



DATE: August 9, 2022

TO: Mayor and City Council

FROM: Acting Assistant City Manager

SUBJECT: Adopt a Resolution Authorizing the Mayor to Sign Letters of Support for Assembly Bill 256 (Kalra), Also Known as the California Racial Justice for All Act

RECOMMENDATION

That Council: 1) adopts a resolution (Attachment I) in support of AB 256, the California Racial Justice for All Act, and 2) provides feedback on the proposed letter of support (Attachment II) to be sent to the City's legislative representatives.

SUMMARY

On June 14, 2022, the Hayward City Council directed staff to provide an analysis of AB 256, also known as the California Racial Justice for All Act, and its predecessor, AB 2542 (Kalra, Ch. 317, Statutes of 2020), the California Racial Justice Act of 2020. Staff was instructed to include background and an explanation of both bills, as well as a recommendation for further action. Taken together, AB 2542 and AB 256 prohibit the state from seeking or obtaining criminal convictions or imposing sentences based upon race, ethnicity, or national origin. The bills are also intended to address limitations on criminal justice discrimination cases imposed by the US Supreme Court. Based on their analysis, staff determined that support for the bill is possible before the end of the current legislative session, and that letters of support to the City's state representatives would be the appropriate course of action. This report presents an overview of the history, current legislative status, and provisions of AB 256 and AB 2542.

BACKGROUND

On April 22, 1987, the Supreme Court of the United States, in a 5-4 vote, ruled on the case of *McKleskey v. Kemp* (No. 84-6811).¹ The case involved the sentencing of Warren McCleskey, an African American man from Georgia convicted of killing a police officer during a robbery and sentenced to death. Mr. McCleskey's attorneys argued that the sentence violated his rights

¹ AB 2542 – Racial Justice Act Fact Sheet 08.01.20
<https://lwvc.org/sites/default/files/downloads/AB%202542%20-%20Racial%20Justice%20Act%20Fact%20Sheet%2008.01.20.pdf>

under the 8th Amendment's prohibition of cruel and unusual punishment and the 14th Amendment's equal protection clause.

Mr. McCleskey's attorneys argued that the pervasive racial disparity in judgements against African American defendants violated his civil rights. Mr. McCleskey's complaint was supported by strong statistical evidence of racial bias in the convictions and sentences imposed by the state of Georgia. The Court ruled against Mr. McCleskey, finding that statistical evidence demonstrating general bias in the criminal justice system was insufficient grounds to overturn an existing conviction or sentence. This precedent established that constitutional challenges to judgements on the basis of racial bias must present clear evidence of specific discriminatory intent from one or more decision-makers involved in the contested case.

The increased evidentiary requirement effectively prevented defendants from appealing their judgements in anything but the most blatant cases of individual discrimination. Following this action by the Supreme Court, both the US House and the US Senate introduced multiple versions of a federal Racial Justice Act between 1988 and 1994. These bills were repeatedly defeated and the effort was ultimately shelved due to changes in the political landscape and attitudes towards crime during the Clinton administration. In response to the lack of federal protections, states concerned about bias in the courts enacted prohibitions against using race or ethnicity as a factor in criminal cases, including Kentucky in 1998² and North Carolina in 2009³. The North Carolina law was later repealed.

In February of 2020, California State Assembly Members Ash Kalra, Sydney Kamlager, Robert Rivas, and Miguel Santiago introduced AB 2542, the California Racial Justice Act, to address racial bias in the justice system and the evidentiary barriers imposed by *McCleskey*⁴. AB 2542 prohibited California from basing the severity of criminal charges, convictions, or sentences on race, ethnicity, or national origin⁵. AB 2542 also significantly expanded the types of evidence defendants could use to show discrimination, making it possible for more defendants to challenge judicial decisions. AB 2452 would apply to judgements on a prospective basis, beginning on January 1, 2021.

