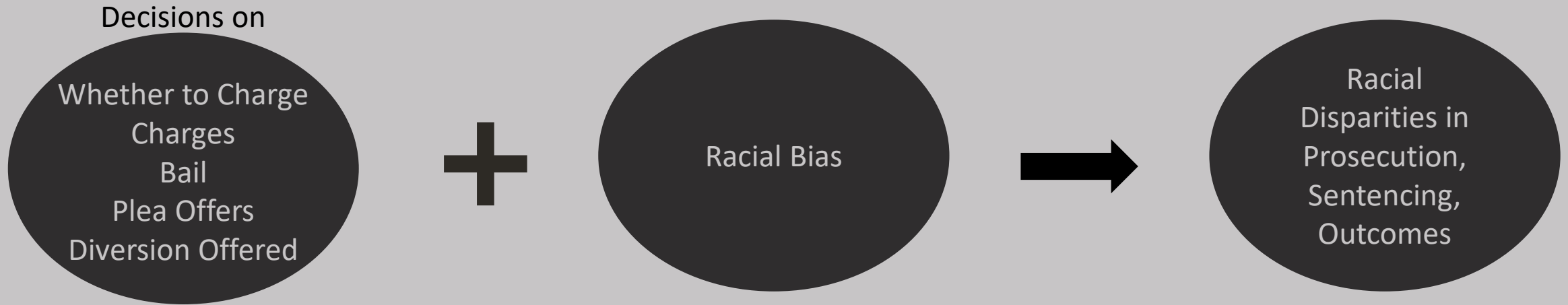




AB 3121 Reparations Task Force: Subpoena Advisory Panel

Proposed Recommendations to the Legislature on the Racial Justice Act

Discretion in Legal Decision Can Impact Racial Disparities



Importance of Data, Data Collection, & Data Transparency



Race Data

+

DA Decision Data

+

Defendant Data

=

RJA Evidence

Data Collection

+

Data Transparency



Fairness

Subpoena Advisory Panel Survey

- DOJ surveyed: all 58 California Superior Courts and District Attorney offices select group of 11 of City Attorney offices.
- Given the limited time we had to identify subject matter for which the Task Force could procure meaningful information within the Task Force's term of existence, construct the Survey questions, and receive responses and analyze them, the Survey was productive.
- Moreover, it was the first effort by any state body to systematically determine what RJA-relevant data the prosecutors and the courts are collecting or not collecting. On this subject, the public's knowledge is almost zero.

Subpoena Advisory Panel Survey Conclusions

- In the absence of requirements for consistent data collection, there appears to be a large amount of discretion, and likewise variability, in what data elements are collected across California District Attorneys Offices, Superior Courts, and select City Attorney's offices and between counties.
- This lack of consistency and absence of data on key variables could present substantial challenges to presenting and evaluating claims of racial discrimination in the criminal justice system, and could increase the difficulty of making Racial Justice Act violation claims in some California counties more than others.

Proposed Recommendations to the Legislature



1. **Ensure RJA Claims Can Be Raised**: An enhanced right to discovery in criminal cases where defendants raise Racial Justice Act claims and/or defenses, with a low threshold for asserting these claims in the context of criminal litigation.
2. **Non-compliance Penalties and Deterrence**: Individual prosecutors who thwart Racial Justice Act data transparency requirements and engage in discovery violations (similarly to Brady violations) should be subject to penalties in the form of adverse rulings, jury instructions, and case dismissals. Also, institute fiscal and systemic penalties for offices that routinely fail to comply with RJA transparency and discovery rules.

Proposed Recommendations to the Legislature



3. **Racial Justice Act Commission**: Create a Commission, similar to the RIPA Board, to track, audit, monitor, and analyze data generated by the RJA process. This Commission could be styled as an arm of the Freedman Agency.

- a. Establish KPIs and other quality control metrics to ensure compliance by prosecutor offices and courts.
- b. Publish annual reports on prosecutorial bias for public consumption.
- c. Establish a federal nexus, which ensures that California data on prosecutorial bias and criminal legal racial profiling is uploaded and synced to national racial profiling databases.

Proposed Recommendations to the Legislature



4. **Increase Public Oversight**: Provide grants, technical assistance, and other resources to watchdog organizations and community-based organizations to build expertise and capacity for Racial Justice Act advocacy and compliance monitoring. As a practical matter, this will have the effect of deputizing private Attorney Generals with the skills and infrastructure to leverage public pressure as a quality control for RJA compliance.