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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguin, Chair  
2025 - 2026 Regular

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**Bill No:** AB 387                      **Hearing Date:** June 10, 2025  
**Author:** Alanis  
**Version:** March 5, 2025  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** CA

**Subject:** *Juries: voir dire: probation officers*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 2240 (Grayson), vetoed, 2018  
SB 428 (Hall), failed in Senate Judiciary, 2015  
SB 1133 (Anderson), failed in the Senate Judiciary, 2014  
AB 1708 (Alejo), died in Assembly Public Safety, 2014  
AB 1769 (Galgiani), vetoed, 2008  
AB 2271 (Parra), failed in Senate Public Safety, 2004  
AB 270 (Bates), failed in Senate Public Safety, 2003  
AB 513 (Matthews), Ch. 353, Stats. of 2003  
AB 1970 (Matthews), not heard in Senate, 2001-2002  
SB 303 (Torlakson), Ch. 353, Stats. of 2001  
SB 2066 (Rogers), Ch. 742, Stats. of 1994  
AB 2577 (Wright), Ch. 324, Stats. of 1992

**Support:** ACLU California Action; Bu 702-Seiu 721 Joint Council; California Public Defenders Association (CPDA); Chief Probation Officers' of California (CPOC); Ella Baker Center for Human Rights; Initiate Justice; Justice2jobs Coalition; LA Defensa; Local 148 LA County Public Defenders Union; Los Angeles County Probation Managers Association AFSCME Local 1967; Los Angeles County Probation Officers Union, AFSCME Local 685

**Opposition:** Judicial Council of California; Riverside County District Attorney

**Assembly Floor Vote:** 67 - 0

### PURPOSE

***The purpose of this bill is to exempt probation officers, as defined, from serving as a juror in a criminal trial.***

*Existing law* provides a right to a jury trial in felony and misdemeanor cases. (Cal. Const., art I § 16.)

*Existing law* states that the policy of the State of California is that all persons selected for jury service are to be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the state; that all qualified persons have an obligation to serve as jurors when summoned; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civ. Proc., § 191.)

*Existing law* requires all persons selected for jury service to be selected at random, from sources that include a representative cross section of the population of the area served by the court, as specified. (Code Civ. Proc., § 197.)

*Existing law* states that no person shall be excluded from jury service in California unless they:

- Are not citizens of the United States;
- Are under 18 years of age;
- Are not domiciliaries of the State of California, or residents of the jurisdiction wherein they are summoned to serve;
- Have been convicted of malfeasance in office and whose civil rights have not been restored;
- Do not hold sufficient knowledge of the English language;
- Currently serve as a grand or trial juror in any court of this state;
- Currently are incarcerated;
- Currently are subject to a conservatorship;
- Have been convicted of a felony and remain on parole, probation, or post-release supervision; or,
- Currently are required to register as a sex offender. (Code Civ. Proc., § 203.)

*Existing law* states that no eligible person shall be exempt from jury service as a trial juror by reason of occupation, except as specified. (Code Civ. Proc., § 204, subd. (a).)

*Existing law* requires the jury commissioner to randomly select jurors for jury panels to be sent to courtrooms for voir dire. (Code Civ. Proc., § 219, subd. (a).)

*Existing law* excludes the following peace officers from random selection to be sent to courtrooms for voir dire in civil and criminal matters:

- Any sheriff, undersheriff, or deputy sheriff employed in the capacity by a county government;

- Any chief of police, of a city, or a chief, a director, or a chief executive officer of a municipal public safety agency, and any peace officer appointed by one of these individuals;
- Any police officers or port wardens employed by the San Diego Unified Port District Police or the Harbor District of the City of Los Angeles;
- Any marshal or deputy marshal of a superior court or county;
- The Attorney General of California;
- All special agents and investigators of the Department of Justice;
- Any chief, assistant chief, deputy chief, deputy director, and division director of the Department of Justice designated as a peace officer by the Attorney General;
- Any deputy sheriff from counties, as specified, employed to perform duties related to custodial responsibilities at any county custodial facility;
- Any member of the Department of the Highway Patrol provided that their duty is the enforcement of the law or the protection of state officers, state properties, and the occupants of state properties; and,
- A member of the San Francisco Bay Area Rapid Transit District Police Department provided that their duty is the enforcement of the law in or about the property owned by the District. (Code Civ. Proc., § 219, subd. (b)(1).)

