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**AB-1071 Criminal procedure: discrimination.** (2025-2026)

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**Assembly Bill No. 1071**

**CHAPTER 721**

An act to amend Sections 745, 1473, and 1473.7 of the Penal Code, relating to criminal procedure.

[ Approved by Governor October 13, 2025. Filed with Secretary of State October 13, 2025. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1071, Kalra. Criminal procedure: discrimination.

Existing law prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin. Under existing law, a defendant may pursue relief for a violation of this prohibition by filing a motion pursuant to the provisions that prohibit this conduct, a petition for a writ of habeas corpus, or a motion to vacate a conviction or sentence.

This bill would authorize the defendant in these proceedings to file a motion for disclosure of all relevant evidence related to a potential violation of the prohibition on the state seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified. The bill would also authorize the court to remedy a violation of these provisions with any other remedy not prohibited by another law. The bill would make other technical changes.

This bill makes legislative findings and declarations in support of its provisions.

This bill would incorporate additional changes to Sections 745, 1473, and 1473.7 of the Penal Code proposed by SB 734 to be operative only if this bill and SB 734 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** The Legislature finds and declares all of the following:

(a) In 2020, the Legislature enacted the California Racial Justice Act (RJA) because discrimination based on race, ethnicity, or national origin (hereafter "race" or "racial bias") has a deleterious effect not only on individual criminal defendants but on our entire legal system. This bill clarifies the RJA's procedures to assure its meaningful implementation. The dissenting statement in *In re Mendoza* (2024) 2024 WL 5171483 accurately articulates the Legislature's intent in passing the RJA and concern about its silent evisceration. These findings illustrate some of the ways in which courts misconstrue the statute to apply procedural barriers or otherwise impose impediments to relief, discordant with the legislative intent of the RJA, and improperly insulate convictions and sentences tainted by racial bias.

(b) This discordance is evident in cases where courts have imposed on RJA petitioners higher burdens than the Legislature intended to meet the thresholds to secure counsel and discovery. The RJA's threshold to secure counsel is extremely low, and yet

courts have denied counsel to litigants raising RJA claims far more than they have appointed counsel. This bill clarifies that the court shall appoint counsel to all indigent postconviction litigants who allege a plausible claim of an RJA violation, and whenever the State Public Defender requests. The Legislature reaffirms that the threshold showing for appointment of counsel does not require a prima facie showing, as correctly held by *McIntosh v. Superior Court* (2025) 110 Cal.App.5th 33, and should be construed as a minimal pleading requirement. The Legislature also intends that individuals must be afforded access to a broad range of relevant discovery to develop and support their potential RJA claims. Otherwise, they are left in the impossible position of having their claims rejected for want of the very data they seek. This is antithetical to the RJA.

(c) The Legislature reasserts the low threshold required to establish a prima facie showing under paragraphs (1) through (4) of subdivision (a) of the RJA. Courts have failed to find a prima facie showing or a violation in cases where individuals involved in the prosecution or investigation have: invoked long-held biases about men of color preying on White women; used dehumanizing and othering language such as “predator,” “monster,” “sociopath,” “terrorist,” “brute,” “thug,” “gangster,” “uncivilized,” “welfare queen,” “superpredator,” or “superhuman”; made racial slurs; elicited or made gratuitous references to gangs, tattoos, nicknames, or neighborhoods; used racially incendiary or coded words such as “ghetto,” “hood,” “baby mama,” or “pimp”; denigrated people who have immigrated to the United States; made gratuitous references to nationality, race, or immigration status; evoked historical and unacknowledged racialized fears that people of color are deceptive, manipulative, crime prone, or a present or future danger; and exaggerated the physical appearance and size of people of color. These examples reflect some of the “many incarnations of racism that have plagued our criminal and juvenile justice systems since their inception.” (*People v. Hardin* (2024) 15 Cal.5th 834, 906 (dis. opn. of Evans, J.)). Courts also have at times failed to find a prima facie showing or a violation despite evidence of disparate charging and sentencing. The Legislature again emphasizes its rejection of *McCleskey v. Kemp* (1987) 481 U.S. 279, and its intent that statistical evidence be sufficient for finding a prima facie case and may suffice to show an RJA violation. (See, for example, *Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, 133 (conc. opn. of Menetrez, J.)).