² Race and Death Penalty After McCleskey: A Case Study of Kentucky's Racial Justice Act
<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1191&context=crsj>

³ In Landmark Decision, North Carolina Supreme Court Strikes Down Retroactive Application of Racial Justice Act Repeal
https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/summer/north-carolina-strikes-retro-application-of-rja-repeal/

⁴ Bill Information AB 2542, Criminal procedure: discrimination. (2019-2020)
https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB2542

⁵ AB 2542 – Racial Justice Act Fact Sheet 08.01.20
<https://lwvc.org/sites/default/files/downloads/AB%202542%20-%20Racial%20Justice%20Act%20Fact%20Sheet%2008.01.20.pdf>

On August 31, 2020, AB 2452 was passed by the California Legislature. The California Racial Justice Act was subsequently signed into law by Governor Gavin Newsom on September 30, 2020.⁶

In January of 2021, the authors of AB 2452, Assembly Members Kalra, Kamlager, Rivas, and Santiago, introduced AB 256, the California Racial Justice for All Act.⁷ AB 256 is intended to retroactively extend the protections of the California Racial Justice Act to those who were impacted by unfair convictions and sentences prior to 2021.⁸

In August of 2021, AB 256 was held in committee by the Senate Appropriations Committee. Typically, this would prevent a bill from moving forward for the rest of the legislative session. However, in the case of AB 256, the State Appropriations Committee Chairman took the unusual step of designating it a two-year bill. This allowed the bill to be shelved in 2021, but to return for consideration in 2022⁹. The Appropriations Committee is expected to vote on AB 256 on August 11th, 2022.

On June 14, 2022, Council Member Angela Andrews and Council Member Elisa Márquez brought forward a Referral Memorandum seeking Council support to direct staff to evaluate AB 256 and AB 2542. Staff was directed to return with an analysis to determine whether a resolution, a letter of support, or a petition would be the best approach for supporting the bill and its objectives. The motion was made by Council Member Márquez, seconded by Council Member Andrews, and carried by unanimous vote.¹⁰

DISCUSSION

In the majority opinion on *McCleskey*, Justice Lewis Powell wrote that questions of racial bias and discrimination in the criminal justice system are “best presented to the legislative bodies” given that “it is the legislatures, the elected representatives of the people, that are constituted to respond to the will and consequently the moral values of the people.”¹¹

Prior to the passing of the California Racial Justice Act, there was no provision in California law stating that racial discrimination was prohibited in seeking or obtaining criminal convictions or sentences, despite ample evidence of omnipresent bias in the state’s criminal

⁶ Bill Information AB 2542, Criminal procedure: discrimination. (2019-2020)

https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201920200AB2542

⁷ Bill Information AB-256 Criminal procedure: discrimination. (2021-2022)

https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220AB256

⁸ AB 256 - California Racial Justice Act for All_5-24-21 https://a27.asmdc.org/sites/a27.asmdc.org/files/2022-03/AB%20256%20-%20California%20Racial%20Justice%20Act%20for%20All_5-24-21.pdf

⁹ Assemblymember Ash Kalra Releases Statement on Racial Justice Act for All, AB 256, Becoming a Two-Year Bill <https://a27.asmdc.org/press-releases/20210827-assemblymember-ash-kalra-releases-statement-racial-justice-act-all-ab-256>

¹⁰ Minutes of the June 14, 2022 Special City Council meeting

<https://hayward.legistar.com/View.ashx?M=E3&ID=981127&GUID=3A570191-4C3D-4C12-9420-BFD49D4B18C5>

¹¹ *McCLESKEY v. KEMP*, 481 U.S. 279 (1987) <https://supreme.justia.com/cases/federal/us/481/279/>

justice system. Under then-existing law, state-level challenges to convictions or sentences were allowed only in cases of new, false, or suppressed exonerating evidence.¹²

In prohibiting racial discrimination in conviction or sentencing, AB 2542 established that a defendant may challenge their judgement if there is “a preponderance of evidence” that racial discrimination influenced the decision. However, these protections currently only apply to judgements on or after January 1, 2021. AB 256, the California Racial Justice for All Act, extends these protections to any person impacted by provable racial bias or discrimination in the justice system at any point in the past. Defendants may challenge their judgement if they are able to provide evidence of any of the following:¹³

- Any officials involved in the case, including judges, attorneys, law enforcement officials, expert witnesses, or jurors exhibited bias or animus toward the defendant due to race, ethnicity or national origin;
- Any officials involved in the case used racially discriminatory language or exhibited bias in relation to the defendant’s race, ethnicity, or national origin during trial;
- Race, ethnicity, or national origin was a factor in the exclusion or dismissal of any juror or jurors, also known as a “peremptory challenge”; or
- Evidentiary data demonstrates a disparity in seriousness of charges, rate of convictions, or length of sentence based on the race, ethnicity, or national origin of either the defendant or the victim. For example, if data shows that defendants of one race are disproportionately convicted of an offense relative to another race for the same offense, or if it shows longer or shorter sentences depending on the race or ethnicity of the victim.

