
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1452 **Hearing Date:** June 29, 2021
Author: Ting
Version: June 17, 2021
Urgency: No **Fiscal:** Yes
Consultant: KW

Subject: *Pilot program: increased fee for low-income jurors: criminal trials*

HISTORY

Source: San Francisco Public Defender's Office

Prior Legislation: SB 592 (Wiener) Ch. 230, Stats. 2020
AB 3070 (Weber) Ch. 318, Stats. 2020
SB 1133 (Jackson) Died in Assembly Public Safety Committee 2020
SB 212 (Umberg) Died in Senate Public Safety Committee 2020

Support: ACLU California Action; California Public Defenders Association; California for Safety and Justice; Ella Baker Center for Human Rights; GLIDE; Homerise; Legal Services for Prisoners with Children; Mo'MAGIC; San Francisco District Attorney; San Francisco Financial Justice Project; Young Community Developers; Young Women's Freedom Center

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to launch a pilot program through the Superior Court of San Francisco to determine whether paying low-income jurors \$100 a day during the trial would lead to a more diverse panel of jurors.

Existing law establishes the Trial Jury Selection and Management Act. (Code of Civil Procedure, Sec. 190.)

Existing law requires that all persons selected for jury service be selected at random from the population of the area served by the court and that all qualified persons have an equal opportunity to be considered for jury service in the state. (Code of Civil Procedure, Sec. 191 & 192.)

Existing law requires all persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists. (Code of Civil Procedure, Sec. 197 (a).)

Existing law states no eligible person shall be exempt from service as a trial juror by reason of occupation, economic status, or any characteristic listed or defined in Section 11135 of the Government Code, or for any other reason. No person shall be excused from service as a trial juror unless otherwise specified by Judicial Council. (Code of Civil Procedure, Sec. 204 (a) & (b).)

Existing law requires the jury commissioner to maintain records regarding the selection and assignment of jurors, maintain records of regarding the juror's fees and mileage, and preserve these records for at least three years afterwards. (Code of Civil Procedure, Sec. 207 (a) (b) & (c).)

Existing law establishes:

- a) The fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars (\$15) a day for each day's attendance as a juror after the first day.
- b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).
- c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of thirty-four cents (\$0.34) per mile for each mile actually traveled in attending court as a juror after the first day, in going only. (Code of Civil Procedure, Sec. 215 (a) (b) & (c).)

This bill would authorize the San Francisco Superior Court to conduct a pilot program to increase the pay for low-income jurors during a trial in an attempt to diversify the jury panel and create a more accurate representation of the community.

This bill states a juror shall be paid a fee of one hundred dollars (\$100) per day for each day they report for trial, if their household income for the past 12 months is less than 80 percent of the San Francisco Bay area median income and they meet one of the additional following:

- 1) The trial juror's employer does not compensate for any trial jury service.
- 2) The trial juror's employer does not compensate for trial jury service for the estimated duration of the criminal jury trial.
- 3) The trial juror is self-employed.
- 4) The trial juror is unemployed.

This bill states this program court shall only fund the one-hundred-dollar (\$100) fee to eligible jurors using funding through The Financial Justice Project of the City and County of San Francisco.

This bill requires self-reported data collection from the jurors including race, ethnicity, and income level to provide a thorough analysis of whether increasing the fee for certain low income jurors has an effect on the demographics of the panel.

This bill requires the San Francisco Superior Court to select a third-party entity to prepare an analysis of the data collected by the jurors and present their findings to the Court and the Legislature.

This bill requires the San Francisco Superior Court to terminate the pilot program on or before December 31, 2023.

This bill requires this code section to be repealed on January 1, 2025.

COMMENTS

1. Need for This Bill

According to the author:

The “Be The Jury” pilot program aims to provide compensation to low-income San Franciscans who would like to serve on juries, but cannot because they would face a financial hardship. Jury duty is perhaps the most meaningful opportunity for true civic engagement that our system provides. However, due to financial constraints, many, often those from the neighborhoods most affected, are deprived of this opportunity for engagement. We believe this effort would help us ensure that San Francisco juries are economically and racially diverse, and therefore better able to administer justice that reflects the values of diverse San Francisco communities.

