
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1972 **Hearing Date:** June 21, 2022
Author: Ward
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Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Grand juries*

HISTORY

Source: Western Center on Law and Poverty

Prior Legislation: AB 1161(Papan) Chapter 218, Stats.2001
AB 1796 (Papan) 2000, Vetoed

Support: California Attorneys for Criminal Justice; California Public Defenders Association

Opposition: California State Association of Counties; Rural County Representatives of California; Urban Counties of California

Assembly Floor Vote: 53 - 17

PURPOSE

The purpose of this bill is to increase the compensation for individuals selected to serve as grand jurors and requires demographic data to be collected during the grand jury selection process.

Existing law requires each county to have a grand jury drawn and summoned at least once a year. (Cal. Const. Art. I, §23.)

Existing law defines a “Grand jury” as a body of the required number of persons from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county. (Penal Code § 888.)

Existing law provides that the grand jury of a county may inquire into all public offenses committed or triable within the county, and present them to the court by indictment. (Penal Code § 917.)

Existing law provides that the compensation for grand jurors is \$15 a day for each day’s attendance, and the mileage reimbursement applicable to county employees for each mile actually traveled in attending court, unless a higher fee or rate of mileage is provided by statute, county or city ordinance. (Penal Code § 890.)

Existing law authorizes the board of supervisors in each county to specify by ordinance the compensation and mileage for members of the grand jury in that county. (Government Code § 68091.)

Existing law states that the juror fees shall be paid by the treasurer of the county out of the general fund of the county. (Penal Code § 890.1.)

Existing law provides that a person is competent to act as a grand juror if the person possesses the following qualifications:

- a) The person is a citizen of the United States;
- b) The person is over the age of 18;
- c) The person is a resident of the state and of the county or city and county for one year immediacy before being selected;
- d) The person is in possession of their natural faculties, or ordinary intelligence, and is of sound judgment and fair character; and,
- e) The person has proficient and sufficient knowledge of the English language. (Penal Code § 893.)

Existing law provides that a person is not competent to act as a grand jury if any of the following apply:

- a) The person is serving as a trial juror;
- b) The person has been discharged as a grand juror within one year;
- c) The person has been convicted of malfeasance in office or any felony or other high crime; and,
- d) The person is serving as an elected public officer. (Pen. Code, § 893.)

Existing law states that the court shall select the grand jurors by personal interview for the purpose of ascertaining whether they possess the qualifications to be competent to act as a grand juror. (Penal Code § 895 (a).)

Existing law states that the grand juror selections shall be made of men and women who are not exempt from serving and who are suitable and competent to serve as grand jurors. (Penal Code § 895 (b).)

Existing law requires the grand jurors to be selected from the different wards, judicial districts or supervisorial districts of the respective counties in proportion to the number of inhabitants therein. In counties with a population of 4,000,000 and over, the grand jurors may be selected from the county at large. (Penal Code § 899.)

Existing law provides that judges should not nominate to the grand jury a spouse or immediate family member of any superior court judge, commissioner, or referee, elected official, or department head of any city, county, or governmental entity subject to grand jury scrutiny. (Cal. Rules of Court, Standard 10.50 (e).)

Existing law authorizes the superior court to name up to 10 regular carryover jurors who served on the previous grand jury and who consent to serve for a second year and encourages the court to consider carryover grand jury selections that ensure broad-based representation. (Penal Code § 901 (a) & (b); Cal. Rules of Court, Standard 10.50 (c).)

Existing law requires the court to list the persons selected to serve as grand jurors and to place the list in the possession of the jury commissioner. (Penal Code, § 895 (b).)

Existing law requires the jury commissioner to file the grand juror list in the jury commissioner's office and have the list, which shall include the name of the judge who selected each person on the list, published one time in a newspaper of general circulation in the county. (Penal Code § 900.)

