengal tiger with his "muscles all flexed out," "claws out," "fangs" visible, and growling, and deep in the "jungle." The court noted that the comments were not brief and the prosecutor repeatedly called the defendant a "thug." Additionally, the Attorney General had conceded the issue that "an objective observer would understand them as an invitation to judge Bankston's character in a manner that appeals to implicit racial bias."[58] Emphasizing the unique and "individualized" nature of a juror's determination of penalty, the court held:

> Here, the prosecutor's comments were not only unfairly demeaning, they also improperly discouraged the jury from according Bankston the full measure of individual worth and mercy that the law allows. After carefully considering the penalty phase record, we agree with the Attorney General that there was a reasonable possibility that the errors in the prosecutor's penalty phase closing argument affected the jury's penalty verdict—which is to say, the errors were not harmless beyond a reasonable doubt.[59]

It is a fair question whether the court would have reversed the penalty based on prosecutorial misconduct during argument, even without the RJA. Prosecutorial misconduct during a penalty phase trial is subject to the same harmless error beyond a reasonable doubt standard that the court used for purposes of RJA analysis.[60] The *Bankston* court cited earlier prosecutor penalty-phase misconduct cases in which more modest uses of the Bengal tiger metaphor and other animal comparisons were found to be harmless error, but cautioned against their use. In *People v. Powell*, the court stated, "It goes without saying that a prosecutor may not compare a defendant to a beast for the purpose of dehumanizing him before the jury or in an effort to evoke the jury's racial biases."[61] In

People v. Nadey, the court stated, "Phrases that liken a defendant to an animal or dreaded disease are closer to the line, however, and we do not endorse them."[62]

As the court emphasized in *Bankston,* the RJA was written so broadly that it necessarily encompassed conduct occurring during trial that had no impact on the overall fairness of the proceedings or ultimate result. The evidence of guilt in each of these cases was overwhelming, and the crimes committed were certainly among the most horrific offenses tried in our system of justice. At the time the four cases were originally presented in court, no one, not the judge, not the prosecutor, nor the defense attorney, could have predicted that decades later the conviction and sentence would be imperiled by an unduly broad law imposing such harsh consequences for purely technical violations. Nor could the victim's family members and survivors ever have envisioned that the convictions of the person who killed their loved one would be in such jeopardy—decades later—for cases they rightfully thought were over.

THE RJA'S CONTINUING IMPACT ON FINALITY AND PUBLIC TRUST

While the California Supreme Court largely rejected the RJA attacks in these four cases in 2026, the future of this law is uncertain, and its impact on the justice system is far from over. Make no mistake: Despite their unhappiness with these decisions, RJA proponents will not stop pushing the boundaries of this very flawed law in the legislature and the courts. These proponents remain focused on thousands of cases concluded long ago, countless pending cases, and even crimes yet to be charged, where technical RJA violations will be alleged in the hope that, notwithstanding the evidence of guilt, convictions will be reversed, cases will be dismissed, and criminals will be released back into our communities. And in the end, if this is the outcome, the value of finality and the public trust in our justice system will be further eroded.

"While the California Supreme Court largely rejected the RJA attacks in these four cases in 2026, the future of this law is uncertain, and its impact on the justice system is far from over.

A Dangerous Solution in Search of a Problem: Elderly and Youth Offender Early Parole

EARLY PAROLE ELIGIBILITY UNDER CALIFORNIA'S YOUTH OFFENDER LAW

What began as a legislative response to decisions affecting juvenile offenders[63] from the United States and California Supreme Courts has now become broad early parole eligibility for violent offenders who committed their crimes when they were under the age of 26.

In *People v. Caballero* (2012), the California Supreme Court held that a determinate sentence that exceeds the expected lifetime of the juvenile defendant violates the Eighth Amendment because it effectively denies a juvenile any opportunity to demonstrate rehabilitation. The court also authorized a post-conviction and sentence process for addressing sentences that violated this constitutional standard:

> Defendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for a writ of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings.[64]

In reaching this conclusion, the court relied upon earlier U.S. Supreme Court decisions in *Graham v. Florida* (2010) 560 U.S. 48, holding that the Eighth Amendment categorically prohibits life without parole sentences for juveniles who commit non-homicide offenses, and *Miller v. Alabama* (2012) 567 U.S. 460, holding that the Eighth Amendment forbids mandatory life without parole sentences for juveniles convicted of homicide.

> "Once again, using decisional law as a catalyst, the California Legislature adopted a series of statutory changes that went far beyond the actual court rulings.

Once again, using decisional law as a catalyst, the California Legislature adopted a series of statutory changes that went far beyond the actual court rulings. In 2013, the Legislature approved Senate Bill 9 (Yee), allowing an inmate who was under 18 years of age at the time of committing an offense and who received a life without possibility of parole sentence to submit a petition for recall and resentencing after serving 15 years of that sentence.

Then, in 2013, the Legislature approved Senate Bill 260 (Hancock), authorizing parole hearings and release eligibility for any inmate who, during their 15th year of incarceration, committed the controlling offense before age 18 and was sentenced to a determinate term of imprisonment. This bill also enacted similar provisions for juveniles sentenced to life terms.[65] The stated intent of the law was to "establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain

release when he or she has shown that he or she has been rehabilitated and gained maturity." But this legislation went far beyond simply granting the youthful offender an "opportunity" for release to expressly compel the parole board to "give great weight to the **diminished culpability of juveniles as compared to adults" in making their decision on suitability for parole**.[66]

Next, in 2015, the Legislature approved Senate Bill 261 (Hancock), extending youth offender parole hearings to inmates who were under 23 at the time they committed their controlling offense. This measure also expanded the requirement that the parole board "give great weight to the diminished culpability of juveniles" to effectively make that provision applicable to 18- to 22-year-olds who clearly were considered "adults" by any measure or other provision of law.

