Staff Memorandum 2025-15
Updates on Staff Research and Preliminary Proposals: Gender Bias, 170.6 Disqualifications, and the Racial Justice Act, and Other Matters Discussed at the April, May, and July 2025 Meetings

This memorandum provides research updates and preliminary staff proposals for topics discussed at the April, May, and July 2025 Committee meetings.

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Racial Justice Act

Research Updates

Developing a model process for determining statistics-based claims.

At the July meeting, staff proposed to partner with researchers, including our colleagues at the California Policy Lab, to develop an accessible approach for how courts should consider RJA claims.

Staff has begun organizing this project, which will also include experts from Stanford Law School, with the goal of producing a document that includes basic data literacy explanations, an explanation of how those concepts interact with the Racial Justice Act, and case studies using actual data (or, if there are data challenges, guidance on how should analysis should proceed).

Staff anticipates incorporating insights from other statistics-based legal claims, including employment discrimination, that may be relevant to similar questions presented in RJA cases. This project will not be completed until 2026 and staff will keep the Committee updated on its progress.

Preliminary Staff Proposals

After hearing witness testimony and reviewing legal developments at the Committee's July 2025 meetings, staff propose the following recommendations for further discussion and analysis.

Additionally, at the meeting staff had highlighted a pending bill AB 1071 (Kalra), which makes changes to the RJA, including some the Committee considered. The bill has passed both houses of the Legislature and is awaiting signature by the Governor. If the bill is not signed by the Governor, staff may make further recommendations for inclusion in the 2025 Annual Report based on provisions of AB 1071.

Reduce duplicative litigation about prima facie cases.

Summary Staff Proposal
Create a procedure for aggregating statistical RJA claims for persons similarly situated at the prima facie stage.

Current Law
The RJA does not specifically allow the findings from an individual case to be applied in another case.

Background
Statistical claims under the RJA are labor intensive. As panelists explained at the July 2025 meeting, defense attorneys and prosecutors are paying retain expert

witnesses to analyze, explain, and testify about data in each case. And for cases that rely on the same historical charging and sentencing data, the work for experts, parties, and the court may often be duplicative.

Practices and rules from other areas of criminal and civil law show that more efficient procedures are possible in the RJA:

- Class actions allow a representative group to sue on behalf of a larger group of people for the benefit of an entire class.[1] This procedural vehicle has been used in habeas corpus petitions in California to resolve conditions of confinement.[2]

- Courts have also grouped criminal law cases together to remedy systemic violations, such as disproportionality in death penalty sentencing, wrongful convictions, forensic fraud, and inadequate indigent representation.[3] For example, after Jessica's Law (Proposition 83) was passed in 2006, petitioners who were registered sex offenders on active parole filed habeas corpus petitions alleging that the residency restrictions were unconstitutional. After the Supreme Court ordered an evidentiary hearing in the trial court in San Diego County, the trial court designated four cases of 140 petitions for purposes of establishing an evidentiary record to address the "as-applied" constitutionality of the residency restriction.[4]

- The legal doctrines of claim preclusion ("res judicata") and issue preclusion ("collateral estoppel") — rules that determine when a claim or issue cannot be litigated again in another hearing — minimize repetitive litigation.[5]

These principles can be applied in the RJA context by creating a presumption that a court's prima facie ruling applies to other similarly-situated cases. To overcome the presumption in a new case, either party may argue that the current case is not actually similarly-situated to the old one, prior counsel was inadequate, or that additional data requires a different result.

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[1] Code of Civil Procedure § 382.

[2] See, e.g., *In re Lugo*, 164 Cal.App.4th 1522 (2008); *Mendoza v. County of Tulare*, 128 Cal.App.3d 403 (1982).

[3] Brandon L. Garrett, *Aggregation in Criminal Law*, 95 Cal. Law Review 383, 385 (2007).

[4] *In re Taylor*, 60 Cal.4th 1019 (2015).

