

Jasmine Cuenco

From: Dana Filkowski
Sent: Thursday, January 28, 2021 2:45 PM
To: Timothy Simmons
Subject: PC 745 - CA's New Racial Justice Act
Attachments: HANDOUTS-AB-2542-PPT-SLIDES-CDAA-COLOR.pdf

Hello Captain Simmons

Great talking with you this afternoon.

Per your request, I've attached the slides from the CDAA's recent training on Assembly Bill 2542 - The Racial Justice Act. AB2542 is effective 2021, creates PC 745, and expands habeas corpus relief with the intention of regulating the language and conduct of judges, attorneys, law enforcement officers, experts and jurors in order to prevent both implicit bias and intentional discrimination in the charging, convicting and sentencing of a criminal case. It also applies to the use of racially charged or coded language throughout the entirety of a criminal case, including language that refers to animals or animal attributes.

Significant to our work on the HTTF, CDAA's training highlighted examples particular to gang and HT cases, including terms of art such as gorilla pimp, bottom bitch, coyote, snake, brut, predator.

Such language could be actionable by the defense if used during an investigation, in police reports and search warrants and in testimony. Body cam evidence will certainly face particular scrutiny. See #34 & 35 in particular for some practical tips.

PC 745 states that 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 (AKA "RENO"). A violation is established if defendant proves to a preponderance of the evidence any of the following:

1. A judge, attorney, law enforcement officer, expert or juror exhibited bias or animus towards defendant because of RENO.
2. Any of the above used racially discriminatory language about defendant's RENO or otherwise exhibited bias or animus towards defendant because of defendant's RENO whether or not purposeful (i.e. implicit bias vs. explicit bias). Exception here is describing language used by another that is relevant to the case or giving a racially neutral and unbiased physical description of the suspect.
3. Defendant was charged with or convicted of a more serious offense than others similarly situated and prosecution in this county more frequently seeks or obtains convictions for more serious offenses against people who share defendant's RENO.
4. Defendant got a longer or more severe sentence than other similarly situated individuals convicted of the same offense and longer/more severe sentences are frequently imposed for that offense on people that share defendant's RENO in this county.
5. Defendant got a longer/more severe sentence than other similarly situated individuals convicted of the same offense in cases with victims of one RENO than in cases with victims of other RENO.

The defense can file a discovery motion to build a case for a PC 745 violation. Like all discovery motions, the prosecutor is required to provide information in possession of the Prosecution Team which would extend to the investigating agencies that helped put the case together against the defendant. The court will grant the discovery motion on a showing of "good cause." If our office gets one of these, the procedure is to inform Chief Assistant Deputy Venus Johnson as there is a Committee working on this issue.

The defense can then file a motion for relief in the trial court, or file a petition for writ of habeas corpus if the case is post-conviction. If the motion is supported by evidence showing a substantial likelihood of PC 745(a) violation, a hearing is required. At the hearing, the defense can present statistics and / or expert testimony and the prosecution has the opportunity to present witnesses/evidence to rebut. If a violation is found, remedies are only applied to that particular case. If the violation occurs during trial, remedies could range from re-seating a juror to granting a mis-trial. If the violation occurs during the prosecution itself, the remedy could range from dismissing charges or enhancements, reducing charges, vacating a conviction/sentence; striking enhancements or re-sentencing.

I'm glad that POST is creating training for law enforcement partners and that RPD is working to implement it. Please let me know if I can be of any further assistance here.

Dana L. Filkowski

Supervising Deputy District Attorney
Human Trafficking Unit / Human Trafficking Task Force
Contra Costa County District Attorney