(d) Systemic racism and the White supremacy on which it is founded have remarkable powers of adaptation. When courts recognize only the most egregious, historic manifestations of racism, they allow present-day racism to go uncorrected. (Roberts, “Racism, Abolition, and Historical Resemblance” (2022) 136 Harv. L.Rev. F. 37.) The Legislature intends that in applying the RJA, courts consider evidence of racism’s origins, insidious shifts, and current manifestations.

(e) The Legislature reaffirms the importance of courts imposing remedies that serve to eliminate bias and redress past harms. “[N]othing can be changed until it is faced.” (Baldwin, “As Much Truth As One Can Bear” N.Y. Times (Jan. 14, 1962) p. 120.) The RJA mandates that we face that racial bias exists in our criminal legal system, and that we remedy it. Racial bias in criminal prosecutions, in all its forms or degrees, is never minor or harmless. (*People v. Simmons* (2023) 96 Cal.App.5th 323.) Like a metastatic cancer, racial bias in one part of a criminal prosecution infects the whole and cannot be remedied by removing a single diseased cell. Remedies must match the gravity of the ills of racial bias and not be so narrow as to minimize the harm or fail to address it in its entirety. Further, this bill clarifies that the prohibition on death sentences for cases in which an RJA violation occurs is categorical, and not a remedy in itself. This is because the racially disproportionate application of the death penalty is “in historical continuity with the long and sordid history of lynching in this country.” (Ogletree, “Black Man’s Burden: Race and the Death Penalty in America” (2002) 81 Or. L.Rev. 15.) Thus, in addition to the categorical prohibition, courts must impose a remedy commensurate with the violation(s) in the case.

(f) Because racial bias in the criminal legal system is the result of centuries of historical and embedded racial injustice, it requires bold, concerted, and ongoing efforts to undo. “The only way out of this morass—for all of us—is to stare at racial disparity unblinkingly, and then do what evidence and experts tell us is required to level the playing field and march forward together, collectively striving to achieve true equality for all Americans.” (*Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) 600 U.S. 181, 408 (dis. opn. of Jackson, J.)). Thus is the aim of California’s Racial Justice Act and the Legislature’s intent in passing it. Its provisions should be interpreted in this light.

**SEC. 2.** Section 745 of the Penal Code is amended to read:

**745.** (a) 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. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin.

(2) During the defendant’s trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant’s race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant’s race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(b) A defendant may file a motion pursuant to this section, or a petition for writ of habeas corpus or a motion under Section 1473.7, in a court of competent jurisdiction, alleging a violation of subdivision (a). For claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section. If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(c) If a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of subdivision (a), the trial court shall hold a hearing. A motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed waived, in the discretion of the court.

(1) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.

(2) The defendant shall have the burden of proving a violation of subdivision (a) by a preponderance of the evidence. The defendant does not need to prove intentional discrimination.

(3) At the conclusion of the hearing, the court shall make findings on the record.

(d) In any proceeding alleging a violation of subdivision (a), a defendant or petitioner may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section, a motion under paragraph (2) of subdivision (e) of Section 1473, or a motion under paragraph (3) of subdivision (a) of Section 1473.7, shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (k), or for an initiative approved by the voters, if the court finds, by a preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(1) Before a judgment has been entered, the court shall impose any of the following remedies:

(A) Grant a defendant's request for a mistrial.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(D) Any other remedy not prohibited by another law.

(2) (A) After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph (3) of subdivision

(a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) As used in this section and for the purposes of a petition pursuant to subdivision (e) of Section 1473 or a motion pursuant to paragraph (3) of subdivision (a) of Section 1473.7 the following definitions apply:

(1) "More frequently sought or obtained" or "more frequently imposed" means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions, and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

(2) "Prima facie showing" means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a "substantial likelihood" requires more than a mere possibility, but less than a standard of more likely than not.

(3) "Relevant factors," as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions.

(4) "Racially discriminatory language" means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

(5) "State" includes the Attorney General, a district attorney, or a city prosecutor.