[5] *San Remo Hotel, L.P. v. City & County of San Francisco, Calif.*, 545 U.S. 323, 336 (2005). An issue can be precluded only if the issue is identical to that decided in a former proceeding, the issue was actually litigated in the former proceeding, it was necessarily decided, and the decision must be final and on the merits. The party sought to be precluded must be the same, or in privity with the party.

Additionally, last year an appellate court left open the question of whether a prima facie case must include both statistics and case-specific details of cases that were treated less harshly than the defendant.[6] If the latter becomes necessary, this presumption would only apply to cases that only require statistical data.

The proposed presumption — which borrows from class action and consolidated litigation and the efficiency principles underlying issue preclusion — would minimize repetitive litigation, increase judicial economy, and reduce costs by eliminating the need for experts at early stages of RJA cases.

Staff Proposal
Allow the prima facie findings from an individual case to be applied presumptively in other cases raising the same charging or sentencing disparity and using the same statistical data.

Expand a court's power to appoint referees in RJA cases

Summary Staff Proposal
Amend existing RJA law to allow judges to appoint a referee in RJA cases at any stage of the case.

Current Law
California civil law allows courts to appoint a referee, by party agreement or at their discretion, in certain circumstances. The RJA allows a court to appoint an "independent expert," but only at an evidentiary hearing.

Background
The July meeting included discussion of whether special masters — called "referees" in California law — may have a role to play in resolving the complicated statistical and other questions presented by RJA claims.

The RJA currently authorizes courts to appoint independent experts at evidentiary hearings, but not at earlier stages of an RJA claim.[7] But California law has long-allowed appointment of referees in other contexts that share similarities with RJA claims. Courts appoint referees primarily to manage complex discovery or to ensure the implementation of court orders.[8] They have been used in family law cases and civil cases that involve large amounts of technical, financial, scientific, or other complex data.

[6] *Mosby v. Superior Court*, 99 Cal.App.5th 106 (2024).
[7] Penal Code § 745(c)(1).
[8] Code of Civil Procedure §§ 638 (upon agreement of parties); 639 (on the court's own motion).

Referees often have specific and relevant expertise to help the court and parties manage the information. In the 1990s the New Jersey Supreme Court appointed two special masters to investigate a claim of racial disparity in death sentencing.[9]

Existing language in the RJA should be expanded to allow a court to appoint a referee to resolve discrete matters, such as discovery,[10] to advise the court on the statistical data — including at the prime facie stage of a case and not just at the evidentiary hearing — or any other circumstance that the court believes is necessary for fair and efficient adjudication of RJA claims.

Staff Proposal
Amend the RJA to allow judges to appoint a referee (or multiple, if necessary) in RJA cases at any stage of the case. The referee should have particular knowledge or experience that can provide the court with guidance on statistical analysis or available data or discovery.

Abrogate *Huerta* and clarify that the RJA applies to enhancements

Summary Staff Proposal
Reiterate and clarify that the RJA applies to enhancements, special circumstances, and any alternate sentencing schemes.

Current Law
As relevant here, an RJA violation is shown if a defendant was "charged or convicted of a more serious offense" than defendants of other races who engaged in similar conduct or received a harsher sentence than "similarly situated individuals convicted of the same offense."[11]

Background
A few days after the Committee's meeting in July, the Fifth District Court of Appeal held in a published case that "the charging and sentencing of gang enhancements … do not fall within the scope of" subdivision (a)(3) or (a)(4) of the RJA because the term "offense" in these subdivisions does not refer to sentencing enhancements.[12]

Other courts have not come to this conclusion: the First District Court of Appeal has implicitly held that gang enhancements do fall within the RJA when it held the defendant had a right to discovery on his RJA claim alleging the district

[9] Brandon L. Garrett, *Aggregation in Criminal Law*, 95 Cal. Law Review 383, 421 (2007); *In re Proportionality Review Project (II)*, 165 N.J. 206 (N.J. 2000).
[10] Code of Civil Procedure § 639(a)(5) ("When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.").
[11] Penal Code § 745(a)(3) & (4).
[12] *In re Huerta*, 113 Cal.App.5th 162, 170-171 (2025).