Apparently, treating 18- to 22-year-old adults as juveniles did not go far enough. The Legislature wasted no time in adopting Assembly Bill 1308 (Stone) in 2017, further extending youth offender parole hearings to inmates under 26 at the time they committed their controlling offense. This time, however, in an apparent effort to use more accurate terminology, the Legislature also amended the statute requiring the parole board to "give great weight to the diminished culpability of juveniles" by deleting the word "juvenile" and replacing it with "youth."[67] That same year, the Legislature also approved Senate Bill 394 (Lara), extending youth offender parole hearings to inmates sentenced to life without the possibility of parole who were under the age of 18 when they committed their controlling offense.

While Senate Bill 260 enacted a mechanism that certainly met the *Miller* and *Caballero* constitutional requirements, it was substantially broader than the changes those decisions required.[68] And the legislative policy changes that followed took this expansive playbook even further by applying the early release, recall, and resentencing policies to violent crimes and homicides committed by 18- to 25-year-olds—something never contemplated in the court decisions.

> "What began as an effort to codify decisional law regarding juveniles quickly metastasized through legislative overreach to grant early parole eligibility to any inmate who committed a crime when they were under the age of 26.

Thus, what began as an effort to codify decisional law regarding juveniles quickly metastasized through legislative overreach to grant early parole eligibility to any inmate who committed a crime when they were under the age of 26. During the legislative debate, proponents of these measures often cited research on adolescent development and neuroscience showing that brain regions, particularly those involved in judgment, do not fully develop until the early to mid-20s. Throughout this process, the strong opposition of numerous prosecutors, law enforcement officials, and crime victim advocacy groups was largely discounted or completely ignored. Opposition complaints that the legislation posed a serious threat to public safety and that such an age distinction was completely inconsistent with existing public policy regarding voting, alcohol consumption, military enlistment, or becoming a peace officer were to no avail. It is also troubling that the Legislature failed to give any weight to age and crime demographics, revealing that so-called youth commit a significant disproportionate share of violent crimes, including homicide.[69]

California Department of Corrections and Rehabilitation (CDCR) reports do not reveal the number of inmates released under just these provisions of the Youth Offender Parole process, but they do show that 5,500 youth offenders have received grants of parole since 2017.[70]

Sadly, the public safety warnings raised by opponents proved accurate. One tragic example is the early release of Darryl Lamar Collins, who, on March 20, 2026, was sentenced to life without the possibility of parole for the murder of his girlfriend, Fatima Johnson—a killing that came less than a year after he was released from prison for two previous murders.

Before his early release in 2020, Collins had been convicted of two separate murders in 1995 and sentenced to serve two consecutive terms of 25 years to life. He was later released after serving 25 years—half of his sentence—under the youth offender parole provisions discussed above.

At the time of the two earlier killings in September 1995, Collins was 24 years old. He carjacked 28-year-old Derrick Reese while he was using a payphone. After taking the vehicle, Collins then backed up and shot Reese at least twice, killing him. Eleven days later, Collins entered a diner where 44-year-old Thomas Weiss was working as a cashier. Collins held Weiss at gunpoint and demanded money. When Weiss did not comply, Collins shot him in the face, killing him.

Both victims were random strangers, murdered 11 days apart. Following his conviction, Collins was sentenced to 50 years to life imprisonment on January 15, 1998. However, after serving less than half of his sentence, Collins was released in 2020 under the provisions of the Youth Offender Law enacted by the Legislature.

Then, on July 2, 2021, 364 days after his release, Collins killed Ms. Johnson in her apartment. She was found by her daughters and best friend, bound, gagged, and wrapped in a blanket. Ms. Johnson, a mother of six and grandmother of eight, was pursuing her nursing license at the time of her murder.

ELDERLY EARLY PAROLE

The genesis of California's elderly parole process began with the *Plata* lawsuits concerning prison overcrowding discussed above. On February 10, 2014, the three-judge panel in that litigation ordered CDCR to "finalize and implement a new parole process whereby inmates who are 60 years of age or older and have served a minimum of 25 years of their sentence will be referred to the Board of Parole Hearings to determine suitability for parole." CDCR complied with the order and fully implemented the policy later that year.

"The genesis of California's elderly parole process began with the *Plata* lawsuits concerning prison overcrowding.

In 2015, the Legislature considered Senate Bill 224 (Liu), a measure seeking to codify and dramatically expand the three-judge panel's order to make inmates eligible for elderly parole if they were 50 years old or older and had served 15 years of their sentence. This measure was strongly opposed by numerous law enforcement associations. For the opponents, the proposal's intent to deem a 50-year-old "elderly" seemed ridiculous. CDAA's letter of opposition articulated this concern as follows:

> SB 224 is predicated on the absurd notion that 50 years old should be deemed "elderly" for purposes of parole consideration …. By virtue of their relative youth, there will undoubtedly be a gap in the services available to them—Social Security benefits, for example, wouldn't kick in until they are 62, and they may not be eligible for Medi-Cal until they turn 65 …. Over the last decade, we've seen a steady erosion of the constitutional principles of Truth in Sentencing and Marsy's Law, at the expense of accountability and public safety. SB 224 continues that troubling trend.

