Judicial Council *of* California

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September 12, 2025

Hon. Ash Kalra
Member of the Assembly, 25th District
1021 O Street, Suite 4610
Sacramento, California 95814

Subject: Assembly Bill 1071 (Kalra), as amended September 5, 2025—Neutral

Dear Assemblymember Kalra:

The Judicial Council is pleased to remove its opposition and take a neutral position on Assembly Bill 1071, which makes several moderate changes to the Racial Justice Act (RJA). AB 1071, in its current amended form: 1) specifies that discovery could be requested in preparation to file an RJA habeas petition or vacatur motion; 2) requires courts to impose remedies for RJA claims made prior to entry of judgment; 3) authorizes courts to impose a remedy specific to the violation if it is not otherwise prohibited by law; 4) states that certain RJA terms, definitions, and thresholds apply to RJA claims brought via habeas petitions and vacatur motions; 5) clarifies that the death penalty ineligibility provision is a categorical prohibition rather than a remedy; 7) allows appointment of counsel for an RJA claim brought via a habeas petition if the petitioner pleads a plausible violation; and, 8) clarifies that a court can remedy an RJA violation determined through the habeas or vacatur process by selecting from the applicable remedies outlined in the RJA itself.

AB 1071 previously made a variety of extensive and complex amendments to the RJA's outlined remedies, appellate procedures, postconviction vehicles, discovery requirements, and counsel appointments. The council's concerns were not based on the policy goals of the author, and instead were directed to the fair administration of justice, the substantial new impacts on court operations, and areas of ambiguity where clarifying language was needed in order to avoid protracted litigation on the meaning of certain provisions. For a more detailed explanation of the council's concerns on

the prior version of AB 1071, please see our previous opposition letter here.[1] The most recent amendments address these concerns and allow the council to remove its opposition.

The council previously identified significant workload impacts associated with the changes in the prior version of AB 1071. The recent amendments do not appear to create significant workload impacts, but we would note that the council still has an identified need of approximately $19.8 million to fully implement the existing provisions of the RJA and the expansion of eligible cases under Penal Code section 745(j) that is set to go into effect on January 1, 2026. While AB 1071 is not currently anticipated to have a significant impact on courts above and beyond these upcoming changes in existing law, if the additional funding is not provided in upcoming budget negotiations AB 1071 may further exacerbate workload constraints associated with RJA claims. The council will continue to work closely with stakeholders to ensure adequate resources are allocated to the courts.

In its current form, AB 1071 makes mostly moderate and clarifying changes to RJA-related discovery, remedy, and procedural provisions. These amendments do not appear to be unduly burdensome for the courts to interpret and implement, and for these reasons the Judicial Council removes its opposition and is now neutral on AB 1071.

Should you have any questions or require additional information, please contact me at 916-323-3121.

Sincerely,

Mureed Rasool
Attorney

MR/jh
cc: Jith Meganathan, Deputy Legislative Secretary, Office of the Governor
Michelle Curran, Administrative Director, Judicial Council of California

[1] Judicial Council of California. *AB 1071 Oppose unless Amended and Funded Letter to the Chair of the Senate Appropriations Committee*. (Aug. 28, 2025.) <https://courts.ca.gov/system/files/file/ab-1071-08282025-s-approps_0.pdf>.

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MICHELLE CURRAN
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August 28, 2025

Hon. Anna M. Caballero
Chair, Senate Appropriations Committee
1021 O Street, Room 2200
Sacramento, California 95814

Subject: Assembly Bill 1071 (Kalra), as amended June 25, 2025 – Oppose Unless Amended and Funded

Dear Senator Caballero:

The Judicial Council writes to respectfully inform you that while we very much appreciate the amendments made in the Senate Public Safety Committee on June 25, 2025, the council continues to have a considerable number of significant concerns about Assembly Bill 1071 and is thus opposed to the bill unless it is amended and funded. As with previous bills relating to the Racial Justice Act (RJA), the council has no objections to the policy sought to be achieved by the author. Indeed, the Judicial Council's Strategic Plan embraces the importance of access to justice, and emphasizes a commitment to "remove all barriers to access and fairness by being responsive to the state's cultural, ethnic, socioeconomic, linguistic, physical, gender, and age diversities, and to all people." Similar to previous RJA bills, the council's continued concerns are directed to the fair administration of justice, the substantial new impacts on court operations that would result from AB 1071, and areas of ambiguity where clarifying language is necessary to avoid protracted litigation on the meaning of the terms.

