

From: [California District Attorneys Association](#)
To: [Venus D. Johnson](#)
Subject: AB 2542 Racial Justice Act Digest for Friday January 29, 2021
Date: Saturday, January 30, 2021 3:10:25 AM



AB 2542 Racial Justice Act

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Discussions

started yesterday, [Anne Masterson](#) (2 replies)

Sonoma Co Update and Request for Input



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Jan 29, 2021 12:03 PM
[Venus Johnson](#)

Good morning -

Thank you for sharing! So far we have received one discovery motion pursuant to the RJA. The motion was VERY broad and in no way showed that our office displayed an explicit or implicit bias or discriminatory practice against the particular defendant in that specific case. The judge acknowledged there are disparities in the CJ system - specifically that men of color are over represented in the system. His main concern however, was whether statistical claims of overall disparity were enough to compel discovery when there was no evidence of explicit or implied bias in the facts of the case in front of him. The judge surmised that if all it took for a defendant to receive voluminous discovery was a claim of bias based on general statistical data then the DA's Office would be overburdened with requests and the

system would stall out. The judge agreed with our position that there must be some form of specific conduct that entitles the defense to the discovery. The motion was denied without prejudice. The judge did order our deputy to submit declarations from our office - specifically, he wanted to know what type of data we maintained and what type we did not maintain, and whether there were certain policies, trainings or procedures in place in our office specific to home invasion robberies (the offense charged in the matter in front of him).

I am very interested in your progress in hiring an outside expert. Are you working with an organization or local university? We have developed an internal committee and are trying to work through some of the same issues you identified - especially hiring an outside expert.

We have done three bias training since 2019. We brought in an outside expert from Georgetown University. We will continue to train on bias and its impact on the CJ system.

Lastly, we have released data pursuant to PRA requests over the last year and we always explain that any race data we release is either an assumption by the arresting agency, a memorialization of what is listed on the person's drivers license or other form of identification, or perhaps a response by the person arrested and booked. We specifically state that we make no determinations as to race and our data is collected from whatever is contained within the police report. This problem has existed since the RIPA was enacted a few years ago.

Please continue to share your developments and we will do the same.

Venus Johnson
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Original Message:
Sent: 01-28-2021 20:38
From: Anne Masterson
Subject: Sonoma Co Update and Request for Input

Hi, all,

I'm updating the message from Carla Rodriguez from about a month ago, and wanted see if anyone has had any developments in your offices since then. We are working on a robust training curriculum on Unconscious Biases for the entire office,

not just attorneys, and Carla and I are embarking on a deep dive into our database to analyze the demographics of our prosecutions, alongside the demographics of the county at large. We've also taken the advice given in the CDAA training in December, and are hiring an outside statistician/consultant to evaluate our data and reports. Anyone else working on similar processes internally?

Has anyone received any petitions under PC745 yet? Has anyone developed a workflow or pleadings for responses yet?

I am also reaching out to the LEAs in our county to assess where their data is coming from, as their demographic data is imported directly into our system. In one of those conversations, I was informed of another law which I think is going to conflict with law enforcement's ability to gather and share relevant data, and which will in turn possibly have an impact on our ability to respond to an allegation under PC745.

The Racial Identity Profiling Act (GC 999.224) requires LEAs to collect and report demographic data directly to a DOJ database. They are not permitted to share this data or these reports with any other agency, including the DA or the courts. Additionally, they are not permitted to ask a person being detained how they identify themselves (and I can imagine a dozen ways that conversation could go, none of them well) in order to gather the data. The officers are required to report their own *perceptions* of race, ethnicity, gender, age, and a whole host of demographic data that goes well beyond the Racial Justice Act. (Caveat: They can only ask National Origin questions during booking when they have reason to believe the subject is a foreign citizen, in order to give them their consulate advisement, etc.)

I'm trying to anticipate how this may impact litigation under PC745. Anyone else come across this yet? Thoughts?

Very curious to see how this plays out.

Thanks for sharing anything you have to add. I'll continue to share whatever we can that might be of help.

Anne

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Jan 29, 2021 12:55 PM

Holly Woesner

Hello!

Thank you for getting the dialogue moving on this issue. We have not yet received a discovery request in Orange County pursuant to RJA, but we are preparing for it. Our first priority is to create a robust discovery response to deal with the multitude of issues that might arise in that context. We have a team of prosecutors based in each of our branch courts and units to monitor the discovery requests and work together to find the best approach.

We are also learning about our data capturing systems and working with our criminal justice analyst/research on staff to understand how race is reported to our office. Like Contra Costa, race is reported from the LE agency based on the information on a defendant's driver's license. We have learned we capture no data re: the victim's race. I'm curious if any other county tracks that data? We are also looking at the benefit of hiring an outside statistician/analyst as well as race-blind charging models. If anyone has any helpful information to share about those issues, we would greatly appreciate it.

Finally, we will be working towards offering bias training as well. Venus, would you kindly share the name of the expert from Georgetown University?

I'm grateful for this community and the opportunity to share resources. Thank you for getting it started, Sonoma County!

Holly Woesner
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