

## Jasmine Cuenco

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**From:** Dana Filkowski  
**Sent:** Monday, December 28, 2020 5:13 PM  
**To:** Venus D. Johnson  
**Subject:** Re: AB 2542 - Racial Justice Act - Further Guidance & Updates

So this ended up not being a vacation day at all 😊

I've reviewed all of CDAA's materials on AB 2542 and agree that this is a particularly significant issue for HT. I sent the information out to our DA's Office HT Team to make sure that our HT Investigators, prosecutors and advocates are all on the same page.

I talked with Kevin about it for a bit this afternoon as it is equally significant that our law enforcement partners understand and adhere to these requirements in statements that may be recorded on body cam or recorded interviews, in report writing and affidavits drafted in support of search warrant requests / bail motions as well as in their witness and/or expert testimony. We frequently use our officers as experts in these cases. These requirements also should be considered in structuring affirmative enforcement efforts such as hotel call-in stings / internet pandering ops which are common in HT Taskforce work.

Kevin's recommendation was to have Chief Mulligan reach out to the Chiefs to explain how this law change may affect filing standards, discovery requests, prosecution strategies and questioning of officers during evidentiary hearings and encourage training. I know our office has a Committee already working on some of these issues so if this is already in the works – great! If not, FJC has done implicit bias training in the DV context with great success. Susun is willing to partner with us and culturally competent community organizations to build a training specific to AB 2542. I thought the training that we had for OIS was excellent and could be modified here too.

Thanks...

*Dana Filkowski*

Supervisor, Human Trafficking Unit/Taskforce  
Contra Costa District Attorney's Office  
[REDACTED] cell (remote work)  
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**From:** Venus Johnson [REDACTED]  
**Date:** Sunday, December 27, 2020 at 11:01 PM  
**To:** DA-All-Attorneys [REDACTED]  
**Subject:** AB 2542 - Racial Justice Act - Further Guidance & Updates

Hello everyone -

As promised, here are some further updates. Some of you may have already received discovery requests pursuant to PC 745. Our committee met last week and discussed a few points we want you to be mindful of:

1. Make sure you thoroughly review PC 745 and the CDAA training materials preciously sent. Understanding the legislative history of the bill will provide important guidance as you proceed through your cases going forward.

2. PC 745 creates new code sections regulating language and conduct of judges, attorneys, officers, experts & jurors. It also provides new discovery and hearing rights and creates mandatory remedies for conduct and language violations, as well as remedies for disparate outcomes based on race, ethnicity, or national origin.
3. The bias alleged can be explicit or implicit - but remember, it only applies to the limited group of actors in YOUR SPECIFIC CASE and must be based on the actual race, ethnicity, or national origin of the D in YOUR case.
4. The use of racially charged or coded language throughout the entirety of case proceedings is now explicitly prohibited (i.e. - super predictor, thug, ghetto, spade, macho, shyster, illegal immigrants, etc.). This also includes to use of language that refers to animals or animal attributes (i.e. - gorilla pimp, bottom \_\_\_\_\_, coyote, snake, brut, predator, etc.). Everyone, especially CVRU & HT because of the nature of your cases, will need to be extremely mindful here. Please specifically see slide 35 in the CDAA training materials. Police reports and search warrants are included. Focus your arguments, questions, statements, and witnesses on race neutral descriptions of the defendant's conduct. Quoting someone or offering a racially neutral or unbiased physical description of an individual is permissible under the statute. The CDAA recorded training gives this point more context in part two of the presentation and the Q&A section.
5. Please specifically review 745(a)(3-5). These sections specifically address prosecutors and when a violation under the act will be deemed to have occurred.

#### Discovery Motions

1. Step 1: A discovery motion shall only be granted when the court finds good cause to believe evidence relevant to a potential violation is in the possession or control of the state. The discovery motion should describe the violation of 745(a) with specificity and the evidence requested must be material to the actors in YOUR case and YOUR defendant. Good cause is not defined in the statute - but there is plenty of case law defining good cause. See slide 38 in the CDAA training materials.
2. Step 2: If the discovery motion is granted, the defense has the burden of filing a motion showing that based on the discovery there is a substantial likelihood that a violation of 745(a) occurred. If the burden is met, the court MUST hold a hearing to determine if a violation has occurred. **There is a sample motion for your use in the CDAA materials previously shared.**
3. Step 3: At the hearing, the defense must prove by a preponderance of the evidence that a violation has occurred. Statistical evidence, aggregate data, expert testimony, etc. are examples of what both sides will likely need to present and rebut during the hearing. Please see slides 41-54 of the CDAA training materials for further context and explanation.

The committee is actively working on consulting with other DA offices, in addition to looking into data experts and statisticians. Please understand that at this point there are likely more questions than answers. But please know, the committee is working diligently to offer further guidance.

In the meantime, if you receive a discovery motion please let me know and send me a copy. The committee will be keeping track of the motions and working to offer assistance where we can. Having a universal perspective of what is happening office-wide will assist us in assisting you and the office as a whole. The committee has a healthy representation of attorneys from our entire office; including the Law and Motion Unit, supervisors, vertical units, and our misdemeanor teams.

If you personally are the subject of the motion, please let me know immediately. You should not be representing yourself during any proceedings where the bias alleged is against you personally.

If you have not already, I strongly encourage you to read through the new statute and the CDAA training materials.

Venus

**Venus D. Johnson**  
**Chief Assistant District Attorney**