(6) "Similarly situated" means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant's conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county

jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

(l) When the court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.

**SEC. 2.5.** Section 745 of the Penal Code is amended to read:

**745.** (a) 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. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

(1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.

(2) During the defendant's trial, in court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. This paragraph does not apply if the person speaking is relating language used by another that is relevant to the case or if the person speaking is giving a racially neutral and unbiased physical description of the suspect.

(3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.

(4) (A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed.

(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.

(b) A defendant may file a motion pursuant to this section, or a petition for writ of habeas corpus or a motion under Section 1473.7, in a court of competent jurisdiction, alleging a violation of subdivision (a). For claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section. If the motion is based in whole or in part on conduct or statements by the judge, the judge shall disqualify themselves from any further proceedings under this section.

(c) If a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of subdivision (a), the trial court shall hold a hearing. A motion made at trial shall be made as soon as practicable upon the defendant learning of the alleged violation. A motion that is not timely may be deemed waived, in the discretion of the court.

(1) At the hearing, evidence may be presented by either party, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent expert. For the purpose of a motion and hearing under this section, out-of-court statements that the court finds trustworthy and reliable, statistical evidence, and aggregated data are admissible for the limited purpose of determining whether a violation of subdivision (a) has occurred.

(2) The defendant shall have the burden of proving a violation of subdivision (a) by a preponderance of the evidence. The defendant does not need to prove intentional discrimination.

(3) If the defendant is represented by an attorney and the motion alleges a violation of paragraph (1) or (2) of subdivision (a), based in whole or in part on the conduct of one or more law enforcement officers, the attorney shall serve a copy of the motion on the law enforcement agency or agencies that employed the officer or officers.

(4) At the conclusion of the hearing, the court shall make findings on the record.

(d) In any proceeding alleging a violation of subdivision (a), a defendant or petitioner may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section, a motion under paragraph (2) of subdivision (e) of Section 1473, or a motion under paragraph (3) of subdivision (a) of Section 1473.7 shall describe the type of records or information the defendant seeks. Upon a showing of good cause, the court shall order the records to be released. Upon a showing of good cause, and in order to protect a privacy right or privilege, the court may permit the prosecution to redact information prior to disclosure or may subject disclosure to a protective order. If a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records.

(e) Notwithstanding any other law, except as provided in subdivision (k), or for an initiative approved by the voters, if the court finds, by a preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(1) Before a judgment has been entered, the court shall impose any of the following remedies:

(A) Grant a defendant's request for a mistrial.

(B) Discharge the jury panel and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(D) Any other remedy not prohibited by another law.

(2) (A) After a judgment has been entered, if the court finds that a conviction was sought or obtained in violation of subdivision (a), the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with subdivision (a). If the court finds that the only violation of subdivision (a) that occurred is based on paragraph (3) of subdivision (a), the court may modify the judgment to a lesser included or lesser related offense. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(B) After a judgment has been entered, if the court finds that only the sentence was sought, obtained, or imposed in violation of subdivision (a), the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence. On resentencing, the court shall not impose a new sentence greater than that previously imposed.

(3) The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(f) This section also applies to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court.

(g) This section shall not prevent the prosecution of hate crimes pursuant to Sections 422.6 to 422.865, inclusive.

(h) As used in this section and for the purposes of a petition pursuant to subdivision (e) of Section 1473 or a motion pursuant to paragraph (3) of subdivision (a) of Section 1473.7, the following definitions apply:

(1) "More frequently sought or obtained" or "more frequently imposed" means that the totality of the evidence demonstrates a significant difference in seeking or obtaining convictions or in imposing sentences comparing individuals who have engaged in similar conduct and are similarly situated, and the prosecution cannot establish race-neutral reasons for the disparity. The evidence may include statistical evidence, aggregate data, or nonstatistical evidence. Statistical significance is a factor the court may consider, but is not necessary to establish a significant difference. In evaluating the totality of the evidence, the court shall consider whether systemic and institutional racial bias, racial profiling, and historical patterns of racially biased policing and prosecution may have contributed to, or caused differences observed in, the data or impacted the availability of data overall. Race-neutral reasons shall be relevant factors to charges, convictions, and sentences that are not influenced by implicit, systemic, or institutional bias based on race, ethnicity, or national origin.