*Existing law* excludes the following peace officers from random selection to be sent to courtrooms for voir dire in criminal matters:

- A member of the University of California Police Department provided that the officer is assigned to the enforcement of the law within one mile of a University of California campus or property owned and administered by the University of California; and,
- A member of the California State University Police Department provided that the officer is assigned to the enforcement of the law within one mile of a California State University campus or property owned and administered by the California State University. (Code Civ. Proc., § 219, subd. (b)(2).)

*Existing law* allows an eligible person to be excused from jury duty in cases of undue hardship, upon the person or the public. (Code Civ. Proc., § 204 subd. (b).)

*Existing law* provides that it is an undue hardship for a prospective juror whose services are immediately needed for the protection of the public health and safety, if it is not feasible to make alternative arrangements to relieve the person of those responsibilities during the period of service as a juror without substantially reducing essential public services. (Cal. Rules of Court, rule 2.1008(d)(6).)

*Existing law* requires the Judicial Council to adopt a rule of court, requiring the trial courts to establish procedures for jury service that gives peace officers scheduling accommodations when necessary. (Code Civ. Proc., § 219.5.)

*This bill* exempts probation officers from being selected for voir dire in a criminal matter.

*Existing law* defines a peace officer as including a probation officer with authority extended only as follows:

- To conditions of parole, probation, mandatory supervision, or postrelease community supervision by any person in this state on parole, probation, mandatory supervision, or postrelease community supervision;
- To the escape of any inmate or ward from a state or local institution;
- To the transportation of persons on parole, probation, mandatory supervision, or postrelease community supervision;
- To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of the officer's employment; and,
- To the rendering of mutual aid to any other law enforcement agency. (Pen. Code, § 830.5, subd. (a).)

*This bill* provides that "probation officer" means a probation officer as described in the aforementioned provision.

## COMMENTS

### 1. Need for This Bill

According to the author:

Probation officers play a pivotal role in our justice system tasked with supervising offenders, conducting presentence investigations, testifying in court, developing rehabilitation plans, maintaining detailed records, providing counseling and guidance, communicating with police, correctional officers, attorneys and judges, ensuring compliance with court orders, and directly interacting with both offenders and victims. However, under current law, a probation officer may also be called to serve on a jury. Their professional responsibilities create a perception of bias if they are selected as jurors, as they often have prior knowledge of defendants or firsthand experience with similar cases. The jury selection process is designed to ensure impartiality, yet placing a probation officer in the jury box introduces the potential for perceptions that probation officers will have preconceived notions that could unfairly influence a trial's outcome. Additionally, exempting probation officers from serving on criminal trials aligns with existing law, which already excludes certain peace officers from jury duty due to their close ties to the justice system. Additionally, requiring probation officers to serve on juries can delay probation hearings, leaving offenders unsupervised or

unaccountable for extended periods. Making probation officers sit in a courtroom only to be excused during voir dire wastes valuable time and resources that could be better spent on supervision, case management, and ensuring probationers are receiving timely access to critical services needed to comply with court orders.