AB 1071 makes a variety of changes related to the RJA, including amendments to the act's outlined remedies, appellate procedures, postconviction vehicles, discovery requirements, and counsel appointments. These changes include, among other things: 1) replacing the current "good cause" standard for an appellate stay-and-remand with a standard based upon a defendant's attestation they need to further develop the record through no fault of their own for a plausible claim of relief, 2) authorizing an undefined judicial diversion option for prejudgment claims, 3) authorizing specified alternative remedies upon a defendant's request that would result in a meaningful modification of judgment, 4) removing the harmless error standard for cases in which judgment

was entered by January 1, 2021, and limiting it to cases that are nonfinal, 5) creating a new postconviction statute for RJA claims, and 6) allowing incarcerated defendants to file their RJA claim both under the new postconviction statute and as a writ of habeas corpus.

Vague and Ambiguous Language

The council notes that several provisions of AB 1071 use terms that, without further clarification, will cause confusion for the parties seeking to use them and for the courts seeking to interpret them. For example:

- Penal Code section 745(b)(2)[1]: *"…and attestation that the alleged violation…"*

  The term *"attestation*" should be further explained. Appellate litigation would likely arise to resolve whether a patently conclusory attestation would suffice or whether some explanation would be needed as to why the alleged violation cannot be adjudicated on the existing record and why the defendant was not at fault. Furthermore, it is not clear whether the attestation means that the defendant personally was not at fault, or whether the court should consider the actions of the defendant's attorney when determining whether to grant the stay-and-remand request.

- 745(e)(1)(C): *"…or grant judicial diversion to the defendant."*

  As judicial diversion is undefined in this context, it is unclear whether the intent is to refer courts to existing diversion statutes such as misdemeanor, veterans, or mental health diversion; or whether this provision intends to create a new type of "RJA diversion" which courts could use to divert defendants who were successful in their prejudgment RJA claim. It is important to clarify this provision as its phrasing seems open to either of the abovementioned interpretations.

- 745(e)(2)(A)-(C): *"…meaningful modification of judgment"*

  This term is undefined and not in use in other areas of criminal law. As such, its ambiguity will likely result in extended litigation around its meaning. While it is certainly the Legislature's prerogative to create new terms and laws, there should be some establishment of the parameters for any phrase used so that courts can intelligibly draw inferences as to legislative intent.

Procedural Issues

- Existing law affords out-of-custody defendants an opportunity to raise an RJA claim under 1473.7, and allows in-custody defendants the opportunity to raise an RJA claim in a writ of habeas corpus pursuant to 1473(e). AB 1071 deletes the ability to raise an RJA claim under 1473.7, creates a new postconviction vehicle with attendant procedural rules in

[1] Unless otherwise indicated, all references are to the Penal Code as it currently exists and as it is proposed to be amended by AB 1071.

1473.2, imports part of the procedural rules from 1473.2 to apply to habeas petitions involving RJA claims, and inconsistently grants the court discretion to convert a habeas petition into a 1473.2 claim (745(b)(3)) while at the same time requiring such conversion to occur if requested by the defendant. (1473(d)(3) & 1473.2(k).)

First, authorizing postconviction RJA claims through 1473.2 or as a habeas petition may result in conflicting and inefficient dual proceedings, and rather than aid earlier resolution, it could result in unintended delays. While AB 1071 contains language attempting to address this issue, the fact that the habeas statute and 1473.2 are standalone statutes, as well as the fact that the court has the ability to convert a habeas petition into a 1473.2 petition, suggest that both petitions may be pursued simultaneously.

Second, AB 1071 modifies postconviction procedures in a number of ways that can unnecessarily bottleneck the resolution of claims and that can have an impact on court scheduling. In terms of impacts to court scheduling, under existing law, upon a court making an order to show cause for a habeas petition, a specified timeline is outlined, with the possibility of the timeline being shortened or extended for good cause. (Cal. Rules of Court, rule 4.551). AB 1071 truncates that timeline for habeas petitions, as well as the newly created 1473.2 petition, and provides no authority for the court to extend or shorten the timeline. (1473(d)(2); 1473.2(h)(3).)