(2) "Prima facie showing" means that the defendant produces facts that, if true, establish that there is a substantial likelihood that a violation of subdivision (a) occurred. For purposes of this section, a "substantial likelihood" requires more than a mere possibility, but less than a standard of more likely than not.

(3) "Relevant factors," as that phrase applies to sentencing, means the factors in the California Rules of Court that pertain to sentencing decisions and any additional factors required to or permitted to be considered in sentencing under state law and under the state and federal constitutions.

(4) "Racially discriminatory language" means language that, to an objective observer, explicitly or implicitly appeals to racial bias, including, but not limited to, racially charged or racially coded language, language that compares the defendant to an animal, or language that references the defendant's physical appearance, culture, ethnicity, or national origin. Evidence that particular words or images are used exclusively or disproportionately in cases where the defendant is of a specific race, ethnicity, or national origin is relevant to determining whether language is discriminatory.

(5) "State" includes the Attorney General, a district attorney, or a city prosecutor.

(6) "Similarly situated" means that factors that are relevant in charging and sentencing are similar and do not require that all individuals in the comparison group are identical. A defendant's conviction history may be a relevant factor to the severity of the charges, convictions, or sentences. If it is a relevant factor and the defense produces evidence that the conviction history may have been impacted by racial profiling or historical patterns of racially biased policing, the court shall consider the evidence.

(i) A defendant may share a race, ethnicity, or national origin with more than one group. A defendant may aggregate data among groups to demonstrate a violation of subdivision (a).

(j) This section applies as follows:

(1) To all cases in which judgment is not final.

(2) Commencing January 1, 2023, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is sentenced to death or to cases in which the motion is filed pursuant to Section 1473.7 because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final.

(3) Commencing January 1, 2024, to all cases in which, at the time of the filing of a petition pursuant to subdivision (e) of Section 1473 raising a claim under this section, the petitioner is currently serving a sentence in the state prison or in a county jail pursuant to subdivision (h) of Section 1170, or committed to the Division of Juvenile Justice for a juvenile disposition, regardless of when the judgment or disposition became final.

(4) Commencing January 1, 2025, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment became final for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice on or after January 1, 2015.

(5) Commencing January 1, 2026, to all cases filed pursuant to Section 1473.7 or subdivision (e) of Section 1473 in which judgment was for a felony conviction or juvenile disposition that resulted in a commitment to the Division of Juvenile Justice, regardless of when the judgment or disposition became final.

(k) For petitions that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on a violation of paragraph (1) or (2) of subdivision (a), the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment.

(l) When the court finds there has been a violation of subdivision (a), the defendant shall not be eligible for the death penalty.

**SEC. 3.** Section 1473 of the Penal Code is amended to read:

**1473.** (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) (1) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(A) False evidence that is material on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(B) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(C) (i) New evidence exists that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case.

(ii) For purposes of this section, “new evidence” means evidence that has not previously been presented and heard at trial and has been discovered after trial.

(D) A significant dispute has emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial or a hearing and that expert testimony more likely than not affected the outcome of the case.

(i) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert’s conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(ii) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(iii) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(iv) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(v) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(vi) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this subparagraph must be established by a preponderance of the evidence.

(2) For purposes of this subdivision, “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(3) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus brought under subparagraph (A) or (B) of paragraph (1).

(4) This subdivision does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(c) This section does not change the existing procedures for habeas relief, except as provided in subdivision (e).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745.

(1) Any and all definitions and legal thresholds specified in Section 745 are controlling for purposes of claims alleging a violation of subdivision (a) of Section 745 contained within a habeas petition filed under this section.

(2) A petitioner, or their counsel, may file a motion for relevant evidence under subdivision (d) of Section 745 upon the prosecution of a petition under this subdivision, or in preparation to file a petition.



(3) A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.

(4) If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745.

(5) The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition pleads a plausible allegation of a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

(6) The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing. A prima facie determination shall be based on the petitioner's showing and the record. The court may request an informal response from the state.