CDCR also raised concerns about workload and costs, noting that the bill, as crafted, would immediately make 6,100 inmates eligible for a parole suitability hearing. They had also previously reported to the court that, in a little over 13 months since the order, 577 hearings for inmates eligible for elderly parole had been held, resulting in 166 releases. While the opposition was successful in preventing the bill's passage, that victory proved short-lived.

Two years later, in 2017, the Legislature enacted Assembly Bill 1448 (Weber) to codify this court-ordered program, even though the state had already met the population cap. Unlike Senate Bill 224, AB 1448 retained the standards for elderly parole eligibility set by the court order (age 60 and 25 years of continued incarceration). Despite strong opposition from numerous law enforcement associations and police unions, the Legislature approved this proposal, and it was signed into law.

Then, in 2020, the Legislature went further and approved Assembly Bill 3234 (Ting), which made it easier for older prison inmates to be released even earlier by lowering the eligibility age to 50 and the amount of time served to 20 years. With this decision, the Legislature made California's elderly parole law the most lenient in the nation.[71] While 24 other states have similar programs, most automatically exclude murderers and sex offenders. California does not.

Prosecutors, chiefs of police, and crime victim organizations strongly opposed AB 3234, warning that it would result in the release of dangerous and violent felons. But once again, this input fell on deaf ears.

Instead, the comments of supporters like Californians for Safety and Justice carried the day: "Incarceration and prosecution are intensely traumatic and damaging processes that harm individuals, families and communities, and often increase recidivism and exacerbate the underlying causes of crime."[72]

The only exemptions for California's unduly generous Elderly Parole Program are for inmates sentenced to death or life without the possibility of parole, inmates sentenced under California's strike laws for a second or third strike, or inmates convicted of first-degree murder of a peace officer or former peace officer.

"The only exemptions for California's unduly generous Elderly Parole Program are for inmates sentenced to death or life without the possibility of parole, inmates sentenced under California's strike laws for a second or third strike, or inmates convicted of first-degree murder of a peace officer or former peace officer.

Since the original enactment of AB 1448, an estimated 1,000 to 1,500 inmates have been the beneficiaries of this reckless and unduly lenient policy.[73] Many exceedingly dangerous felons are eligible, including child predators like David Allen Funston, who was approved for release under this law in early 2026.

In 1999, Funston had been convicted and sentenced to three consecutive life sentences in Sacramento County for multiple violent sexual offenses committed against eight young children over a six -month period, including kidnapping, forcible lewd acts, oral copulation, and penetration by a foreign object. Despite his admissions to parole authorities that he was still attracted to children and might relapse, he was granted parole under California's elderly parole law. But for the Placer County District Attorney's decision to charge him with a related offense from the same period, Funston would have been released back into the community. The prior Placer County offense had not been pursued due to the lengthy Sacramento County sentence.

The Parole Board also voted to release Gregory Lee Vogelsang, who had been convicted and sentenced to 355 years for committing more than two dozen child molestation and kidnapping charges involving five young boys in 1999. Fortunately, that release was subsequently rescinded following significant political and public outrage. However, he is scheduled for yet another parole hearing in 18 months.

There are many other equally dangerous and violent offenders serving lengthy sentences who will one day benefit from this law if it is not changed. For example, Roy Waller, known as the NorCal Rapist, could be eligible for the Elderly Parole Program. Waller terrorized women and communities across Northern California between 1991 and 2006. Waller broke into the homes of at least nine women, bound them, and repeatedly sexually assaulted them. In several cases, he kidnapped his victims and forced them to go to ATMs to steal their money.

In 2018, Waller was captured. At the time of his arrest, he was 58 years old. Despite the years since his last known assault, he still possessed tools that could facilitate new attacks when he was arrested: duct tape, handcuffs, zip ties, rope, gloves, and a ski mask.

Following Waller's conviction for these horrific crimes, Judge James Arguelles sentenced him to 897 years in prison. At the time of his sentencing, one of Waller's victims, Nicole Ernest-Payte, expressed relief: "I'm done. He's gone. I never have to think of him for one second of my life, and that is the greatest relief I could ever, ever feel."[74] Little did she know that thanks to the Legislature's approval of elderly parole, Waller would be eligible for release after serving only 20 years of his lengthy sentence. Unfortunately, these laws are designed to benefit the criminal with little to no consideration for the impact such changes have on the victim.

Judge Arguelles has criticized lawmakers, stating, "They seem to be more worried about defendants' rights than victims' rights."

For many victims and survivors, sentencing represents "finality." It can provide validation of their suffering and a chance to heal and move forward. But that sense of closure is often shattered when, later, they are notified that their offenders are eligible for parole simply because they have turned 50 and served a mere 20 years for their violent crimes. Victims are retraumatized by a system they relied upon to do justice. A sentence meant to ensure safety and closure becomes meaningless.

"Victims are retraumatized by a system they relied upon to do justice. A sentence meant to ensure safety and closure becomes meaningless.

Efforts to fix this injustice have repeatedly failed. In 2019, Senate Bill 411 (Jones) sought to exclude aggravated sexual assaults from elder parole eligibility. In 2012, Senate Bill 445 (Jones) again sought to exclude aggravated sexual assaults from the law's application. Again, in 2025, Assembly Bill 47 (Nguyen) sought to increase the eligibility age to 60 and the length of continuous incarceration to 25 years. Each time, these bills were promptly killed in committee.