attorney more frequently charged gang enhancements against Black defendants.[13] The California Supreme Court has issued orders to show cause about appointment of counsel in RJA cases involving sentencing enhancements or special circumstances.[14]

The consequences of the outlier decision —which neither party had briefed and arose in a case originally filed pro se — could be significant. Under the court's logic, enhancements, special circumstances, and strike offenses might, in some circumstances, not form the basis of a RJA claim. Such a result would directly conflict with the Legislature's goal in enacting the RJA, which was "to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing."[15]

Staff Proposal

Clarify that the RJA applies, and has always applied, to enhancements, special circumstances, any other alternate sentencing schemes and thus abrogate *In re Huerta*.

Improve data access to support RJA claims

Summary Staff Proposal

Reiterate the Committee's 2023 recommendation to expand data access for people bringing claims under the Racial Justice Act, by expanding the scope of existing reports by state entities, increasing access to probation and reports, and funding the Justice Data Accountability and Transparency Act.

Current Law

The Racial Justice Act (RJA) allows discovery from law enforcement agencies after a showing of "good cause," but many documents and data that are relevant to RJA claims are not reasonably accessible to people bringing such claims.

Background

In 2023, the Committee recommended a variety of ways to improve access to data relevant to RJA claims, including expanding reports already produced by the California Department of Corrections, Department of Justice, and Judicial Council. Though a bill in 2024 (AB 2065 Kalra) would have implemented many of these improvements, the bill was not successful. The need for this data access remains and the Committee should reiterate this recommendation.

[13] *McDaniel v. Superior Court*, 332 Cal.Rptr.3d 667 (2025).

[14] See *In re Delariva*, Cal. Supreme Court Case No. S286304 (August 20, 2025) (special circumstances); *In re Phillips*, Cal. Supreme Court Case No. S286417 (September 3, 2025) (firearm enhancements).

[15] AB 2542 (2019-2020 Reg. Sess.) § 2(i).

Staff Proposal
As explained in the Committee's 2023 Annual Report, the Committee should again recommend expanding access to data in the following ways for people bringing claims under the Racial Justice Act:

1. Expand the detail and format of existing reports by the California Department of Corrections and Rehabilitation, Judicial Council, and the California Department of Justice.
2. Amend current law to increase access to probation and police reports if the request is related to a Racial Justice Act claim.
3. Fund the Justice Data Accountability and Transparency Act to support the collection and publication of data from prosecutors.

Strengthen appellate review of RJA claims

Summary Staff Proposal
Establish a presumption that appellate courts should consider on the merits all RJA issues based on biased language, even if the claim did not follow the strict rules around preservation. Require the existing stay-and-remand procedure to be mandatory.

Current Law
A claim on appeal is forfeited if it is not objected to in the trial court. The RJA allows defendants to raise a claim on direct appeal at their discretion, however, courts have resisted this process.

Background
General appellate rules hold that a defendant forfeits a claim on appeal unless the issue has been raised at trial. Appellate courts have continued to apply the forfeiture rule to the RJA, finding that a failure to object at trial prevents a defendant from raising an RJA issue for the first time on appeal.[16] This interpretation is difficult to square with AB 1118's changes to the RJA in 2023 — that "[f]or 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"[17] — since requiring preservation by raising it in the trial court was already the rule.