In previously-resolved cases that meet any of these criteria, defendants may file a motion to vacate their conviction or sentence. This results in the removal of the conviction from the defendant’s record and a retrial, but does not expunge the criminal record unless the court finds in favor of the defendant in the subsequent trial. If a judgement has not yet been entered in the case and the court finds in favor of the defendant, the court may 1) reseal a dismissed juror; 2) declare a mistrial; 3) require selection of a new jury; or 4) reduce or eliminate charges.¹⁴

If AB 256 is passed in its current form, the ability to retroactively challenge judgements would be phased in, with courts accepting petitions from those sentenced to death or those facing deportation beginning on January 1, 2022. Felony convictions rendered after January 1, 2013 may be challenged beginning on January 1, 2023. Beginning on January 1, 2025, challenges under the California Racial Justice for All Act would be open to any felony convictions, regardless of date of judgement.¹⁵

¹² AB 2542 Senate Floor Analysis

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB2542

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Bill Information AB-256 Criminal procedure: discrimination. (2021-2022)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB256

As for the Senate Committee on Public Safety analysis on May 24, 2021, AB 256's expansion of the protections under the California Racial Justice Act was supported by nearly 120 state and national organizations, including Amnesty International, the California Public Defenders Association, SEIU California, and SURJ Bay Area. Organizations co-sponsoring the bill include ACLU California Action, the American Friends Service Committee, the Ella Baker Center for Human Rights, the California Coalition for Women Prisoners, Californians United for a Responsible Budget, the Coalition for Humane Immigrant Rights, Initiate Justice, the League of Women Voters of California, NextGen, and Silicon Valley De-Bug.¹⁶

Staff outreach to the City's Legislative Advocate and analysis of the bill's history found that the City has an opportunity to support AB 256 in the current legislative session. In light of this development, staff recommends approval of a resolution authorizing the Mayor to sign letters of support to be sent to the City's elected representatives, Assembly Member Bill Quirk and Senator Bob Wieckowski, as well as the bill's primary author, Assembly Member Kalra.

FISCAL IMPACT

AB 256 will not have a fiscal impact on the City of Hayward. The authors of the California Racial Justice for All Act estimate that the state may experience savings of \$154.7 million per year.¹⁷ The Senate Appropriations Committee estimated statewide costs up to \$1.4 million to state courts and up to \$41.25 million to the Department of Justice in order to meet increases in workload and personnel needs.¹⁸

STRATEGIC ROADMAP

This agenda item supports the City's overarching commitment to racial equity and the policies outlined in the City's Legislative Program, as well as the following specific strategic priority and objective:

Strategic Priority:	Enhance Community Safety and Quality of Life.
Objective:	Celebrate Hayward's Heritage & Confront Racial Inequities

NEXT STEPS

If Council approves the attached resolution, staff will transmit copies along with letters conveying the City of Hayward's support of AB 256 to the City's elected representatives in the California State Senate and California State Assembly, well as to other appropriate legislative representatives.

¹⁶ AB 256 Senate Committee on Public Safety Analysis
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB256#

¹⁷ AB 2542 – Racial Justice Act Fact Sheet 08.01.20
<https://lwc.org/sites/default/files/downloads/AB%202542%20-%20Racial%20Justice%20Act%20Fact%20Sheet%2008.01.20.pdf>

¹⁸ AB 256 Senate Committee on Appropriations Analysis
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB256#

Prepared by: Rick Rivera, Management Analyst

Recommended by: Dustin Claussen, Acting Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'McAdoo', with a long horizontal stroke extending to the right.

Kelly McAdoo, City Manager