The Parole Board's decisions on Funston and Vogelsang, as well as concerns about the future release of violent predators like Waller, raised understandable public furor and anger. As an institution, the Legislature often pays more attention to events than to actual need. Often, when events and actual need coalesce, the Legislature responds. Notably, public sentiment on elderly parole has clearly drawn the attention of the body politic at the state capitol, where legislators are now seriously considering multiple proposals to address the injustice they created with this reckless policy.

For example, Assembly Bill 2727 (Nguyen) would strengthen public safety by raising the minimum age from 50 years of age to 65 years of age for eligibility under the Elderly Parole Program if the inmate has served a minimum of 25 years of continuous incarceration for sexual offenses. AB 2727 would also make the sexually violent predator referral and civil commitment process (SVP) applicable to individuals who received a life sentence and were granted parole (like David Funston). It is worth noting that the original version of this proposal would have altogether excluded specified aggravated sex offenders from Elderly Parole eligibility. But as is all too common in the legislative process, Assemblymember Nguyen was forced to accept hostile amendments in committee, deleting this provision to keep the bill alive. The modified bill was signed into law.

In a state where law-abiding citizens must wait until age 62 to collect Social Security, it defies logic—and basic fairness—that murderers, torturers, and serial rapists can seek parole at 50 after serving only a fraction of their sentences. This is patently absurd considering Penal Code section 368 defines an elder abuse victim as any person who is 65 years of age or older.

"In a state where law-abiding citizens must wait until age 62 to collect Social Security, it defies logic—and basic fairness—that murderers, torturers, and serial rapists can seek parole at 50 after serving only a fraction of their sentences.

A Call for Common Sense at the State Capitol: End the Legislative "Impetuous Vortex" Destabilizing Finality

There are several changes that, while highly unlikely in the current legislative environment, are warranted to address the erosion of "finality" and the legislative obsession with undoing criminal convictions and sentences:

- Impose a moratorium on further statutory changes that reopen long-concluded cases and further reduce the consequences for crime. This will, of course, leave the Governor's power of commutation in place for meritorious claims seeking leniency that are not covered by existing law.
- The RJA should be repealed due to its fundamental flaws and costs, as discussed in this commentary. However, in the current political and legislative environment, that is unlikely, so at a minimum the RJA should be amended to expressly incorporate a miscarriage of justice standard in compliance with article VI, section 13 of the California Constitution.
- Require additional funding for the courts and for district attorneys to address all forms of post-conviction claims based, in whole or in part, on the Racial Justice Act, to address the significant increase in workload caused by the Act.
- The Commission on State Mandates must recognize that new laws, like the RJA, authorizing defense actions to challenge convictions and sentences, not only impose costs on the defense but also impose mandated costs on the prosecution for responding to these challenges. Such mandates must be funded by the State.
- Incoming legislators after the 2026 elections should propose changes to Youth Offender Parole that limit its application to offenders who committed their crimes as juveniles under the age of 18. Legislation should also be proposed to prohibit Elderly Parole for convicted sex offenders.
- Incoming legislators after the 2026 elections should propose legislation repealing Assembly Bill 2167, which requires a court to use the least restrictive means in sentencing for any crime; Assembly Bill 333, which limited the use of enhanced penalties for gang involvement; and Assembly Bill 2483, prohibiting the district attorney, following post-conviction proceedings, from rescinding an earlier plea agreement.

> "Impose a moratorium on further statutory changes that reopen long-concluded cases and further reduce the consequences for crime.

- Incoming legislators after the 2026 elections should propose a legislative rule requiring review by the Legislature's Elections and Constitutional Amendments committees of any legislative proposal affecting criminal justice that may conflict with the California or United States Constitution. This review must necessarily consider whether the proposal may violate the separation of powers doctrine or otherwise intrude on the authority of the judiciary and the finality of judgments.
- Incoming legislators after the 2026 elections should propose a legislative rule requiring consideration of the impact any legislative proposal affecting criminal justice would have on victims in any written analysis of the bill, including, but not limited to, whether it infringes upon any Marsy's Law right or imposes any other negative impact on victims.
- Mandate the California Judicial Council to track and regularly report all relevant data for post-conviction proceedings, including, but not limited to, the numbers of motions, hearings, sentence reductions, and cases granted vacatur relief.
- Mandate CDCR to track and regularly report all relevant data for early parole grants under the youth and elderly offender parole provisions, including but not limited to case numbers, charges, original date of sentence, sentence imposed, and date of release.

Conclusion

Over the last decade, the California Legislature has, unfortunately, been engaged in a headlong rush to profoundly reform criminal justice. In this effort, they have enacted many unduly technical barriers to convictions and sentences, adopted reckless early release provisions for serious and violent criminals serving lengthy prison sentences, and dramatically weakened a sentencing scheme designed to protect the public. Along the way, it is safe to say that while the legislative process is intended to be open and transparent, many of these changes received little media coverage and largely escaped the attention of the California electorate.

At its core, this article sought to shine a light on these reforms through critical analysis of several compelling examples: The Racial Justice Act, Youth Offender and Elderly Parole, and numerous retroactive sentence reductions. These reforms were praised by many so-called justice experts when enacted, but in practice, they unquestionably undermined the finality of criminal judgments. While the legislators who proposed these changes and those who voted for them may have been motivated by altruism—as public awareness increases—the immense havoc, uncertainty, and never-ending process they have caused may become a damning indictment of their failure.