The “Be The Jury” pilot program was developed through a partnership of stakeholders in the criminal legal system, demonstrating that such a pilot program is critically needed. Working group members include the San Francisco Public Defender’s Office, the San Francisco District Attorney’s Office, the San Francisco Bar Association, and the San Francisco Financial Justice Project in the Treasurer’s Office.

The right to a jury of peers is at the core of our system of justice. The right to a trial by jury is the only right that appears in both the Constitution and the Bill of Rights. A jury of peers means a jury of equals, to draw jurors from different races, genders, and socioeconomic classes. Yet a troubling phenomenon is occurring: juries are whiter and wealthier, and not reflective of the economic or racial diversity of San Francisco’s overall population. Many San Franciscans would like to serve on a jury, but cannot, because they cannot afford to take time off work that is required.

California, like many states, requires employers to provide time off for employees who are summoned to jury duty. While time off work is guaranteed, California law does not require employers to pay employees who serve on a jury. If a juror’s employer does not cover their salary, jurors earn nothing on their first day of service and \$15 per day after that. Because many low-income families cannot afford to forfeit days, weeks, or months of their salary, many minimum wage, low-income workers or workers file a claim of financial hardship and are excused from service. In a 2004 report presented to the Judicial Council from the Task

Force on Jury System Improvements, the commission called the rate paid to California jurors for daily service and mileage “insulting.”

As a result, jury pools tend to be composed of people who can afford to serve unpaid or who have employers who’ll pay them while they’re serving. Diverse juries are critical to the fair delivery of justice in San Francisco. In a city with increasing income inequality, it is more important than ever to ensure all San Franciscans can have a jury of their peers.

AB 1452 would implement “Be The Jury,” a pilot program where low- to moderate-income jurors are compensated \$100 per day for jury service in the San Francisco Superior Court. Jurors are eligible if their household income is less than 80% Area Median Income (\$71,700 for a single person; \$102,500 for a household of four) and they meet one of the following criteria:

1. Their employer does not compensate for jury service;
2. Their employer does not compensate for the estimated duration of jury service;
3. They are self-employed; or
4. They are unemployed.

The “Be The Jury” pilot program would test out whether providing increased compensation creates juries that are more economically and racially diverse. Through the pilot program, stakeholders hope to learn if people who would have claimed a financial hardship can serve because of this program and whether this program impacts the economic and racial diversity of juries in a meaningful way. This pilot program will be funded through philanthropic funds raised by the San Francisco Financial Justice Project in the San Francisco Treasurer’s Office.

2. San Francisco Financial Justice Project

San Francisco is the first city and county in the nation to launch a Financial Justice Project to assess and reform how fees and fines impact our city’s low-income residents and communities of color. Fines, fees, and financial penalties can trap low-income residents in a maze of poverty and punishment and prevent people from succeeding. We work with community groups, city and county departments and the courts to advance reforms that work better for people and for government. Working with our partners, we have eliminated or adjusted dozens of fees and fines to lift a financial burden off of struggling residents. We are housed in the San Francisco Office of the Treasurer & Tax Collector.¹

The mission of the Office of the Treasurer & Tax Collector is to:

- Facilitate voluntary compliance with the tax laws of the City and County of San Francisco by simplifying all processes and procedures and by providing efficient customer service.
- Collect all taxes and fees due and owing to the City.
- Conserve all City funds, prudently investing the monies to achieve maximum yield, low risk and high liquidity.²

¹ <https://sfgov.org/financialjustice/>

² <https://sftreasurer.org>

3. Task Force on Jury System Improvements

In their 2004 Final Report, the Judicial Council of California wrote:

The blue ribbon commission called the rate paid to California jurors for daily service and mileage “insulting.”⁵ The commission demonstrated that if the \$5-per-day fee and \$0.15-per-mile mileage reimbursement had merely been adjusted for inflation since they were enacted in the 1950s, jurors would receive \$28.42 per day and \$0.85 per mile in 1996 dollars.