(A) If the petitioner makes a prima facie showing, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

(B) If the court determines that the petitioner has not established a prima facie showing, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

(7) If the court finds a violation of subdivision (a), the court shall impose one or more of the applicable remedies as outlined in subdivision (e) of Section 745.

(f) If the court holds an evidentiary hearing and the petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing with a signed or oral waiver on record, or they may appear remotely through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

(g) For purposes of this section, if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

(h) (1) If after the court grants postconviction relief under this section and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

(A) The petitioner and postconviction counsel both agree for postconviction counsel to be appointed.

(B) Postconviction counsel is qualified to handle trials.

(2) Counsel shall be paid under the applicable pay scale for appointed counsel. Otherwise, the court shall appoint other appropriate counsel.

**SEC. 3.5.** Section 1473 of the Penal Code is amended to read:

**1473.** (a) A person unlawfully imprisoned or restrained of their liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.

(b) (1) A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(A) False evidence that is material on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration.

(B) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.

(C) (i) New evidence exists that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case.

(ii) For purposes of this section, “new evidence” means evidence that has not previously been presented and heard at trial and has been discovered after trial.

(D) A significant dispute has emerged or further developed in the petitioner’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial or a hearing and that expert testimony more likely than not affected the outcome of the case.

(i) For purposes of this section, the expert medical, scientific, or forensic testimony includes the expert’s conclusion or the scientific, forensic, or medical facts upon which their opinion is based.

(ii) For purposes of this section, the significant dispute may be as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(iii) Under this section, a significant dispute can be established by credible expert testimony or declaration, or by peer reviewed literature showing that experts in the relevant medical, scientific, or forensic community, substantial in number or expertise, have concluded that developments have occurred that undermine the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(iv) In assessing whether a dispute is significant, the court shall give great weight to evidence that a consensus has developed in the relevant medical, scientific, or forensic community undermining the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony or that there is a lack of consensus as to the reliability or validity of the diagnosis, technique, methods, theories, research, or studies upon which a medical, scientific, or forensic expert based their testimony.

(v) The significant dispute must have emerged or further developed within the relevant medical, scientific, or forensic community, which includes the scientific community and all fields of scientific knowledge on which those fields or disciplines rely and shall not be limited to practitioners or proponents of a particular scientific or technical field or discipline.

(vi) If the petitioner makes a prima facie showing that they are entitled to relief, the court shall issue an order to show cause why relief shall not be granted. To obtain relief, all the elements of this subparagraph must be established by a preponderance of the evidence.

(2) For purposes of this subdivision, “false evidence” includes opinions of experts that have either been repudiated by the expert who originally provided the opinion at a hearing or trial or that have been undermined by the state of scientific knowledge or later scientific research or technological advances.

(3) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus brought under subparagraph (A) or (B) of paragraph (1).

(4) This subdivision does not create additional liabilities, beyond those already recognized, for an expert who repudiates the original opinion provided at a hearing or trial or whose opinion has been undermined by scientific research, technological advancements, or because of a reasonable dispute within the expert’s relevant scientific community as to the validity of the methods, theories, research, or studies upon which the expert based their opinion.

(c) This section does not change the existing procedures for habeas relief, except as provided in subdivision (e).

(d) This section does not limit the grounds for which a writ of habeas corpus may be prosecuted or preclude the use of any other remedies.

(e) Notwithstanding any other law, a writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745, if that section applies based on the date of judgment as provided in subdivision (j) of Section 745.

(1) Any and all definitions and legal thresholds specified in Section 745 are controlling for purposes of claims alleging a violation of subdivision (a) of Section 745 contained within a habeas petition filed under this section.

(2) A petitioner, or their counsel, may file a motion for relevant evidence under subdivision (d) of Section 745 upon the prosecution of a petition under this subdivision, or in preparation to file a petition.

(3) A petition raising a claim of this nature for the first time, or on the basis of new discovery provided by the state or other new evidence that could not have been previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition.

(4) If the petitioner has a habeas corpus petition pending in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained, or imposed in violation of subdivision (a) of Section 745.