We must also acknowledge that in our constitutional system of governance, we have checks and balances, and the Governor's power of veto is a crucial check on the Legislature's tendency to extend "the sphere of its activity and drawing all power into its impetuous vortex." Sadly, when it comes to the criminal justice reforms discussed in this commentary, that power has almost never been exercised.

Nor are police and prosecutors wholly blameless in the Legislature's folly. Certainly, we opposed and forcefully advocated against most of these flawed legislative proposals. But in our respective professional cultures, communication with the public about pressing issues of statewide policy is neither routine nor common. In hindsight, we may have missed opportunities to share our concerns with the public at large.

In this regard, the comments of law school professor W. David Ball, in the wake of the Supreme Court's RJA decisions, should offer cause for concern among all prosecutors, law enforcement, and the courts. He said the law was written to teach "hard lessons" to prosecutors and law enforcement, even if it could mean that a guilty person walks free.[75]

Police have countless encounters with members of the public that never result in arrest, and prosecutors sitting at the charging desk regularly decide against filing charges. In doing so, they exonerate more individuals in a single week than most defense attorneys do in an entire career. While the Legislature makes the laws that proscribe certain conduct as a crime, the responsibility to mete out justice on a case-by-case basis rests squarely with the professionals working daily in the justice system, where facts and evidence, the law, and fundamental fairness govern decision-making, not the whim of a legislator trying to secure a political win.

It is the author's hope that the public will gain greater awareness of the perils this unbridled legislation poses to finality. It is time for those truly concerned about justice to issue a clarion call that further erosion of laws that protect the public and ensure confidence in the efficacy of its administration must be halted.

Endnotes

1 September 3, 1979, forever changed the lives of Mike and Harriet Salarno. Their eldest daughter, Catina Rose Salarno, was senselessly murdered "execution style" at the University of the Pacific in Stockton on her first day of college when she was only 18 years old. In the years following, the Salarno family endured the frustrating criminal justice system that tilted too heavily toward preserving criminal rights while barely addressing the rights and needs of victims and their families. This led to the founding of Crime Victims United and, in 1982, Harriet co-chaired the Crime Victims Bill of Rights effort that established a historic turning point for victims of crime and set off a national wave of states enacting similar laws. Since then, Harriet has been instrumental in bringing change to various states' criminal justice systems.

2 *The Killing of Bonnie Garland: A Question of Justice (1982)* by Willard Gaylin, M.D., also cited in *People v. Rowland* (1992) 4 Cal.4th 238, 277.

3 Article I, section 28, subdivision (a) contains the preamble to "Marsy's Law" (the Victims' Bill of Rights). Paragraph (6) of this subdivision declares: "Victims of crime are entitled to finality in their criminal cases. Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, frequent and difficult parole hearings that threaten to release criminal offenders, and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated. This prolonged suffering of crime victims and their families must come to an end."

4 *Crime in California and the United States* 1988–1998, California DOJ Bureau of Criminal Justice Statistics, June 2000, p. vi. Between 1988 and 1998, California's violent crime rate declined by 23.5% compared to a national decline of 9.3%; see also, Jones, *Why the Three Strikes Law Is Working in California* (1999) 11 Stan L. & Pol'y Rev. 23, 24. Shafer, *The Deterrent Effect of the Three Strikes Law,* FBI Law Enforcement Bulletin (Apr. 1999).

5 *Brown v. Plata (2011)* 563 U.S. 493.

6 *Three-Judge Court Quarterly Update,* California Department of Corrections and Rehabilitation (December 2025).

7 *Id.* See also Public Policy Institute Report: *California's Prison Population,* April 2026 citing a decline in prison population from 173,000 in 2006 to 90,600 in 2025 and noting the closure of three state prisons and an additional closure planned for the fall of 2026.

8 *Teague v. Lane* (1989) 489 U.S. 288, 309 (plur. Opn. By O'Connor, J.) See also, *McCleskey v. Zant,* (1991) 499 U.S. 467, 491; *Murray v. Carrier* (1986) 477 U.S. 478, 487; *Reed v. Ross* (1984) 468 U.S. 1, 10; *Desist v. United States* (1969) 394 U.S. 244, 262–64; and *Engle v. Isaac* (1982) 456 U.S. 107, 127.

9 *Mackey v. United States* (1971) 401 U.S. 667, 691 (Harlan, J., conc. In part and dis. in part), quoted in *Teague, supra,* at 309.

10 *In re Reno* (2012) 55 Cal.4th 428, 451, quoting *In re Morgan* (2010) 50 Cal.4th 932, 944, and later quoting Justice Harlan from *Mackey, supra,* at 491. See also California Constitution, article I, section 11.

11 *People v. Buycks* (2018) 5 Cal.5th 857, 876, fn. 5.

12 *People v. Brown* (2012) 54 Cal.4th 314, 323–324.

13 *People v. Esquivel* (2021) 11 Cal.5th 671, 673, citing *In re Estrada* (1965) 63 Cal.2d 740.

14 *Estrada*, *supra*.

15 *People v. Padilla* (2022) 13 Cal.5th 152, 169.

16 Ryan W. Scott, *In Defense of the Finality of Criminal Sentences on Collateral Review,* 4 Wake Forest J. L.& Pol'y 179, 185–86.

