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Racial Justice Act Retroactivity
AB 256

The original California Racial Justice Act (RJA) was created by Assembly Bill 2542. It was signed into law by the Governor in 2020. It applied only to people who were sentenced in the trial court after January 1, 2021.

Assembly Bill 256 – also called "The Racial Justice For All Act" – will make the RJA apply "retroactively." This means it will apply to people who were sentenced before January 1, 2021. But AB 256 will become retroactive in stages, starting on January 1, 2023. It will not apply to everyone until January 1, 2026.

AB 256 makes the RJA apply retroactively in four stages, from 2023 to 2026:

- **Eligible Jan. 1, 2023**: people sentenced to death or facing possible immigration consequences like deportation;
- **Eligible Jan. 1, 2024**: people in prison, in a county jail serving a sentence for a felony conviction, or in the Division of Juvenile Justice ("DJJ");
- **Eligible Jan. 1, 2025**: people no longer incarcerated, but with a felony conviction or a juvenile case that resulted in commitment to DJJ entered after 2015;
- **Eligible Jan. 1, 2026**: anyone with a felony conviction or a juvenile case that resulted in commitment

FREQUENTLY ASKED QUESTIONS

The following is general information only. The Office of State Public Defender cannot provide legal advice about your case at this time.

Q: **What is the Racial Justice Act?**

The RJA is a law that lets people charged with (or convicted of) a crime raise issues of bias or discrimination based on race, ethnicity, or national origin in their cases. It was created by Assembly Bill 2542 (AB 2542).

Before the RJA was signed into law, courts often only recognized bias and discrimination that was extreme and intentional. But this kind of bias has been almost impossible to prove in court. In passing AB 2542, the Legislature recognized that both explicit (intentional) bias and implicit (unintentional) bias creates harm in the criminal justice system. AB 2542 enacts new approaches to combat racial discrimination and disparities. The goal is not to blame or punish people who may have unintentionally acted with bias, but rather to make sure that everyone is treated fairly, no matter their race, ethnicity, or country of birth.

Q: Where can I find the RJA in the California Penal Code?

The RJA added a new section 745 to the Penal Code. That is where you will find the language of the RJA. AB 2542 also added language to sections of the Penal Code that govern habeas corpus petitions (Pen. Code, §§ 1473 & 1473.7).

Under the original RJA, only people who were sentenced on or after January 1, 2021 could raise Racial Justice Act claims in habeas corpus petitions. AB 256 will change that. It will allow people sentenced before January 1, 2021 to file habeas corpus petitions raising retroactive racial justice claims.

Q: **What kind of bias or discrimination claims does the RJA cover?**

The RJA prohibits bias or discrimination in charging, conviction, and sentencing based on a defendant's race, ethnicity, or national origin. Sentencing violations can also be based on the victim's race, ethnicity, or national origin.

Section 745 (a) includes four "pathways" to proving an RJA violation. These pathways may work separately or together to prove an RJA violation. (See Y*oung v. Superior Court of Solano* (2022) 79 Cal.App.5th 138.) The four pathways, which are described below, are set out in Penal Code section 745 (a)(1)-(a)(4).

Q: **What are the four pathways to a RJA violation?**

Two of the pathways apply when someone important to your case, like a district attorney, defense attorney, expert witness, juror, or judge said biased or racist things or acted in a way that was biased or racist, either inside or outside the courtroom.

Two of the pathways apply when there are disparities, or differences, between racial groups in charging, conviction, or sentencing. For this kind of RJA violation, you would need to show that two groups of people of different races allegedly committed similar conduct, but one racial group was either charged with more serious crimes, convicted more often, or sentenced to longer terms.

You do not need to show all of these things happened; one is enough to prove an RJA violation.

Pathway 1: Subdivision (a)(1) of Penal Code § 745.

The first pathway applies when a person important to your case used biased or racist words or conduct outside of the courtroom. General racist language or conduct is not enough; it must be toward you. But the RJA does not require that you heard the words or saw the conduct. It is a violation if one of the people listed in PC 745 (a)(1) – which includes the judge, an attorney, police officer, expert witness, or juror – says something biased about you, even if it is not said directly to you. For example, if a police officer used a racial slur about you when talking to a witness that could raise an RJA claim, even if you were not there to hear it.

Pathway 2: Subdivision (a)(2) of Penal Code § 745.

The second pathway applies when the judge, an attorney, police officer, expert witness, or juror involved in your case used biased or racist words in the courtroom. The words do not have to be spoken towards you; it is enough if they show bias towards your race, ethnicity, or national origin. It is also an RJA violation if one of these people engaged in conduct that shows bias or racism while in court proceedings.

Pathway 3: Subdivision (a)(3) of Penal Code § 745.

The third pathway applies when people in one racial group are <u>charged</u> with (or convicted of) more serious crimes than similar people in another racial group. These differences – or disparities – between racial groups must exist in the same county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Pathway 4: Subdivision (a)(4) of Penal Code § 745.

The fourth pathway applies when people in one racial group are sentenced more harshly than similar people in another racial group who have the same types of charges. It also applies if people are given longer sentences because of the race of their victim. These disparities must be in the county where you were sentenced. This pathway will require gathering information about other cases to show that there is a pattern.

Q: **What should I do if I think there was an RJA violation in my case?**

You will need to **wait** until 2024 to file a habeas corpus petition, unless you are sentenced to death or facing immigration consequences.

In the meantime, you can reach out to your trial and/or appellate attorney. Explain to them why you think there was an RJA violation in your case and ask if they will be able to represent you in a habeas corpus proceeding.