Existing law establishes an alternative grand jury selection procedure, which requires the jury commissioner, annually, to furnish a list of persons qualified to serve as grand jurors to the judges of the court. (Penal Code §§ 903.1, 903.3.)

Existing law provides that the judges shall examine the list of persons recommended by the jury commissioner for the grand jury, and may select persons from the list to serve as grand jurors. (Penal Code § 903.3.)

Existing law provides that judges are not required to select any name from the list returned by the jury commissioner and may in their judgment, make every, or any selection from among the body of persons in the county suitable and competent to serve as jurors. (Penal Code § 903.4.)

Existing law states that judges who nominate persons for grand jury selection are encouraged to select candidates from a list returned by the jury commissioner or to otherwise employ a nomination procedure that will ensure broad-based representation from the community. (Cal. Rules of Court, Standard 10.50(d).)

Existing law provides that no challenge may be made to the panel of the grand jurors or to an individual grand juror, except when made by the court on the ground that the juror is not qualified to act as a grand juror. (Penal Code §§ 909, 910.)

Existing law requires the jury commissioner to mail trial jurors jury summonses, as specified. (Code Civ. Proc., § 207.)

Existing law states that trial summonses shall contain the date, time, and place of appearance required of the prospective juror, and additional juror information as deemed appropriate by the jury commissioner. (Code Civ. Proc., § 210.)

This bill provides that a jury summons may also contain information on how to become a juror on a grand jury.

This bill increases the fees for grand jurors to equal to seventy percent of the county median daily income for each day's attendance as a grand juror.

This bill states that the list of persons selected and required to serve as grand jurors shall contain the person's gender, age, race or ethnicity, and residential ZIP Code or supervisorial district of the respective.

This bill provides that the jury commissioner shall file the list of grand jurors and it shall include the name of the judge. A separate list with the name of the judge and the name of all the jurors selected should also be kept.

This bill provides that in addition to naming an additional 10 regular jurors for a grand jury who were on the previous juror this bill also allows the selection of those that are among the list of jurors not selected in an effort to balance the demographic diversity to reflect the general population of the country.

This bill requires that in addition to the list returned to the judges by the jury commissioner of the list of prospective jurors, the bill specifies that the list shall contain the person's name, gender, age, race, or ethnicity, and zip code and that a separate list of prospective grand jurors, carry-over grand jurors, persons recommended by the jury commissioner, persons selected by the court, and certified impaneled grand jurors which shall also contain the demographic information.

This bill provides that each superior court shall by March 15 of each year, starting in March 15, 2024, provide Judicial Council with the list of aggregate data of prospective regular grand jurors, any carry-over grand jurors, persons recommended by the jury commissioner, persons selected by the court, and certified impaneled grand jurors that contains the person's gender, age, race, or ethnicity, and residential Zip Code or supervisorial district of the respective counties, as well as the name of the judge who selected each person. Judicial Council shall report the information to the Legislature.

COMMENTS

1. Need for This Bill

According to the author:

Current law creates circumstances during the selection and compensation of grand jurors which may not provide for a body that is truly representative of the county's demographics. The role is largely voluntary with a per diem compensation of up to \$15 per day served, unless a higher fee is provided by statute or county or city ordinance, a rate not changed since 2001.

Further, while statute requires jury commissioners to note the supervisorial district of candidates in an effort to have geographic diversity, there are no further requirements that would help judges create diversity on race, gender, age, or other demographic characteristics.

AB 1972 would raise the per diem rate for grand jurors to match 70 of the area median daily income in their respective counties to open up the jury pool from which they are selected. Providing a compensation rate that matches the amount of time and work required of each juror will allow for more interested parties to participate as a juror.

Additionally the bill will amend the statutory requirements to include that gender, age, and race or ethnicity be included in the existing reports to newspapers of general circulation and to empaneling judges for their knowledge in their role to create truly representative bodies. The compensation rate would be adjusted to match the prevailing wage in the juror's respective county to attract broader pools of candidates into service while ensuring they are justly compensated and able to serve. The list of certified names and select demographic information would further

be published on the court's internet website in addition to a newspaper of general circulation, in order to increase transparency about the makeup of this important civic institution.