17 James Madison, The Federalist Papers: No. 48, 332–338.

18 *Criminal Justice Statistical Reports for 2025,* California Department of Justice.

19 Penal Code section 1192.7(c).

20 Alisaa Skog and Johanna Lacoe, *Felony Murder Reform (2025) California Policy Lab* <https://capolicylab.org/felony-murder-reform/> (accessed Jul. 16, 2026).

21 Data reported from San Bernardino County District Attorney's Office.

22 *Ruiz,* supra, at 1082. See also Macklin Fleming, *The Price of Perfect Justice 6* (1974). For when we aim at perfect procedure, we impair the capacity of the legal order to achieve the basic values for which it was created, that is, to settle disputes promptly and peaceably, to restrain the strong, to protect the weak, and to conform the conduct of all to settled rules of law. If criminal procedure is unable to promptly convict the guilty and promptly acquit the innocent of the specific accusations against them, and to do it in a manner that retains public confidence in the accuracy of its results, the deterrent effect of swift and certain punishment is lost, the feeling of just retribution disappears, and belief in the efficacy of the system of justice declines.

23 See Author's Statement, Assembly Public Safety Committee, April 22, 2025, <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202520260AB1071> (accessed Jul. 21, 2026).

24 See Assembly Floor Analysis, amended March 25, 2026, <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB1958> (accessed Jul. 21, 2026).

25 Ibid.

26 Article VI, section 13 of the California Constitution provides: "No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

27 *Wayte v. United States (*1985) 470 U.S. 598, 608.

28 *United States v. Armstrong* (1996) 517 U.S. 456, 464.

29 *Murgia v. Municipal Court for the Bakersfield Judicial District of Kern County* (1975) 15 Cal.3d 286, 294.

30 *Berger v. United States* (1921) 255 U.S. 22, 28.

31 *Zant v. Stephens* (1983) 462 U.S. 862, 885.

32 *Frazer v. United States* (9th Cir. 1994) 18 F.3d 778, 784.

33 *People v. Allen and Johnson* (2011) 53 Cal.4th 60, 78.

34 The RJA provides in Penal Code section 745(e)(2)(A): "After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, **find that is legally invalid, and order new proceedings** …"

35 Criminal Law Advisory Committee, *Budget Change Proposal for Racial Justice Act Cases* (January 29, 2026) Judicial Council of California <https://courts.ca.gov/system/files/file/clac-20260129-materials.pdf> (accessed Jul. 16, 2026).

36 See Senate Appropriations Committee Analysis, August 11, 2022, <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB256> (accessed Jul.21, 2026).

37 See Budget Act of 2021, Senate Bill 129; Budget Act of 2022, Senate Bill 154; and Budget Act of 2023, Senate Bill 101.

38 "Panel seeks overhaul of Racial Justice Act after troubled rollout" (Dec. 22, 2025) *California Daily Journal* <https://www.dailyjournal.com/article/389087-panel-seeks-overhaul-of-racial-justice-act-after-troubled-rollout> (accessed Jul. 16, 2026).

39 Assembly Floor Analysis, amended March 25, 2026, *supra.*

40 "Chief Justice says ICE Activity, Racial Justice Act backlog and bar exam woes top court concerns" (Jan. 29, 2026) *California Daily Journal* <https://www.dailyjournal.com/articles/389531-chief-justice-says-ice-activity-racial-justice-act-backlog-and-bar-exam-woes-top-court-concerns> (accessed Jul. 16, 2026).

41 "Public defenders may decline Racial Justice Act habeas appointments, court rules" (Jan. 22, 2026) *California Daily Journal* <https://www.dailyjournal.com/article/389430-public-defenders-may-decline-racial-justice-act-habeas-appointments-court-rules> (accessed Jul. 16, 2026).