## 2. Potential Conflicts, Bias, and Impartiality

Both the U.S. and state constitutions guarantee defendants accused of a crime the right to a trial by unbiased, impartial jurors. (U.S. Const., 6th and 14th Amendments; Cal. Const., art. I, section 16; *Irvin v. Dowd* (1961) 366 U.S. 717, 722; *In re Hitchings* (1993) 6 Cal.4th 97, 110.) An impartial juror is someone capable and willing to decide the case solely on the evidence presented at trial. (*Smith v. Phillips* (1982) 455 U.S. 209, 217.) A sitting juror's bias renders them unable to perform their duty and thus the juror could be challenged for cause and subject to discharge and substitution. (*People v. Keenan* (1988) 46 Cal.3d 478, 532; *People v. Lomax* (2010) 49 Cal.4th 530, 589; Code Civ. Pro., §§ 225, subds. (b)(1)(B) [implied bias] & (b)(1)(C) [actual bias], § 229 [implied bias].)

Whether a juror is impartial is discovered through the voir dire process. During voir dire the parties and judge ask questions of prospective jurors in order to learn information about them. For example, during voir dire prospective jurors are commonly asked whether they know any of the people associated with the case, including the parties, their witnesses, the attorneys, the judge, and the court staff.

Even where inquiry during voir dire does not disclose proof supporting a challenge for cause, a party may exercise a certain number of peremptory challenges to remove a juror in both civil and criminal trials. (Code Civ. Pro., §§ 225, subd. (b)(2), 231.) Peremptory challenges may not be used in an unlawful discriminatory manner. (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258; Code Civ. Pro., § 231.7.)

## 3. The Constitutional Problem of Categorically Excluding from Jury Duty Certain Occupations

The Legislature should exercise caution when deciding whether to continue down the path of excluding certain categories of people from jury service. "...[T]he constitutional rule requiring a representative jury bars not only the exclusion of a group, but disproportionate reduction in its members; if some persons with a particular life experience are barred from the jury, others cannot properly represent the perspective of those excluded because the number of persons with that perspective will be disproportionately small." (*People v. Harris* (1984) 36 Cal.3d 36, 51, fn. 5.)

It is a fundamental tenet of the U.S. Constitution that a criminal defendant is entitled to trial by an impartial jury drawn from a representative cross-section of the community. (*Taylor v. Louisiana* (1975) 419 U.S. 522, 530; *People v. Wheeler*, *supra*, 22 Cal.3d at p. 272.) As the Supreme Court stated, "in our heterogeneous society jurors will inevitably belong to diverse and often overlapping groups defined by race, religion, ethnic or national origin, sex, age, education, occupation, economic condition, place of residence, and political affiliation; that it is unrealistic to expect jurors to be devoid of opinions, preconceptions, or even deep-rooted biases derived

from their life experiences in such groups; and hence that the only practical way to achieve an overall impartiality is to encourage the representation of a variety of such groups on the jury so that the respective biases of their members, to the extent they are antagonistic, will tend to cancel each other out.” (*Wheeler, supra*, at pp. 266-267.) The Court concluded that the exclusion of prospective jurors solely on the ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community. (*Id.* at pp. 276-277.)

A defendant may challenge a jury conviction for a violation of the fair-cross-section requirement. To do so the defendant must show (1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.” (*Duren v. Missouri* (1979) 439 U.S. 357, 364.) No litigant has the right to a jury that mirrors the demographic composition of the population, or necessarily includes members of their own group, or is composed of any particular individuals. (*People v. Wheeler, supra*, at p. 277.) Jurors are subject to for cause and peremptory challenges on grounds of specific bias; but, as the Court warned “we cannot countenance the decimation of the surviving jurors” on the ground of group bias. (*Id.* at pp. 277-278.) In Sixth Amendment fair-cross-section cases, systematic disproportion itself demonstrates an infringement of the defendant's interest in a jury chosen from a fair community cross section. The only remaining question is whether there is adequate justification for the infringement. (*Duren v. Missouri, supra*, at p. 368, fn. 26.) To be adequate “requires that a significant state interest be manifestly and primarily advanced by those aspects of the jury-selection process, such as exemption criteria, that result in the disproportionate exclusion of a distinctive group.” (*Id.* at p. 367.)

