



Support California's Racial Justice Act (AB 2200)

IT'S TIME to Confront Systemic Racism in California's Criminal Legal System

For far too long, racism has been widely recognized as a pervasive, structural part of our criminal legal system. We know that California's criminal legal system is plagued by racial, anti-ethnic, and xenophobic bias -- especially seen at trials and sentencing. But we currently have no real path forward for people who wish to pursue justice in the face of discriminatory treatment during the process. It's time for California to be proactive in confronting the racial, ethnic, and xenophobic bias that leads to unfair convictions and lengthy sentences for Black, Brown, Indigenous, Native, and people of color. It's time to pass California's Racial Justice Act.

DID YOU KNOW?

California is one of the worst states in the US when it comes to systemic racial disparities in mass incarceration.

1. In California, a Black man is over 8 times more likely to be incarcerated than a white man. This is worse than Mississippi, which has a disparity of 3 to 1, or Louisiana, which has a disparity of 4 to 1. The racial disparity for Latinx people in California is also one of the worst in the nation. A Latinx man is almost twice as likely to be incarcerated in California as a white man - a disparity that is much worse than Texas, Nevada or Oregon.¹
2. The overwhelming majority of people serving Life Without Parole sentences are Black, Latinx, and multiracial, making up at least 68% of the over 5,200 people serving this death-by-incarceration sentence. Blacks, Latinx, Asians or Native Americans make up more than half the people currently on death row.
3. In 2014, Black youth charged with offenses in California were more likely to be assigned to adult court at a rate of 91 per 100,000 cases. For their white counterparts, only eight per 100,000 cases met the same fate.²
4. As of August 2019, Blacks and Latinx make up more than 90% of adults charged with a gang enhancement in a state prison, according to data from CDCR.³
5. In the rare instance that a case goes to trial, pervasive racial bias in jury selection often leads to the systemic removal of all or nearly all non-white people from the jury.⁴

Racial bias shows up at all levels, including from attorneys and prosecutors who have immense power over cases.

¹ sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/

² chronicleofsocialchange.org/analysis/california-data-shows-racial-gap-widened-juvenile-incarceration-declined/28784

³ theguardian.com/us-news/2019/nov/26/california-gang-enhancements-laws-black-latinos

⁴ newsone.com/3888713/every-black-person-removed-jury-california-murder-trial

For example, S. Donald Ames was a California defense attorney who “regularly made racist comments about his own clients.”⁵ U.S. Ninth Circuit Judge Jacqueline Nguyen wrote Ames “was a virulent racist who believed in the inferiority of racial minorities.”⁶ Ames’ daughter also testified that her father used a racial epithet to refer to a client who had been sentenced to death and said he “got what he deserved.”⁷ The Ninth Circuit recently reversed the conviction of Ames’ former client, Ezzard Ellis, “a black man [who] had been tried five times for a 1989 robbery and murder in a McDonald’s parking lot in San Bernardino, Calif., before an all-white jury found him guilty in 1991.”⁸ However, Ellis’ conviction was reversed only because the attorney general asked the court to do so, not because it was required by law.

We cannot accept dehumanizing language against minorities in court! Too often during opening and closing arguments, prosecutors compare the person on trial to an animal, frequently choosing a Bengal tiger.⁹ Even while acknowledging that such statements are “highly offensive and inappropriate,” courts continue to uphold these convictions.¹⁰ Use of animal imagery is historically associated with racism and should not be permitted in our court system.¹¹

With growing public awareness that mass incarceration is racist, why is it so hard to address?

We need the Legislature to act because of a widely condemned 1987 legal precedent established in the case of *McCleskey v. Kemp*. Known as the *McCleskey* decision, the Court has since required defendants in criminal cases to prove *intentional discrimination* when challenging racial bias in their legal process. This is an unreasonably high standard for victims of racism in the criminal legal system, and is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted. We don’t, for instance, require victims of assault to prove the motive behind their attack, and we should not require it to address racism in the criminal legal system. Even in the face of overt racism, California courts have concluded it is a “harmless error.”¹²

Racial discrimination is not harmless. The historically innate racial discrimination in our criminal legal system overwhelmingly harms Black, Brown, Indigenous, Native and people of color. Whether it’s bias held by attorneys, the judge, the police, an expert witness or a juror—we firmly believe that racial, anti-ethnic, and xenophobic bias should not be a factor in seeking or obtaining convictions. Confronting this injustice through legislation is long overdue. We cannot accept racial discrimination and systemic racial disparities as inevitable in California’s criminal legal system. We must move the Legislature to act. It is time to pass California’s Racial Justice Act.

The California Racial Justice Act is cosponsored by American Friends Service Committee, Asian Americans Advancing Justice, California Coalition for Women Prisoners, Californians United for a Responsible Budget, Ella Baker Center for Human Rights, the League of Women Voters, and NextGen.

⁵ [washingtonpost.com/nation/2020/01/22/ellis-ames-racist/](https://www.washingtonpost.com/nation/2020/01/22/ellis-ames-racist/)

⁶ *Id.*

⁷ *Id.*

⁸ [washingtonpost.com/nation/2020/01/22/ellis-ames-racist/](https://www.washingtonpost.com/nation/2020/01/22/ellis-ames-racist/).

⁹ *Duncan v. Ornoski*, 286 Fed. Appx. 361, 363 (9th Cir. 2008); *People v. Powell*, 6 Cal. 5th 136, 182-83 (2018).

¹⁰ *Duncan v. Ornoski*, 286 Fed. Appx. At p. 363.

¹¹ Phillip Atiba Goff, Jennifer L. Eberhardt, Melissa J. Williams, & Matthew Christian Jackson, Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences, 94 J. Personality & Soc. Psychol. 292, 292-93 (2008); Praatika Prasad, Note, Implicit Racial Biases in Prosecutorial Summations: Proposing an Integrated Response, 86 Fordham L. Rev. 3091, 3105-06 (2018).

¹² *Duncan v. Ornoski*, 286 Fed. Appx. 361, 363 (9th Cir. 2008); see also *People v. Powell*, 6 Cal. 5th 136, 182-83 (2018).