The County Superior courts would then be required to send the aggregate demographic data to the Judicial Council of California who would then be required to release a yearly report to the legislature on the demographic makeup of each of the 52 grand juries. This will allow the legislature to make informed decision towards incentivizing diversity in our grand jury system. These reports will provide state and local governments the tools needed to both understand and address the underlying issues that cause a lack of diversity on County Grand Juries.

These changes are necessary from a racial justice and equity perspective. Juries play a critical role in the lives of Californians involved in the legal system — particularly people of color and those living in poverty who are over-policed. The state has made strides to address bias and lack of diversity in the trial jury process, but hasn't done the same for grand juries. Currently grand juries are disproportionately made up of white retirees who can afford to take time off to serve. This bill acts a first step toward diversifying grand juries in California so they are representative of their populations, and to ensure people are fairly compensated when they serve so jury duty is more accessible for Californians with low incomes. Grand juries act as a critical watchdog authority on essential government departments such as Sherriff Departments and Detention Facilities, while also overseeing the issuing of criminal indictments and investigating allegations of a public corruption. This critical civil duty should not be divided by racial and income lines.

2. Role of Grand Juries

In California, the responsibilities of the grand jury include both the determination whether there is probable cause to believe a crime has been committed and the protection of citizens against unfounded criminal prosecutions. (*People v. Flores* (1969) 276 Cal.2d 61, 65.) The grand jury fulfills its protective function by permitting the government to prosecute an accused only after a grand jury has found it probable that a crime has been committed and that the accused committed the crime. (*Branzburg v. Hayes* (1972) 408 U.S. 665, 687-90.) Grand jurors also possess the power independently to investigate the possibility that a crime may have been committed and act as watchdogs of the public trust and as an objective body reporting on the operations of local government. (*People v. Cohen* (1970) 12 Cal.App.3d 298, 311.)

3. Grand Jury Selection Process

During the month preceding the beginning of the fiscal year of each county, the superior court of the county is required to estimate the number of grand jurors required for the year. Then, judges select the jurors through personal interviews in order to determine whether they possess the statutory qualifications. The selections must be made of persons who are not exempt and who are suitable and competent to serve. They must be selected from different wards, judicial districts, or supervisorial districts in proportion to the number of inhabitants in the county.

The judges then make a list of persons that they selected as grand jurors. The list is given to the jury commissioner, and filed in the commissioner's office. When the jury commissioner receives

the list of persons selected by the judges, the commissioner must have it published once, in a newspaper of general circulation, naming each person selected and designating the judges who selected each of the listed persons.

Next, the commissioner has a choice of depositing the names on separate slips of paper for the drawing, or of depositing slips containing numbers that correspond to the names on the list into a grand jury box. The court orders a drawing, designating the number of names to be drawn and the time of the drawing. The names are then drawn by the jury commissioner. The persons whose names are drawn are summoned to serve as grand jurors. Before accepting a person drawn, the court must be satisfied that the person is qualified to serve as a grand juror.

An alternative procedure is authorized by Penal Code section 903.1, *et seq.* The jury commissioner, must “diligently inquire” of the qualifications of persons residing in the county who may be summoned for grand jury duty. Then, under instructions of the court, the jury commissioner lists the names of the potential jurors and submits the list to the judges. The judges can pick the jurors from the list, and they may disregard any of the recommendations and make their own selections.

Despite the affirmative language setting forth the foregoing grand jury selection procedures, irregularities in formation of the grand jury have practically no effect on the validity of an indictment. (See e.g., *People v. Thornton* (2007) 41 Cal.4th 391, 412 [selection of grand jurors upheld, even though district attorney staff performed criminal history check and conducted interviews with applicants, neighbors, and employers and reported results to judges, where judges exercised unfettered discretion in selecting jurors from among those applicants who were not disqualified by statute]; *People v. Goodspeed* (1972) 22 Cal.App.3d 690, 701 [statutory provisions on duties of jury commissioner are not mandatory; failure to conform to prescribed method does not affect validity of indictment].)