California law has long recognized that a broad pool of potential jurors is needed to ensure the fairness of the legal process. In 1975, AB 681 (Siegler) Chapter 593, Statutes of 1975 replaced California’s remaining limited jury duty exemptions with a generic provision allowing any person to be excused from jury duty for undue hardship to themselves or the public. In the years since 1975, several categories of front-line peace officers have been exempted from jury service. (See Code Civ. Pro., § 219.)

An exemption for specified peace officers and California Highway Patrol (CHP) officers from civil and criminal matters was created in 1992 and an exemption for University of California police officers and members of the Department of Corrections Law Enforcement Liaison Unit was added in 1994. (AB 2577 (Wright), Ch. 324, Stats. of 1992; SB 2066 (Rogers), Ch. 742, Stats. of 1994.) In 2001, SB 303 (Torlakson), Chapter 55, Statutes of 2001, created a new public safety officer carve out that exempted San Francisco Bay Area Rapid Transit District police from jury service in both civil and criminal matters. In 2002, AB 1970 (Mathews) attempted to add probation, parole, and correctional officers to the jury duty exemptions, and it was never heard in Senate Public Safety. In 2014, AB 1708 (Alezo) attempted to add certain parole officers, probation officers, deputy probation officers, board coordinating parole agents, correctional officers, transportation officers of a probation department, and other employees of the Department of Corrections and Rehabilitation, the State Department of State Hospitals, and the Board of Parole

Hearings to the jury duty exemption. AB 1708 was never heard in Assembly Public Safety. In 2018, the Legislature passed AB 2240 (Grayson), which would have exempted probation, parole, and correctional officers from jury service in criminal trials. The Governor vetoed AB 2240, stating:

“Jury service is a fundamental obligation of citizenship. I am not inclined to expand the list of those exempt simply because of their occupation.”

The following year, AB 310 (Santiago) sought to exempt probation officers from having to serve in criminal trials. This provision was removed from the bill which was then withdrawn from the Senate Public Safety Committee.

This bill adds probation officers to the list of occupations already categorically exempted from jury duty in criminal cases. This is so despite the fact that probation officers may already be excused from jury service if it is an undue hardship because their services are immediately needed for the protection of the public health and safety. (Code Civ. Pro., § 213; Cal. Rules of Court, rule 2.1008(d)(6).) Members of this group can also be dismissed for cause during voir dire, if needed. (Code Civ. Pro., § 225, subds. (b)(1)(B) [implied bias] & (b)(1)(C) [actual bias], § 229 [implied bias].)

Are the parties and the judge in a better position to determine, through voir dire, whether a particular probation officer has a conflict of interest in serving on the jury on a case by case basis? Despite the current exemptions, most participants in the criminal justice process, including attorneys and judges, remain eligible for jury service, reflecting the widely held belief that making the full scope of the citizenry eligible for jury service is imperative to a functioning democracy. Should the Legislature exclude probation officers from jury duty when parole officers, who play similar role in the criminal justice system, are not excluded? What about correctional officers who work in the prison system?

Additionally, as amended in the Assembly on March 5, 2025, the bill does not exempt probation officers from serving in civil trials. However, similar impartiality and conflict concerns can arise in civil cases. For example, state and local inmates, former inmates, and parolees file civil actions challenging their conditions of confinement and supervision against officers and correctional institutions under state and federal law. These lawsuits often allege civil rights violations on the incarcerated person, parolee, or probationer by an officer. In these cases, correctional officers, probation officers, and parole officers selected for jury duty could still end up supervising the plaintiff, and could have preexisting knowledge of prior offenses committed by a repeat offender who may be a plaintiff or a witness, and could be more favorable to the defendants and defendants’ witnesses. In both criminal and civil cases, these potential conflicts should be exposed during voir dire, and the officer could be dismissed via a preemptory challenge, or by a judge or either party for cause.

Should the Legislature categorically exclude probation officers from jury duty in criminal trials, but not civil trials, even though both could present a conflict of interest in some cases, and both require officers to miss time from work?