AB 1118, passed in 2023, also allowed appellate courts to "stay and remand" an RJA claim, ostensibly granting defendants the ability to raise some claims on

[16] *People v. Wagstaff*, 111 Cal.App.5th 1207 (2025) (Attorney General conceded RJA violation but court still found forfeiture); *People v. Quintero*, 107 Cal.App.5th 1060, 1075–1079 (2024) (finding (a)(2) claim forfeited because trial counsel did not object to the prosecutor's language during closing argument); *People v. Singh*, 103 Cal.App.5th 76, 116 (2024); *People v. Lashon*, 98 Cal.App.5th 804, 816 (2024).
[17] Penal Code § 745(b).

direct appeal for the first time.[18] The practice is unusual in appellate practice and has faced some measure of resistance from courts. The California Supreme Court denied a motion for stay-and-remand in a capital case because it was not "necessary" as the defendant was entitled to pursue a habeas proceeding simultaneously with the direct appeal.[19]

The stated intent of the RJA was "to eliminate racial bias" from the criminal courts and to "actively work to eradicate" racial disparities.[20] Removing unnecessary obstacles on appeal would further the intent of the RJA.

Staff Proposal
Strengthen the presumption in the RJA that appellate courts should consider on the merits all RJA issues based on biased language, even if the claim did not follow the strict rules around preservation. The Committee should also consider requiring the existing stay-and-remand procedure to be mandatory upon a defendant's request that the claim needs further development through no fault of the defendant and a plausible claim for relief is alleged.

Gender Bias, 170.6 Disqualifications, and Other Matters

Research Updates

Coercion defense

AB 938, which would have extended the coercion defense to all crimes except murder, was held in the Senate Appropriation Committee and will not move forward this year. This marks the third time in three years that legislation to expand the coercion defense and related vacatur relief has been unsuccessful.[21]

No existing data indicates how frequently the coercion defense is raised under current law, nor is there consensus among experts or practitioners regarding the most effective way to expand its applicability, short of extending the defense to more offenses. Moreover, there has been only one appellate court decision clarifying the current scope of the defense since its enactment.[22]

Because the law remains relatively new and legislative efforts to broaden it have been unsuccessful, staff proposes that the Committee allow more time before revisiting whether additional reforms are warranted and not include a recommendation on coercion in the 2025 Annual Report.

[18] Penal Code § 745(b).
[19] *People v. Wilson*, 16 Cal.5th 874, 943–963 (2024). See also *People v. Lashon*, 98 Cal.App.5th 804, 817 (2024).
[20] Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(i).
[21] See AB 2534 (Bonta, 2024); AB 1497 (Haney, 2023).
[22] *In re D.C.*, 60 Cal.App.5th 916, 921 (2021).

Appointment of counsel in coercion-based vacatur motions

AB 938 was amended to specify that coercion-based vacatur motions qualify as ameliorative proceedings, which would have clarified that individuals seeking relief are entitled to appointed counsel. With the bill's failure, that clarification will not become law.

The Committee should determine whether to recommend enacting this clarification as a standalone measure or whether to similarly take a wait-and-see approach, consistent with the recommendation above on the coercion defense.

Board of Parole Hearings regulations on recommendations for commutation and recall of sentences.

On August 19, 2025, the Board of Parole Hearings released draft regulations for using its statutory authorities under Penal Code § 1172.1(a) to make resentencing referrals to courts and Penal Code § 4801 to make recommendations for clemency to the Governor.

The regulations are currently in the public comment period. Written comments can be submitted until October 22, 2025, and BPH will have a public meeting on the regulations on October 30, 2025.[23]

As currently drafted, the regulations provide review for possible referral to all people who have served at least 25 years of incarceration.[24] Good conduct and other earned credit do not count towards the 25 years.[25] Excluded from eligibility are people who are required to register under Penal Code § 290, people sentenced to death, anyone who is expected to be released within 3 years, anyone with a parole eligible date in the past, and anyone eligible for parole consideration in the next 3 years.[26] This means that people serving life without parole sentences, unless excluded by a more specific exemption, would be eligible for this review process.