4. Right to a Nondiscriminatory Grand Jury

“The constitutional standards controlling the selection of grand jurors are the same as for petit jurors. ... They must be selected in a manner which does not systematically exclude, or substantially underrepresent, the members of any identifiable group in the community.” (*People v. Newton* (1970) 8 Cal.App.3d 359, 388.) A number of cases have dealt with the systematic exclusion of certain groups or individuals from service on the grand jury. (See *Peters v. Kiff* (1972) 407 U.S. 493, [systematic exclusion of black persons from grand juries compelled reversal of conviction, even though defendant was white]; *Vasquez v. Hillery* (1986) 474 U.S. 254, [intentional discrimination in selection of grand jurors renders conviction reversible]; *Montez v. Superior Court* (1970) 10 Cal.App.3d 343 [exclusion of Mexican-Americans; trial judge erred in refusing to allow defendants to interrogate judges who had nominated prospective jurors]; *In re Wells* (1971) 20 Cal.App.3d 640, [exclusion of black persons; nominating judges must be made available for examination].)

Another challenge often made to grand juries is a situation falling short of systematic exclusion but still resulting in substantial underrepresentation of certain groups. (See *Alexander v. Louisiana* (1972) 405 U.S. 625, [no adequate explanation for disproportionately low number of black persons on grand jury]; *Castaneda v. Partida* (1977) 430 U.S. 482 [prima facie case of discrimination was established by evidence that, although Mexican-Americans comprise 79% of county’s population, the average percentage of Spanish surnamed grand jurors over 10-year period was 39%]; *People v. Navarette* (1976) 54 Cal.App.3d 1064 [underrepresentation of

women on grand jury was discriminatory even though there was no apparent attempt to discriminate in selection process].)

Although there is no specific statute requiring it, the California Rules of Court encourage courts to consider grand jury selections to ensure broad-based representation. However, the law merely requires jury commissioners to note the supervisorial district of grand juror candidates in an effort to promote geographic diversity. There are no further requirements that would help judges create diversity on race, gender, age, or other demographic characteristics of grand juries.

In order to facilitate the selection of grand juries that are representative of the demographics of their counties, this bill would require the list of persons selected by the court to serve as grand jurors to contain the person's name, gender, age, race or ethnicity, and residential zip code or supervisorial district and would require that list to be filed in the jury commissioner's office. This bill also requires that demographic information be included in the list the jury commissioner must publish, along with the name of each person and the name of the judge who selected each person, one time in a newspaper of general circulation. This bill also requires the jury commissioner's list of persons recommended for grand jury duty to contain the person's name, gender, age, race or ethnicity, and residential zip code or supervisorial district, which will allow judges to better select a grand jury that reflects the demographics of their respective counties. This bill would also requires a list of certified names of impaneled persons chosen by the judges, containing only the gender, age, race or ethnicity, and residential zip code or supervisorial district of the juror, and not the juror's name, to be published on an internet website by the county.

This bill further requires each superior court, annually, to provide the Judicial Council with aggregate data on the gender, age, and race or ethnicity of persons impaneled on the grand jury; the list of person's selected by the court as a grand juror; the list of persons recommended as grand jurors by the jury commissioner; and the list of certified names of impaneled persons. This bill also requires the Judicial Council, each year, to submit a report to the Legislature on the information reported by each superior court on a county and statewide basis. These reports are intended to provide state and local governments the tools needed to both understand and address the underlying issues that cause a lack of diversity on grand juries.