Based on a review of comments received about Recommendation 3.25 when the blue ribbon commission report was circulated for comment, the Judicial Council approved the proposal calling for increased juror compensation, with the additional statement that any increase should be assured through state funds. Comments reflected concerns about the potential increased costs, but there was widespread recognition of the importance of raising the fee above \$5 per day and the mileage reimbursement above \$0.15 cents per mile one way. Because of the financial impact of pending state trial court funding legislation (Stats. 1997, ch. 850), the council approved an incremental increase in juror compensation.

Subsequently, Judicial Council–sponsored legislation was introduced to implement the first phase of increased juror fees and mileage reimbursement (Sen. Bill 14 [Calderon], 1996, calling for juror fees of \$16 per day after the first day and mileage reimbursement of \$0.28 per mile one way for jurors traveling more than 50 miles). Although Senate Bill 14 did not pass, from 1997 through 1999 various pieces of legislation that called for increased juror fees, developed in concert with the AOC’s Office of Governmental Affairs and the task force’s Jury Management Working Group, were introduced. (See Assem. Bill 2551 [Migden], 1998, calling for \$40 per diem and \$0.28 round-trip mileage reimbursement; Assem. Bill 592 [Migden], 1999, calling for \$15 per diem and mileage and dependent-care reimbursement up to \$50 per day.) Ultimately juror fees were raised to \$15 a day for the second and subsequent days of jury service, starting July 1, 2000. (Stats. 2000, ch. 127.) This represented the first raise in juror pay in California since 1957. First-day juror pay was eliminated in concert with the implementation of one-day or one-trial jury service. (See BRC Recommendation 3.21.) Because the length of jury service was being considerably shortened for most jurors, a contribution of one day to jury service on the part of citizens was not seen as a significant hardship. In addition, the savings from eliminating the first-day payment helped fund the increased payment for jurors whose service extended beyond one day.

However, juror mileage reimbursement remained at \$0.15 per mile one way for all days of service. In many court systems, this resulted in a great number of checks being cut for very small amounts of money—to reimburse jurors who traveled a few miles and served for only one day. The administrative costs were often much greater than the amount of the reimbursement. To eliminate this wasteful practice, legislation was passed effective January 1, 2003, that eliminated first-day mileage and increased the reimbursement rate for mileage to \$0.34 per mile, matching the then-current rate for state employees. (Stats. 2002, ch. 144.) Reimbursement was still paid for one-way travel only, however, so the result would be essentially revenue neutral; the anticipated savings from eliminating first-day mileage

reimbursements were projected to fund the increased reimbursements for second- and subsequent-day service.³

4. Argument in Support

According to Californians for Safety and Justice:

Today a troubling phenomenon has emerged: juries are whiter and wealthier, and not reflective of our communities' economic and racial diversity.

To address this issue, a working group of agencies at the City and County of San Francisco has developed the "Be The Jury" pilot program. This program will compensate low- to moderate-income jurors \$100 per day for jury service in the San Francisco Superior Court. Jurors will be eligible if their household income is less than 80 percent Area Median Income and they meet one of the following criteria: (1) their employer doesn't compensate for jury service; (2) their employer does not compensate for the estimated duration of jury service; (3) they are self-employed; or (4) they are unemployed.

The Be The Jury pilot program was borne from feedback given through interviews and listening sessions with San Franciscans with low to moderate incomes and community-based organizations, including Californians for Safety and Justice, to better understand the challenges with creating more diverse juries. These conversations confirmed that for many, the current rate of compensation for jury service in California (\$15 per day) creates significant barriers for people who would like to serve on a jury, but cannot, because they cannot afford to take time off work that is required. Californians for Safety and Justice strongly believes that the Be The Jury pilot program will help ensure that San Francisco juries are more economically and racially diverse, and therefore better able to administer justice that reflects the values of diverse San Francisco communities. The pilot is already fully funded through philanthropic support and has wide buy-in from community organizations, the San Francisco Public Defender, District Attorney, Treasurer's Office, and Bar Association. Now, all that is needed is the state authorization to begin.

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³ https://www.courts.ca.gov/documents/tfjsi_final.pdf