(5) The petition shall state if the petitioner requests appointment of counsel and the court shall appoint counsel if the petitioner cannot afford counsel and either the petition pleads a plausible allegation of a violation of subdivision (a) of Section 745 or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment.

(6) If the defendant is represented by an attorney and the petition alleges a violation of paragraph (1) or (2) of subdivision (a) of Section 745, based in whole or in part on the conduct of one or more law enforcement officers, the attorney shall serve a copy of the motion on the law enforcement agency or agencies that employed the officer or officers.

(7) (A) The court shall review a petition raising a claim pursuant to Section 745 and shall determine if the petitioner has made a prima facie showing. A prima facie determination shall be based on the petitioner's showing and the record. The court may request an informal response from the state.

(B) If the petitioner makes a prima facie showing, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

(C) If the court determines that the petitioner has not established a prima facie showing, the court shall state the factual and legal basis for its conclusion on the record or issue a written order detailing the factual and legal basis for its conclusion.

(8) If the court finds a violation of subdivision (a), the court shall impose one or more of the applicable remedies as outlined in subdivision (e) of Section 745.

(f) If the court holds an evidentiary hearing and the petitioner is incarcerated in state prison, the petitioner may choose not to appear for the hearing with a signed or oral waiver on record, or they may appear remotely through the use of remote technology, unless counsel indicates that the defendant's presence in court is needed.

(g) For purposes of this section, if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law.

(h) (1) If after the court grants postconviction relief under this section and the prosecuting agency elects to retry the petitioner, the petitioner's postconviction counsel may be appointed as counsel or cocounsel to represent the petitioner on the retrial if both of the following requirements are met:

(A) The petitioner and postconviction counsel both agree for postconviction counsel to be appointed.

(B) Postconviction counsel is qualified to handle trials.

(2) Counsel shall be paid under the applicable pay scale for appointed counsel. Otherwise, the court shall appoint other appropriate counsel.

**SEC. 4.** Section 1473.7 of the Penal Code is amended to read:

**1473.7.** (a) A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for any of the following reasons:

(1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.

(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

(3) A conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of subdivision (a) of Section 745.

(b) (1) Except as provided in paragraph (2), a motion pursuant to paragraph (1) of subdivision (a) shall be deemed timely filed at any time in which the individual filing the motion is no longer in criminal custody.

(2) A motion pursuant to paragraph (1) of subdivision (a) may be deemed untimely filed if it was not filed with reasonable diligence after the later of the following:

(A) The moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(B) Notice that a final removal order has been issued against the moving party, based on the existence of the conviction or sentence that the moving party seeks to vacate.

(c) A motion pursuant to paragraph (2) or (3) of subdivision (a) shall be filed without undue delay from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section or Section 745.

(d) All motions shall be entitled to a hearing. Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party provided that it finds good cause as to why the moving party cannot be present. If the prosecution has no objection to the motion, the court may grant the motion to vacate the conviction or sentence without a hearing.

(e) In preparation for the filing of a motion pursuant to paragraph (3) of subdivision (a), the defendant may file a motion to obtain discovery as outlined in subdivision (d) of Section 745.

(f) When ruling on the motion:

(1) The court shall grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the grounds for relief specified in subdivision (a). For a motion made pursuant to paragraph (1) of subdivision (a), the moving party shall also establish that the conviction or sentence being challenged is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(2) There is a presumption of legal invalidity for the purposes of paragraph (1) of subdivision (a) if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences.

(3) If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

(4) When ruling on a motion under paragraph (1) of subdivision (a), the only finding that the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. When ruling on a motion under paragraph (2) of subdivision (a), the court shall specify the basis for its conclusion.

(5) If the court grants a motion made pursuant to paragraph (3) of subdivision (a), the court shall impose one or more of the applicable remedies as outlined in subdivision (e) of Section 745.

(g) An order granting or denying the motion is appealable under subdivision (b) of Section 1237 as an order after judgment affecting the substantial rights of a party.

(h) A court may only issue a specific finding of ineffective assistance of counsel as a result of a motion brought under paragraph (1) of subdivision (a) if the attorney found to be ineffective was given timely advance notice of the motion hearing by the moving party or the prosecutor, pursuant to Section 416.90 of the Code of Civil Procedure.