42 Information provided pursuant to Public Records Act Request of Judicial Council regarding RJA workload issues.

43 See e.g., *People v. Stubblefield (2024)* 107 Cal.App.5th 896 vacating conviction under the RJA based upon prosecutor comments during closing argument with no finding of actual prejudice because the law does not require that. The Supreme Court expressly disapproved this decision in *People v. Bankston* (2026) 19 Cal.5th 786; *RD v. Superior Court of Sacramento County* (2025) 108 Cal.App.5th 1227 denying writ under the RJA regarding judicial comments. *People v. Simmons* (2023) 96 Cal.App.5th 323 where the majority found a violation of the RJA requiring reversal based upon prosecutor comments on defendant's skin color and "ambiguous ethnic presentation. See also *People v. Howard* (2024) 104 Cal.App.5th 625 remanded for further evidentiary hearing re prosecutors repeated and unnecessary references to EPA gang; *People v. Quintero* (2024) 107 Cal.App.5th 1060 affirmed no RJA violation for prosecutors repeated references to defendant as a monster; *People v. Gomez* (2026) 118 Cal.App.5th 384 affirmed no RJA violation for prosecutors benign use of animal imagery; *Hernandez v. Superior Court of Sacramento County* (2025) 115 Cal.App.5th 1120 granted writ for prima facie violation of RJA related to police conduct and implicit bias; *People v. Midell* (2025) 113 Cal.App.5th 1060 affirmed no RJA violation for defense attorney repeatedly describing defendant as a "raving animal"; *Mosby v. Superior Court of Riverside County* (2024) 99 Cal.App.5th 106 granted writ regarding charging issues; *Finley v. Superior Court of City and County of San Francisco* (2023) 95 Cal.App.5th 12 granted writ regarding police conduct; *People v. Singh* (2024) 103 Cal.App.5th 76 affirmed no RJA violation related to police conduct; *Bonds v. Superior Court of San Diego County* (2024) 99 Cal.App.5th 821 granted writ regarding police conduct; *Jackson v. Superior Court* (2025) 109 Cal.App.5th 372 granted writ for evidentiary hearing regarding police conduct; *People v. Coleman* (2024) 98 Cal.App.5th 709 affirmed no RJA violation re defense conduct; *People v. Lawson* (2025) 108 Cal.App.5th 990 affirmed no RJA violation re judicial conduct at sentencing calling defendant a thief, fraudster, liar and coward; *People v. Wilson* (2024) 16 Cal.5th 874 denied defense request for stay to litigate RJA issues; *People v. Frazier* (2024) 16 Cal.5th 814 discussed RJA stays in Justice Evans dissent; *People v. Wilson* (2025) 111 Cal.App.5th 1020 defense forfeited RJA claim by not objecting to prosecutor referring to him as a Gorilla Pimp; *People v. Wagstaff* (2025) 111 Cal.App.5th 1207 defense forfeited any claims of RJA violation by failing to object; *People v. Midell* (2025) 113 Cal.App.5th 1060 no RJA violation for defense repeated description of defendant as animal that was cornerstone of defense theory and thus invited error; *Gonzales v. Superior Court of Santa Clara County* (2024) 108 Cal.App.5th Supp. 36 defense presented plausible theory supporting discovery related to a potential RJA violation; *People v.*

Superior Court (Lalo) of Riverside County (2025) 114 Cal.App.5th 707 writ granted defense not entitled to discovery with generalized stats or weak comparisons; *People v. Hodge* (2024) 107 Cal.App.5th 985 appeal dismissed, post-conviction claims must be brought via habeas (1473.7); *In re Montgomery* (2024) 104 Cal. App.5th 1062 appeal dismissed, discovery under RJA is not standalone; *People v. Serrano* (2024) 106 Cal. App.5th 276 appeal dismissed re post-conviction discovery; *Sanchez v. Superior Court of San Bernardino County* (2024) 106 Cal.App.5th 617 removal of defense counsel for violation of RJA; *People v. Corbi* (2024) 106 Cal.App.5th 25 affirmed RJA claim not raised in trial court and therefor forfeited; *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138 writ granted on denial of discovery and plausible RJA violation; *McDaniel v. Superior Court of San Mateo County* (2025) 111 Cal.App.5th 228 writ granted for denial of discovery on RJA claim related to statistics; *In re Lynex* (2026) 118 Cal.App.5th 756 writ granted regarding request for counsel on RJA claim; *People v. Lashon* (2024) 98 Cal.App.5th 804 RJA claim against judge for implicit racial bias forfeited; *People v. Garcia* (2022) 85 Cal.App.5th 290 reversal of continuance denial to develop plausible RJA claim.

44 *People v. Simmons* (2023) 96 Cal.App.5th 323.

45 *Id.* at 326.

46 *Id.* at 340 (citations omitted).

47 *Id.* at 342-44 (citations omitted).

48 *Id.* at 345 (citations omitted; emphasis in original).

49 *People v. Barrera* (2026) 19 Cal.5th 919; *People v. Bankston* (2026) 19 Cal.5th 786; *People v. Chhuon and Pan* (2026) 19 Cal. 5th 1018; *People v. Demolle* (2026) 19 Cal. 5th 1117.

50 *Barrera, supra,* at 974.

51 *Chhuon and Pan*, supra,at 1108. Additionally, the court reversed defendant Pan's conviction and sentence on grounds unrelated to the RJA.

52 *Demolle, supra,*. at 1199

53 "Racial Justice Act sets off turf war between courts, lawmakers" (June 3, 2026) *Daily Journal* <https://www.dailyjournal.com/article/391840-racial-justice-act-sets-off-turf-war-between-courts-lawmakers> (accessed Jul. 16, 2026).

54 *Id.*

55 *Bankston, supra,* at 870.

56 *Id.* at 870–71.

57 *Id.* at 876.

58 *Id.* at 880.

59 *Id.*

60 *Chapman v. California* (1967) 386 U.S. 18; *People v. Lancaster* (2007) 41 Cal.4th 50, 94; *People v. Brown* (1988) 46 Cal.3d 432, 448.

61 *People v. Powell* (2018) 6 Cal.5th 136, 183.

62 *People v. Nadey* (2024) 16 Cal.5th 102, 186.

63 Juvenile offenders have historically been defined as those individuals who are under the age of 18 at the time the offense was committed. See Welfare and Institutions Code section 602.

64 *People v. Caballero* (2012) 55 Cal.4th 262, 269.

65 This measure added Penal Code section 3051(b)(1)–(3) which provided in pertinent part: "A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person's 25th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 25th year of incarceration."

66 Penal Code section 4801(c).

67 See text Sen. Bill No. 1308, 2017-2018 legislative session and Penal Code section 4801(c).

68 In *People v. Franklin* (2016) 63 Cal.4th 261, the California Supreme Court held the enactment of Penal Code section 3051 satisfies the requirement of *Miller-Caballero* that a defendant who was a minor at the time of an offense have a reasonable opportunity to gain release during his or her natural lifetime, because it requires that the defendant receive a parole hearing during his 25th year of incarceration.