An eligible person will first be reviewed by a single hearing officer.[27] If that officer concludes "there is a reasonable likelihood" a full panel would make a referral for resentencing or commutation, the eligible person then goes through a process that is similar to a typical parole board process.[28] They will receive a comprehensive risk assessment from a psychologist and a hearing, with counsel,

[23] For further information, see Note of Changes to Regulations, NCR Number BPH RN 25-01, available at the "Regulatory Changes" webpage on BPH's website.
[24] All citations are to proposed regulations. 15 CCR § 2840(b).
[25] 15 CCR § 2840(b).
[26] 15 CCR § 2843(b).
[27] 15 CCR § 2844(a).
[28] 15 CCR § 2844(j).

from a panel of two to three hearing officers.[29] There are provisions facilitating participation of prosecutors, victims, and the public.[30] The panel applies the existing parole release standard — unreasonable risk of danger to public safety — to determine whether a referral, which can include a recommendation that a new sentence include parole supervision and a specific amount of time in transitional housing, is appropriate.[31] If it is, BPH's chief counsel reviews the decision and may refer it for en banc review.[32]

If the referral stands, the person will be referred to court for recall of sentence and resentencing.[33] They will also be referred to the Governor for clemency.[34] In court, because of law changes enacted in response to the Committee's 2020 Annual Report, a referral from BPH requires counsel to be appointed, an initial hearing within 30 days of the referral, and a presumption that recall and resentencing should occur.[35]

Staff will continue to monitor and report back on the progress of the regulations.

Preliminary Staff Proposals

Require heightened judicial scrutiny of potentially gender-biased evidence.

Summary Staff Proposal
Establish Evidence Code provisions that require heightened judicial scrutiny before evidence likely to invoke gender bias is admissible at trial. Allow claims in older cases based on this change in the law to be heard via habeas corpus petitions.

Current Law
The Evidence Code requires courts to exclude evidence where the risk of undue prejudice substantially outweighs its probative value. While there are some more targeted limitations on specific types of evidence, there are no provisions specifically requiring judges to assess whether evidence is likely to trigger gender-based stereotypes against defendants.

Background
Gender bias in criminal trials can lead to unjust outcomes. This concern is especially heightened in cases involving women and LGBTQ+ defendants, where

[29] 15 CCR § 2848; 2847(e); 2851(a); 2840(e).
[30] 15 CCR §§ 2851(g) & (i); 2852; 2847(h).
[31] 15 CCR §§ 2856(b) & (c).
[32] 15 CCR § 2859.
[33] 15 CCR § 2858(d).
[34] 15 CCR § 2858(c)
[35] Penal Code § 1172.1(b).

certain types of evidence — such as prior sexual conduct, sexually explicit images, or critiques of parenting — can invoke prejudicial stereotypes and overshadow legally relevant issues. As presented at the Committee's April 2025 meeting, Professor Sandra Babcock's research on death penalty trial transcripts revealed that prosecutors often relied on inflammatory depictions of women as promiscuous, immoral, or manipulative based on such evidence.[36]

The California Supreme Court recently acknowledged these risks in *People v. Collins*, where a mother was convicted of aiding and abetting her boyfriend in the fatal abuse of her child, even though the defendant herself had been subject to abuse by the boyfriend and the fatal act occurred outside of the defendant's presence.[37] Although the conviction was reversed, the Court underscored the dangers of relying on gendered assumptions — such as maternal instinct or intuition — as a basis for criminal liability.[38] It emphasized that "prosecutors and courts must take care to ensure that this type of gender bias does not infect our criminal justice system."[39]

Examples from other California cases reinforce these concerns. For example, in one case, the prosecution argued that a woman's same-sex attraction provided a motive for sexual abuse — a claim the appellate court later found irrelevant and prejudicial.[40] In another, prosecutors introduced a photo of the defendant lying nude in bed covered with cash to prove the defendant's financial motive for the killing, contributing to a death sentence that was later overturned.[41]

A recent report by the Stanford Criminal Justice Center offers additional confirmation that gender bias frequently plays a role in criminal prosecutions.[42] Researchers surveyed over 600 women incarcerated for murder or manslaughter in California, documenting their experiences with the criminal legal system.[43] More than half of the respondents reported that they were treated unfairly in court due to their gender.[44] Many respondents described how prosecutors used their sexuality, appearance, or perceived failure as mothers against them.[45]