Q: **What are the remedies for a RJA violation? What happens if I "win"?**

If you prove an RJA claim, the remedy may depend on which of the four pathways were violated. If the RJA violation relates to your conviction, the court can find your conviction to be invalid and order a new trial or change your conviction to a less serious offense. If the RJA violation relates only to your sentence, you may be resentenced.

Q: Do I have to show that the RJA violation affected the outcome of my case?

Under the original RJA, a person does not need to show prejudice to get relief in the trial court. For retroactive claims under the new law (AB 256), the court must grant relief under Pathway 1 or 2 discussed above (section 745 (a)(1) and (a)(2)) unless the prosecution can show beyond a reasonable doubt that the violation did not contribute to the conviction or sentence. For Pathway 3 and 4 (section 745 (a)(3) and (a)(4) disparity claims), there is no need to show prejudice.

Q: **What should I do if I have a death sentence and think there was an RJA violation in my case?**

Please speak to your appointed attorney if you have one. If you don't have a lawyer, please contact the CAP attorney assigned to help you. We strongly recommend you do **NOT** file a pro per petition. If you do, a court may prevent you from raising other errors in your case later in another habeas corpus petition.

Q: **What if I am facing possible immigration consequences like deportation and I think there was an RJA violation in my case?**

Contact an immigration attorney or the attorney who represented you at trial. Tell him or her why you think there was an RJA violation in your case and see if they have any advice for you. You can also consider filing a habeas petition if you cannot get an attorney to help you and you are about to be deported or face other serious immigration consequences.

Q: **What if a lawyer contacts me and asks for money to file an RJA claim in my case?**

Keep in mind that no attorney, paid or not, can make you eligible for RJA relief earlier than the dates above. In fact, filing too early may get your case rejected simply because the law does not yet apply to you. Any time you hire an attorney you should ask how often they have handled similar cases and ask to see examples of their work. Beware of anything that seems too good to be true.

You might become eligible for a public defender or other free lawyer to make a claim under the RJA. Lawmakers and policymakers are still working out how people who need lawyers in 2024 will get them.

Assembly Bill No. 256

CHAPTER 739

An act to amend Sections 745 and 1473 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

legislative counsel's digest

AB 256, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, vacating the conviction or sentence and ordering new proceedings.

This bill would additionally authorize that petition to be filed for cases in which a judgment was entered as final prior to January 1, 2021, as specified, and in cases in which a juvenile disposition resulted in a commitment to the Division of Juvenile Justice, as specified. The bill would, if a motion under these provisions is based on the conduct or statements by the judge, require the judge to disqualify themselves from those proceedings. The bill would additionally make other technical changes.

Existing law allows a defendant to file a motion requesting disclosure of all evidence related to a potential violation of the prohibition on seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, and requires the court to order the records to be released upon a showing of good cause. If the records are not privileged, existing law allows the court to permit the prosecution to redact information prior to disclosure.

This bill would require the court, upon a showing of good cause, to order disclosure unless a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order.

Under existing law, a conviction or sentence is unlawfully imposed on the basis of race, ethnicity, or national origin if the defendant proves, among other things, that the defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, or received a longer or more severe sentence, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin, as specified, or if a longer or more severe sentence was more frequently imposed on defendants of a particular race, ethnicity, or

national origin, as specified. Existing law requires this determination to be made pursuant to statistical evidence or aggregate data, as specified.

This bill would allow that evidence to include nonstatistical evidence and would require the court to consider the totality of the evidence in determining whether a significant difference in seeking or obtaining convictions or in imposing sentences has been established. The bill would require the court to consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall.

This bill would incorporate additional changes to Section 1473 of the Penal Code proposed by SB 467 to be operative only if this bill and SB 467 are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to apply the California Racial Justice Act of 2020 retroactively, to ensure equal access to justice for all.

SEC. 2. Section 745 of the Penal Code is amended to read:

745. (a) The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

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

(2) During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, 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. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution 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.

(4) (A) 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 that offense on people that 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.

(B) 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.

(b) A defendant may file a motion in the trial court or, if judgment has been imposed, may file a petition for writ of habeas corpus or a motion under Section 1473.7 in a court of competent jurisdiction, alleging a violation of subdivision (a). If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

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

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

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

(3) At the conclusion of the hearing, the court shall make findings on the record.

(d) A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (*l*), or for an initiative approved by the voters, if the court finds, by a

preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

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

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

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

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

(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 it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph (3) of subdivision (a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

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

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

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

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

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

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

(1) "More frequently sought or obtained" or "more frequently imposed" means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions,

and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

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

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

(4) "Racially discriminatory language" means 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.

(5) "State" includes the Attorney General, a district attorney, or a city prosecutor.

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

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

(j) This section applies as follows:

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

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

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

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

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (f) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

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

SEC. 3. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at

a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 3.5. Section 1473 of the Penal Code is amended to read:

1473. (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(3) (A) New evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

(4) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial.

(A) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert's conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(B) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(C) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(D) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(E) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(F) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this paragraph must be established by a preponderance of the evidence.

(G) This section does not change the existing procedures for habeas relief.

(c) Any allegation that the prosecution knew or should have known of the false nature of the evidence referred to in paragraphs (1) and (2) of subdivision (b) is immaterial to the prosecution of a writ of habeas corpus brought pursuant to paragraph (1) or (2) of subdivision (b).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) (1) For purposes of this section, "false evidence" includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(2) This section does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert's relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(f) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745. A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745. The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing of entitlement to relief. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed. If the court determines that the petitioner has not established a prima facie showing of entitlement to relief, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Senate Bill 467. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends

Section 1473 of the Penal Code, and (3) this bill is enacted after Senate Bill 467, in which case Section 3 of this bill shall not become operative.