69 California Department of Justice, *Homicide in California (2024),* where it was reported that 41.2% of all homicide arrestees were aged 18-29.

70 California Department of Corrections and Rehabilitation, *Annual Reports of Significant Events (2017 through 2025)* <https://www.cdcr.ca.gov/bph/statistical-data/> (accessed Jul. 21, 2026).

71 Comparison provided by Criminal Justice Legal Foundation of California's Elderly Parole Law with the 24 other states that have adopted Elderly Parole Laws.

72 Assembly Floor Analysis, August 3, 2020.

73 Statewide tracking combines this with other reform policies (such as Youth Offender Parole), making an exact, isolated tally for AB 1448 alone unavailable from the California Department of Corrections and Rehabilitation, Cayla Mihalovich, "California Shrank Prisons with Sentencing Changes. A New Study Shows How That's Working" (Sept. 2025) *CalMatters* <https://calmatters.org/justice/2025/09/california-prisons-recidivism-study/> (accessed Jul. 21, 2026).

74 "NorCal rapist's 900-year-to life sentence reduced under new state laws, now eligible for elder parole" (January 9, 2026) *KCRA3* <https://www.kcra.com/article/norcal-rapistlife-sentence-reduced-new-state-laws/69940059> (accessed Jul. 13, 2026).

75 "Racial Justice Act sets off turf war," *supra.*

About the Author

Greg Totten

Greg Totten became the Chief Executive Officer of the California District Attorneys Association (CDAA) in January 2021 after retiring as the elected district attorney of Ventura County, California. Mr. Totten is a founding member of the Golden State Communities Board of Directors and one of the principal architects and co-chair of bipartisan coalition for statewide ballot measure addressing retail theft, drug addiction/homelessness and fentanyl that was overwhelmingly approved by the voters. He is a member of the National Association of Prosecutor Coordinators Board of Directors and a member of the National District Attorneys Association. He also serves on the Crime Survivors Council for the Crime Survivors Resource Center.

Mr. Totten was the elected district attorney of Ventura County for 18 years of his 38-year prosecutor career. As a prosecutor, he also served as president of the 2011-2012 CDAA Board of Directors, co-chaired the CDAA Legislation Committee for nearly two decades, and was instrumental in forming the CDAA Institute for Education and Research Foundation. He was also a member of the National District Attorneys Association throughout this tenure and served a number of years on its Executive Committee.

Mr. Totten has lectured at state and national prosecutor symposia and published numerous articles on a wide array of criminal justice topics, including principle-centered leadership, elder abuse issues, gang strategies, contemporary trial issues, homicide prosecution techniques, asset forfeitures, victim impact evidence in death penalty cases, and forensic genetic genealogy.

About PRI

The Pacific Research Institute (PRI) champions freedom, opportunity, and personal responsibility by advancing free-market policy solutions. It provides practical solutions for the policy issues that impact the daily lives of all Americans, and demonstrates why the free market is more effective than the government at providing the important results we all seek: good schools, quality health care, a clean environment, and a robust economy.

Founded in 1979 and based in San Francisco, PRI is a non-profit, non-partisan organization supported by private contributions. Its activities include publications, public events, media commentary, community leadership, legislative testimony, and academic outreach.

CENTER FOR BUSINESS AND ECONOMICS

PRI shows how the entrepreneurial spirit—the engine of economic growth and opportunity—is stifled by onerous taxes, regulations, and lawsuits. It advances policy reforms that promote a robust economy, consumer choice, and innovation.

CENTER FOR EDUCATION

PRI works to restore to all parents the basic right to choose the best educational opportunities for their children. Through research and grassroots outreach, PRI promotes parental choice in education, high academic standards, teacher quality, charter schools, and school-finance reform.

CENTER FOR THE ENVIRONMENT

PRI reveals the dramatic and long-term trend toward a cleaner, healthier environment. It also examines and promotes the essential ingredients for abundant resources and environmental quality: property rights, markets, local action, and private initiative.

CENTER FOR HEALTH CARE

PRI demonstrates why a single-payer Canadian model would be detrimental to the health care of all Americans. It proposes market-based reforms that would improve affordability, access, quality, and consumer choice.

CENTER FOR CALIFORNIA REFORM

The Center for California Reform seeks to reinvigorate California's entrepreneurial self-reliant traditions. It champions solutions in education, business, and the environment that work to advance prosperity and opportunity for all the state's residents.

CENTER FOR MEDICAL ECONOMICS AND INNOVATION

The Center for Medical Economics and Innovation aims to educate policymakers, regulators, health care professionals, the media, and the public on the critical role that new technologies play in improving health and accelerating economic growth.

FREE CITIES CENTER

The Free Cities Center cultivates innovative ideas to improve our cities and urban life based around freedom and property rights—not government.

PACIFIC RESEARCH INSTITUTE

www.pacificresearch.org

MAILING ADDRESS
PO Box 60485
Pasadena, CA 91116
Tel 415-989-0833

SACRAMENTO OFFICE
2110 K Street, Suite 28
Sacramento, CA 95816
Tel 916-389-9774

PASADENA OFFICE
680 E. Colorado Blvd., Suite 180
Pasadena, CA 91101
Tel 626-714-7572

CONNECT WITH US

facebook.com/pacificresearchinstitute

@pacificresearch

youtube.com/pacificresearch1

www.linkedin.com/company/pacific-research-institute

pacificresearchinstitute