In terms of creating congestion in the courts, AB 1071 makes the denial of counsel and the grant or denial of discovery appealable. This is a change from existing law which has been currently trending towards requiring parties to challenge such decisions in higher courts by a writ of mandate. (*People v. Serrano* (2024) 106 Cal.App.5th 276, review granted January 15, 2025, S288202; *In re Montgomery* (2024) 104 Cal.App.5th 1062, review granted December 11, 2024, S287339.) Existing law that addresses such matter through the writ process are more efficient than appeal, which involves record preparation, a briefing schedule, and etcetera. Appeals can be lengthy, and multiple appeals on interlocutory orders will delay a determination on the actual merits of the claim. Furthermore, under the newly proposed section 1473.2(h)(2) & 1473.2(h)(3)(E), AB 1071 makes the failure of a court to state its reasons for determining that the petitioner did not establish a prima facie showing or in denying relief an automatically appealable order. This per se reversal provision could result in repetitive work; currently an appellate court can generally review such a denial de novo and sift through the merit of the denial, rather than having to rubberstamp the reversal and wait for another appeal to then sift through the merits of the claim. The added layer of extra work for all parties will delay the eventual resolution of the claim on its merits.

Third, current law requires courts to impose a remedy specific to the RJA violation, if such violation has been found. In some instances, such as when an RJA violation was found in a case in which judgment has been entered, a court must vacate the conviction and sentence and order new proceedings. (745(e)(2)(A).) In other instances, such as when an RJA violation was found in a case prior to the entry of judgment, a court may choose from a

variety of options including discharging of the jury or reduction of charges. (745(e)(1).) AB 1071 keeps some of these existing remedies intact, however, it also creates a seemingly inconsistent scheme where alternative remedies are outlined that can be available upon request of the defendant or stipulation of the parties. The manner in which the language has been drafted makes it unclear whether courts retain their discretion to select a remedy specific to the violation, and therefore the council is concerned that, unless amended, such changes will limit a court's discretion to fashion an appropriate remedy.

Fiscal Impacts

Given the extensive changes present in AB 1071, it has been difficult to pinpoint the bill's expected fiscal impact on the judicial branch. Currently, the Judicial Council has identified a $19.8 million funding need to implement the existing RJA provisions and is anticipating higher amounts of RJA filings when it expands under current law on January 1, 2026 to include all felony convictions or juvenile dispositions that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final. The council has identified a number of aspects of AB 1071 that will create significant additional workload for the courts, including the following:

- Arguably lowers the prima facie showing threshold for habeas petitions which may result in more cases getting to the mandatory evidentiary hearing before having fully developed petitions, leading to more court workload to schedule and conduct those hearings. However, this may be offset to an unknown degree by having better developed records for appellate review.

- More cases are anticipated to be remanded back to the trial courts, specifically to allow for additional information to be added to the court record for the appellate court to take into consideration which adds workload for additional hearings, clerks, research attorneys, and judicial review.

- The bill does not specify that parties are required to be indigent to be eligible for court appointed counsel. While this is not a trial court cost, there is workload involved to get counsel appointed and the cost is fully borne by the courts at the appellate level. A lower procedural bar for being able to access court appointed counsel may also lead to more petitions being filed, adding to court calendars and general court workload.

- As detailed above, the undefined "judicial diversion" authority is a general reference that makes it difficult to gauge the potential workload implications. If this is intended to be existing diversion programs, additional hearings will be needed to determine which program will be the appropriate program for the petitioner. If the intent is to create a new diversion program, the judicial branch will have additional costs and need a delayed implementation to create and implement the program.

- Lastly, the above detailed allowance for a petitioner to file both a habeas petition as well as a petition under Penal Code section 1473.2 will require additional court workload to process both petitions, if filed, and determine which should move forward.

In summary, the Judicial Council appreciates the laudable goals of this legislation, however, due to the extensive number of significant concerns, we must oppose AB 1071 unless it is amended to address the substantive concerns and fully funded.

Should you have any questions or require additional information, please contact Mureed Rasool at 916-323-3121.

Sincerely,

Cory T. Jasperson
Director, Office of Governmental Affairs

CTJ/MR/jh
cc: Members, Senate Appropriations Committee
Mark McKenzie, Chief Consultant, Senate Appropriations Committee
Morgan Branch, Consultant, Senate Republican Office of Policy
Jith Meganathan, Deputy Legislative Secretary, Office of the Governor
Michelle Curran, Administrative Director, Judicial Council of California