



PREVENTING VIOLENCE
AND DEVELOPING
YOUTH LEADERS

YOUTH ALIVE!
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September 14, 2020

The Honorable Gavin Newsom
Governor of the State of California
State Capitol, 1st Floor
Sacramento, CA 95814

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ANNE MARKS
Executive Director
Youth ALIVE!
Oakland, CA

Re: Request Signature on AB 2542 (Kalra) Racial Justice Act

Dear Governor Newsom,

On behalf of Youth ALIVE!, I write in strong support of AB 2542, the California Racial Justice Act, your bill to prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity or national origin. California's legal system is plagued by racial disparities and discrimination in arrest, trial, and sentencing. Currently we have no feasible path forward for people who wish to pursue justice in the face of discriminatory treatment during the criminal legal process.

Youth ALIVE! is a nationally recognized community-based organization known for initiating an alliance to treat violence as a public health crisis and developing young leaders in the process. Tasked as Oakland's anchor organization for violence prevention, intervention, and healing, Youth ALIVE! has maintained a successful track record of implementing evidence-based violence intervention and prevention services. Our decades of experience serving individuals impacted by the criminal justice system informs our support of Assembly Bill 2542.

The California Racial Justice Act addresses the problem of what Justice William Brennan called a "fear of too much justice." The new law would make it possible for a person charged or convicted of a crime to challenge racial, ethnic, and national origin bias in their case, as shown through evidence of:

- 1) Explicit racial bias by an attorney, judge, law enforcement officer, expert witness, or juror involved in the case.
- 2) Use of racially discriminatory language in court and during the criminal proceedings, whether or not intentional.



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- 3) Racial bias in jury selection, such as removing all or nearly all Black, Brown, Native, Indigenous, and people of color from the jury.
- 4) Statistical disparities in charging and convictions – that is, evidence that people of one race are disproportionately charged or convicted of a specific crime or enhancement.
- 5) Statistical disparities in sentencing – that is, evidence that people of one race receive longer or more severe sentences, including the death penalty or life without parole.

This bill is needed because of a widely condemned 1987 legal precedent established by the U.S. Supreme Court in the case of *McCleskey v. Kemp*. The *McCleskey* decision has the functional effect of requiring that criminal defendants prove intentional discrimination when challenging racial bias in their legal process. This is an unreasonably high standard and is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate, and targeted.

Californians have relied on state or federal constitutional provisions to challenge discrimination in the criminal justice system. However, these provisions are insufficient to address persistent racial discrimination in the criminal legal system, because courts have concluded that, due to the *McCleskey* case and others, proof of purposeful discrimination is required. As a result, California convictions and sentences are routinely upheld despite:

- Blatantly racist statements by attorneys, judges, jurors, and expert witnesses;
- The exclusion of all, or nearly all Black, Brown, Native, Indigenous, and people of color from serving on a jury; and
- Stark statistical evidence showing systemic bias in charging and sentencing.

The *McCleskey* majority observed that state legislatures concerned about racial bias in the criminal legal system could act to address the problem. We agree. Just as California's Unruh Civil Rights Act currently prohibits racial discrimination in employment, housing and public accommodation, we need a statewide policy that makes it unlawful to discriminate against Black and Brown people in the state's criminal legal system. It's time to take a stand against racial discrimination in our criminal legal system.



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For these reasons, we respectfully request that you sign the California Racial Justice Act into law, which will take a profound step forward by prohibiting racial discrimination in seeking or obtaining convictions or sentences.

Sincerely,

A handwritten signature in black ink that reads "Kyndra Simmons". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kyndra Simmons
Intervention Director