5. Grand Juror Compensation

The right to compensation for services as a juror is purely statutory, and it is for the Legislature to determine the amount and mode of payment. (*Hilton v. Curry* (1899) 124 Cal. 84.) Jurors cannot claim any compensation for their services in any amount greater than what is prescribed by statute. (*Ibid.*)

Grand jurors receive a nominal fee of \$15 per day for each day's attendance and mileage reimbursement applicable to county employees for each mile actually traveled in attending court. (Pen. Code, §890.) Though often referred to as "voluntary," any person that is summoned as a grand juror, who willfully and without reasonable excuse fails to attend, may be compelled to attend, and the court may impose a fine not exceeding \$50. (Pen. Code, § 907.) California law does not require employers to pay employees for time lost from work due to jury service. (*People v. Kwee* (1995) 39 Cal.App.4th 1, 4.) And, those compelled to serve often use sick, vacation, or paid leave. (Lab. Code, § 230, subd. (l).)

By comparison, federal grand jurors are paid \$50 a day. Jurors can receive up to \$60 a day after serving 45 days on a grand jury. Jurors also are reimbursed for reasonable transportation expenses and parking fees. Federal grand Jurors also receive a subsistence allowance covering their meals and lodging if they are required to stay overnight. (*Juror Pay*, U.S. Courts. Available at: <https://www.uscourts.gov/services-forms/jury-service/juror-pay#:~:text=Grand%20Jury,transportation%20expenses%20and%20parking%20fees> [as of March 7, 2022].)

This bill seeks to remove economic barriers to jury participation by setting the per diem for grand jurors equal seventy percent of the county median daily income for each day's attendance as a grand juror. The hope is that increasing grand juror pay will result in juries that are more economically and racially diverse and therefore are more reflective of the local population. Further, by tying grand juror pay to the county's median daily income, this bill would establish a flexible method of determining the minimum compensation owed to jurors that will change with the local cost of living, without need for future legislation.

6. Argument in Support

The California Attorneys for Criminal Justice support this bill stating:

CACJ supports both components of this bill. Increasing the per diem allowance for grand jurors would make it more feasible for those of limited economic means to participate in grand jury service and will likely improve the demographic and experiential diversity of those willing to serve. Moreover, collecting data provides a critical means to track the progress of the ultimate goal: ensuring that grand juries reflect the experience of the communities from which they are drawn.

If it is possible, CACJ would respectfully request that the component of the bill touching on the collection of demographic data by the jury commissioner be expanded to the collection of demographic data for petit juries as well. There have been a number of efforts in recent years to improve the diversity of petit juries, but is difficult to assess progress without the uniform collection of demographic data by the jury commissioner. Moreover, to enforce new laws prohibiting discrimination in jury selection, see Code of Civil Procedure 231.7, it is critical that the parties obtain data on petit juror gender, race, and ethnicity. However, direct questions regarding jurors' race, ethnicity and gender in open court "may be offensive to some jurors and thus are not ordinarily asked on voir dire." *People v. Motton* (1985) 39 Cal.3d 596, 604. Absent a juror questionnaires, which are not provided in most cases, it is thus often difficult to track critical demographic data necessary to enforce anti-discrimination laws.

Uniform collection of demographic data at the jury commissioner level is less likely to offend jurors and would be a critical step in improving the diversity of juries in this state.

7. Argument in Opposition

California State Association of Counties, the Urban Counties of California, and the Rural County Representatives of California oppose this bill stating:

We appreciate the intent of this measure, to encourage increased diversity on grand juries, but must respectfully oppose it due to the significantly increased costs it would impose on counties. One urban county, for example, has estimated its increased costs at \$750,000 per year.

While the state's revenues have exceeded expectations and historical precedent year after year, in most counties per capita revenues have never recovered from the ravages of the Great Recession, in real dollars. We therefore request the provisions of the bill providing for increased compensation apply only in years the state budget has provided a sufficient appropriation for the purpose. Doing so would appropriately align the cost with the level of government making the decision.

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