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[36] See Sandra Babcock, *Gendered Capital Punishment,* 31 Wm. & Mary J. Race, Gender Soc. Just. (March 2025). Staff continued working with Professor Babcock and her team to develop the background and recommendations contained in this proposal.
[37] *People v. Collins*, 17 Cal.5th 293 (2025).
[38] Id. at 318.
[39] Id.
[40] See *People v. Garcia*, 229 Cal.App.4th 302 (2014).
[41] See *People v. Samuels,* 36 Cal.4th 96, 112, fn 2 (2005). See also *Samuels v. Espinoza*, 2020 WL 1140434 (vacating death sentence).
[42] Debbie Mukamal, et al., *Fatal Peril: Unheard Stories from the IPV-to-Prison Pipeline*, Stanford Criminal Justice Center (November 2024).
[43] Id.
[44] Id. at 129.
[45] Id. at 129–132.

While courts are always required to weigh the probative value of evidence against its potential for undue prejudice,[46] the Evidence Code does not specifically caution judges to consider the risk of gender-based stereotyping. By contrast, the Legislature has created heightened admissibility standards for other categories of sensitive evidence. These include:

- "**Rape shield" laws**:[47] Limit the use of a complaining witness's prior sexual conduct in sexual assault cases.[48]
- **Creative expressions:** Require a special balancing test before admitting "creative expressions" (such as rap lyrics) due to the risk of racial bias.[49]
- **Citizenship**: Bars the introduction of a person's citizenship or immigration status without prior judicial review.[50]
- **Condom possession**: Excludes it as evidence in prostitution cases.[51]
- **Character evidence**: Limits the use of prior misconduct to prove conduct on a specific occasion.[52]

To address these concerns, staff propose a framework that would require heightened judicial scrutiny before certain types of evidence or argument may be admitted in criminal cases. This heightened review would apply when evidence is offered by either party that is of a type that risks triggering gender-based stereotypes.

Specifically, such evidence includes: (1) information about the defendant's sexual activity, orientation, sexual partners, reproductive choices, or romantic relationships; (2) sexually suggestive photos or images; (3) evidence related to clothing, appearance, or gender expression when used to suggest or reinforce gender-based stereotypes; (4) references to a defendant's failure to conform to traditional gender roles, including parenting expectations; and (5) appeals to notions of a "woman's nature" or "emotional" disposition. In addition, the framework would prohibit arguments that rely on gender-based stereotypes

[46] Evidence Code § 352.
[47] "Complaining witness" generally refers to the alleged victim of the crime charged. See Evidence Code § 782(b).
[48] Evidence Code §§ 782, 1103(c). This can include exclusion of evidence of how a complaining witness was dressed at the time of an offense when offered by a defendant to prove consent. Evidence Code § 1103(c).
[49] Evidence Code § 352.2.
[50] Evidence Code § 351.4.
[51] Evidence Code § 782.1.
[52] Evidence Code § 1101(a). But see Evidence Code § 1101(b) (allowing such evidence when offered to prove a fact other than a person's disposition to commit a crime, such as motive, intent, or preparation).

directly — such as assumptions about how a woman should behave — regardless of whether the arguments are tied to a specific piece of evidence.

The proposed framework would require courts to take additional steps before allowing such evidence to be used to establish a defendant's culpability. These steps could include: (1) requiring an in limine hearing to assess whether the evidence is relevant and not unduly prejudicial; (2) applying a balancing test that specifically weighs the risk of reinforcing gender stereotypes against the probative value of the evidence; and (3) specifying that courts must consider credible testimony or social science research showing that the evidence explicitly or implicitly introduces gender bias into the proceedings.

Notably, Proposition 8, passed in 1982, established a state constitutional provision that prohibits laws excluding relevant evidence in criminal cases unless enacted by a two-thirds vote in each house of the Legislature.[53] As a result, legislation creating new Evidence Code provisions to limit the admissibility of gender-biased evidence would likely require a supermajority vote.

