



VIA Online Portal to Author and Assembly Committee on Public Safety

March 26, 2020

The Honorable Ash Kalra
California State Assembly
State Capitol Building, Room 2196
Sacramento, CA 95814

RE: AB 2200 (Kalra) – CRIMINAL PROCEDURE: DISCRIMINATION - CO-SPONSOR SUPPORT

Dear Assemblymember Kalra:

The League of Women Voters of California writes as a co-sponsor and in strong support of SB 2200, the California Racial Justice Act, your legislation 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.

The League of Women Voters of California believes that racial discrimination is a scourge that must be confronted in every sphere – in voting access, in housing, in education, in employment, and now, at long last, in our criminal legal system.

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.
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.

Assemblymember Ash Kalra
Page 2
March 26, 2020

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.

The League of California Voters of California is co-sponsoring AB 2200, the California Racial Justice Act, which takes a profound step forward by confronting racism and injustice through establishing a clear prohibition on the use of race, ethnicity or national origin in seeking or obtaining convictions or sentences. We thank you for authoring this important bill and strongly urge its passage.

Sincerely,



Carol Moon Goldberg
President