#### **4. Argument in Support**

According to the Chief Probation Officers:

...[W]e are pleased to support Assembly Bill 387, which would exempt probation officers from being selected for voir dire for jury service in criminal matters. This exemption is the same as that afforded to other peace officers including sheriffs, police, California Highway Patrol, San Francisco BART police, and UC and CSU police.

As an entity responsible for critical community safety services for youth and adults, as well as our role in supporting the court, pulling probation officers away from their duties, even for the important civic act of serving on a jury, significantly impacts their respective agencies' ability to effectively manage delivery of these critical services. More often than not, probation officers get released from the jury pool as part of the voir dire process, precisely because of the responsibilities articulated above. Continuing to include probation officers as part of the eligible pool is both a waste of the courts' time and resources as well as creates additional pressures on probation departments to pull officers away from core functions.

As an arm of the court, probation officers have obligatory pretrial responsibilities such as administering pretrial programs in coordination with courts and preparing reports to the courts. These duties may involve interviewing the defendant and witnesses and reviewing information on the circumstances of the offense.

Probation officers also have significant post-conviction responsibilities including supervision and programming for people on probation, mandatory supervision, and Post Release Community Supervision. Further, probation is also responsible for administering the operation and programming of juvenile halls, camps, and ranches along with providing services to youth in the community including cognitive behavioral therapy, wraparound services, referrals to mental health or substance use disorder treatment, and vocational and educational programming among others.

AB 387 recognizes the role of probation in both the adult and juvenile justice systems, both from a pre conviction and post-conviction perspective, and ensures that officers can continue to best serve the needs of those under our care and supervision. For these reasons, CPOC is pleased to support AB 387.

#### **5. Argument in Opposition**

According to the Judicial Council of California:

The Judicial Council must regretfully oppose Assembly Bill 387, which exempts probation officers, as defined, from being selected for voir dire in criminal matters. While we appreciate the most recent amendments to the bill to remove the exemption for civil matters, the council remains in opposition to an exemption for probation officers from service on criminal juries.



The council has a longstanding policy of opposing categorical exemptions from jury service and believes that statutorily exempting specific categories of persons from jury duty reduces the number of available jurors, makes it more difficult to select representative juries, unfairly increases the burden of jury service on other segments of the population, and is unnecessary as existing law allows for exemptions based on hardships.

In principle, the jury system shares the same core tenet as a democracy, namely, that the most equitable way of managing societal affairs is to ensure all different segments of our community are afforded a meaningful opportunity to participate in, and help inform, significant decisions. Constitutional law has interpreted the Sixth Amendment's right to an impartial jury to mean that a jury should ideally be a body that is a fairly representative cross section of the community. As pointed out in *Thiel v. Southern Pacific Co.* (1946) 328 U.S. 217, 220], this does not mean,

that every jury must contain representatives of all the economic, social, religious, racial, political, and geographical groups of the community... [however,] it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups.. Jury competence is an individual rather than a group or class matter.. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

For decades, there have been repeated attempts to exclude certain groups from participating in the jury process. Although the constitutionality of categorical exemptions would be decided on a case-by-case basis, our concern derives from the exhortation for restraint issued by the United States Supreme Court when discussing categorical jury duty exemptions. In warning state legislatures to be mindful when creating categorical exemptions it stated, "We stress, however, that the constitutional guarantee to a jury drawn from a fair cross section of the community requires that States exercise proper caution in exempting broad categories of persons from jury service.

While existing law exempts only certain types of peace officers, at one point of time in California's history, the Code of Civil Procedure exempted 17 different occupations from jury service. Among other occupations, the list included teachers, doctors, faith healers, merchant seamen, clergy, railroad employees, attorneys, peace officers, telephone and telegraph operators, firefighters, military personnel, and dentists. Then in 1975, AB 681 (Siegler) Ch. 593, repealed the entire list and replaced it a general provision which allowed for an excusal if jury duty would be an undue hardship on the person or public served by the person.