In addition to trial-level protections, the Committee could recommend including a post-conviction relief component modeled on Penal Code section 1473.5. Under such a provision, convicted people could petition for habeas relief when they can show that gender-biased evidence or argument was invoked at their trial and that there is a reasonable probability the outcome would have been different absent such bias. This would ensure that the proposed reforms provide a mechanism for relief in cases where past convictions may be tainted by gender stereotyping.

Staff Proposal
Update the Evidence Code to require heightened judicial scrutiny of gender-biased evidence in criminal cases, as outlined above.

Revision to Previous Staff Proposal

Limit blanket challenges of judges in criminal cases under Code of Civil Procedure § 170.6

At its May 2025 meeting, the Committee considered peremptory blanket challenges to a judge under Code of Civil Procedure § 170.6, which essentially allows a public defender or prosecutor office to disqualify a judge from hearing all criminal cases or particular types of criminal cases.

[53] Prop. 8, approved June 8, 1982.

The Committee also discussed this issue at the July 2025 meeting and staff presented a preliminary proposal that would eliminate abuse of its "blanket challenge" provisions. There are two items for discussion now.

1. **Limit proposal to prosecutors offices**

The Committee discussed whether blanket challenges from prosecutors present a special harm that is not caused when defense attorneys make blanket challenges. There is precedent for such a limit restriction: Three states — Illinois, Minnesota, and Wisconsin — currently have restrictions on blanket challenges that apply only to prosecutors.[54] [In Wisconsin, only the defendant may substitute a judge by statute.[55] California's original version of this law from 1937 also did not allow prosecutors to use it[56] and the California Supreme Court recently ordered briefing in a pending case about whether any limitations on blanket challenges should only be applied to prosecutors and other executive branch offices.[57] But anecdotal information compiled by Committee staff from across the state did not indicate clearly that prosecutors in California make more use of blanket challenges than defense attorneys.

The Committee should decide whether any limitations on blanket challenges should apply to all parties or just prosecutors.

2. **Updates to staff proposal**

Staff received feedback from the previous proposal from two panelists who spoke about this issue at the May Committee meeting. Following that feedback, which did not make major changes, staff has the following updated proposal, with changes in bold:

> Create a broad definition of a blanket challenge: repeated disqualifications under Code of Civil Procedure § 170.6 that prevent a judge from hearing **substantially** all criminal cases or a particular type of case or recurring docket, such as arraignments, mental health court, or domestic violence cases. **This policy would apply to all attorneys, not just public defenders or prosecutors.**
>
> When a blanket challenge is filed, allow the challenged judge or Presiding Judge to request a hearing, which will be determined by a judge from another county.

[54] *State v. Erickson*, 589 N.W.2d 481, 485 (1999) (Minnesota); *People ex rel. Baricevic v. Wharton,* 136 Ill.2d 423, 437 (1990) (Illinois).
[55] Wisconsin Stat. § 971.20(2).
[56] *Austin v. Lambert*, 11 Cal.2d 73, 74–75 (1938).
[57] *J.O. v. Superior Court*, Cal. Supreme Court Case No. S287284 (order of September 24, 2025).

At the hearing, the party bringing the blanket challenge must establish a reasonable good faith belief, through particularized facts, that the judge is prejudiced against the office, the group of attorneys, or their interest. While the prejudice standard should not be difficult to meet, similar to the law in Oregon, these additional requirements will help to limit abuse of 170.6 disqualifications. **The law should specify that a reasonable good faith belief cannot be based in any part on the categories specified in Code of Civil Procedure § 231.7(a), which includes race, ethnicity, gender, and sexual orientation**.

Any ruling on a blanket challenge can be appealed.

This process would still allow individual case-based automatic disqualifications under Code of Civil Procedure § 170.6.

Conclusion

Staff looks forward to discussing the research and proposals presented in this memorandum with the Committee.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel

Rick Owen
Senior Staff Counsel