**SEC. 4.5.** Section 1473.7 of the Penal Code is amended to read:

**1473.7.** (a) A person who is no longer in criminal custody may file a motion to vacate a conviction or sentence for any of the following reasons:

(1) The conviction or sentence is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. A finding of legal invalidity may, but need not, include a finding of ineffective assistance of counsel.

(2) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

(3) (A) A conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of subdivision (a) of Section 745.

(B) If the motion alleges a violation of paragraph (1) or (2) of subdivision (a) of Section 745, based in whole or in part on the conduct of one or more law enforcement officers, the person shall serve a copy of the motion on the law enforcement agency or agencies that employed the officer or officers.

(b) (1) Except as provided in paragraph (2), a motion pursuant to paragraph (1) of subdivision (a) shall be deemed timely filed at any time in which the individual filing the motion is no longer in criminal custody.

(2) A motion pursuant to paragraph (1) of subdivision (a) may be deemed untimely filed if it was not filed with reasonable diligence after the later of the following:

(A) The moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(B) Notice that a final removal order has been issued against the moving party, based on the existence of the conviction or sentence that the moving party seeks to vacate.

(c) A motion pursuant to paragraph (2) or (3) of subdivision (a) shall be filed without undue delay from the date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section or Section 745.

(d) All motions shall be entitled to a hearing. Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party provided that it finds good cause as to why the moving party cannot be present. If the prosecution has no objection to the motion, the court may grant the motion to vacate the conviction or sentence without a hearing.

(e) In preparation for the filing of a motion pursuant to paragraph (3) of subdivision (a), the defendant may file a motion to obtain discovery as outlined in subdivision (d) of Section 745.

(f) When ruling on the motion:

(1) The court shall grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the grounds for relief specified in subdivision (a). For a motion made pursuant to paragraph (1) of subdivision (a), the moving party shall also establish that the conviction or sentence being challenged is currently causing or has the potential to cause removal or the denial of an application for an immigration benefit, lawful status, or naturalization.

(2) There is a presumption of legal invalidity for the purposes of paragraph (1) of subdivision (a) if the moving party pleaded guilty or nolo contendere pursuant to a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, where the moving party complied with these requirements, and where the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences.

(3) If the court grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere, the court shall allow the moving party to withdraw the plea.

(4) When ruling on a motion under paragraph (1) of subdivision (a), the only finding that the court is required to make is whether the conviction is legally invalid due to prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence. When ruling on a motion under paragraph (2) of subdivision (a), the court shall specify the basis for its conclusion.

(5) If the court grants a motion made pursuant to paragraph (3) of subdivision (a), the court shall impose one or more of the applicable remedies as outlined in subdivision (e) of Section 745.

(g) An order granting or denying the motion is appealable under subdivision (b) of Section 1237 as an order after judgment affecting the substantial rights of a party.

(h) A court may only issue a specific finding of ineffective assistance of counsel as a result of a motion brought under paragraph (1) of subdivision (a) if the attorney found to be ineffective was given timely advance notice of the motion hearing by the moving party or the prosecutor, pursuant to Section 416.90 of the Code of Civil Procedure.

**SEC. 5.** (a) Section 2.5 of this bill incorporates amendments to Section 745 of the Penal Code proposed by both this bill and Senate Bill 734. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before

January 1, 2026, (2) each bill amends Section 745 of the Penal Code, and (3) this bill is enacted after Senate Bill 734, in which case Section 2 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 1473 of the Penal Code proposed by both this bill and Senate Bill 734. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2026, (2) each bill amends Section 1473 of the Penal Code, and (3) this bill is enacted after Senate Bill 734, in which case Section 3 of this bill shall not become operative.

(c) Section 4.5 of this bill incorporates amendments to Section 1473.7 of the Penal Code proposed by both this bill and Senate Bill 734. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2026, (2) each bill amends Section 1473.7 of the Penal Code, and (3) this bill is enacted after Senate Bill 734, in which case Section 4 of this bill shall not become operative.