After the lists of exempt occupations was repealed in 1975 and the undue hardship rule was created, the Legislature has since reinstated several exemptions. According to a Senate Judiciary Committee analysis from 2015:

First, a full exemption from jury duty was re-established for "line" peace officers—police, sheriffs, CHP—by passage of SB 549 (Wilson, Ch. 748, Stats. 1977), the rationale being that such individuals were rarely chosen to serve and a vital public resource was wasted in attendance through the process

of jury selection. This exemption was later extended to judges. Then in 1988, a comprehensive revision of the law relating to juries was enacted by AB 2617 (Harris, Ch. 1245, Stats. 1988) wherein the exemption for judges was removed, and the peace officer exemption was limited to criminal matters only. Again, in 1992, the peace officer exemption was expanded to include civil cases and, two years later, an exemption from voir dire in criminal cases was extended to California State University and University of California police. Finally, in 2001, an exemption was provided for Bay Area Rapid Transit [BART] District police from jury duty in civil and criminal matters.

Although BART officers were the last occupation to successfully exempt themselves from jury duty, throughout the years numerous bills have been introduced that attempted to exempt certain occupations. These occupations include firefighters, nurses, judges, self-employed persons, community college and school district police, and correctional, parole, and probation officers. While many of these bills failed passage in the legislature, two of the bills were expressly vetoed. In vetoing AB 2240 (Grayson), of the 2017-18 legislative session, which would have exempted probation, parole, and correctional officers, Governor Brown stated, “Jury service is a fundamental obligation of citizenship. I am not inclined to expand the list of those exempt simply because of their occupation.” In his veto message of AB 1769 (Galgiani), which would have exempted community college and school district officers, Governor Schwarzenegger specifically noted how the current rule for undue hardship gives flexibility to jurors:

“Currently a specified group of peace officers are exempt from voir dire due to the public need of their critical public safety function. This bill would extend the exemption to yet another specified group, in this instance police and peace officers employed by a community college or school district. All peace officers perform critical public safety functions but not all are exempt. In addition, this bill could reduce the pool of potential jurors, thus creating a strain on the judicial system. The judicial system already has enough difficulty gathering potential jurors. In the event that an officer is unable to serve on a jury, current law already allows jury service exemption for undue hardship, which renders this bill unnecessary.”

(AB 1769 (Galgiani) of the 2007-08 legislative session.)

Part of the council’s reasoning for opposing such categorical exemptions is its belief that the existing jury duty structure contains enough flexibility for jurors whose lives would be unduly burdened if they had to serve. Current law continues to allow an individual to be excused from jury service for undue hardship upon themselves or the public. (Code Civ. Proc. § 204(b).) Jurors can be excused on the ground of undue hardship for a variety of reasons; including if their services are immediately needed for the protection of public health and safety, in cases where alternative arrangements would substantially reduce essential public services. (Cal. Rules of Court, rule 2.1008(6).) In addition to the existing rules for the general public, probation officers are given greater scheduling accommodations. Code of Civil Procedure section 219.5 required the Judicial Council to adopt a rule of court to give certain peace officers, including probation officers, scheduling accommodations when necessary. Accordingly, for members of the general public, a jury commissioner should try to

accommodate a juror's schedule by granting a one-time deferral of jury service, and should not require a juror appear in person to make the request if it was sent under penalty of perjury. (Cal. Rules of Court, rule 2.1004(a).) However, for specified officers, including probation officers, the jury commissioner must make scheduling accommodations with no limit on how many deferrals can be made, and they cannot require a probation officer to make the request in person if it was sent under penalty of perjury. (Cal. Rules of Court, rule 2.1004(b).) While probation officers play a significant role in the criminal justice system, along with district attorneys, defense attorneys, judges, court clerks, and numerous other nonexempt occupations, the council respectfully believes the list of categorical exemptions should not be further expanded.

For these reasons, the Judicial Council opposes AB 387. [Footnotes omitted.]

**-- END --**