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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair  
2023 - 2024 Regular

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**Bill No:** AB 881                      **Hearing Date:** June 20, 2023  
**Author:** Ting  
**Version:** June 7, 2023  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Juror fees: pilot program*

### HISTORY

**Source:** San Francisco Public Defender's office

**Prior Legislation:** AB 1981 (Lee) Chapter 326, Stats. of 2022,  
AB 1452 (Ting), Chapter 717, Stats. 2021

**Support:** ACLU California Action; Asian Americans Advancing Justice-Southern California; Board of Supervisors for The City and County of San Francisco; California Attorneys for Criminal Justice; California District Attorneys Association; California Public Defenders Association (CPDA); Californians for Safety and Justice; Coalition on Homelessness, San Francisco; Communities United for Restorative Youth Justice (CURYJ); Conference of California Bar Associations; Consumer Attorneys of California; Dignity and Power Now; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Fair Chance Project Glide; Homerise San Francisco; Initiate Justice;; Justice LA; LA Defensa; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; Legal Services for Prisoners With Children; Los Angeles County District Attorney's Office; Los Angeles County Public Defenders Union Local 148; Prosecutors Alliance California; Safe Return Project; San Francisco District Attorney's Office; San Francisco Financial Justice Project; San Francisco Labor Council; San Francisco Public Defender; Santa Cruz Barrios Unidos INC.; Sister Warriors Freedom Coalition; University of San Francisco School of Law | Racial Justice Clinic; Young Women's Freedom Center

**Opposition:** None known

**Assembly Floor Vote:** 67 - 7

### PURPOSE

*The purpose of this bill is to expand the existing pilot program authorizing the Superior Court of San Francisco to pay low-income trial jurors \$100 per day for each day of service as a trial juror in a criminal case to the Superior Courts of Alameda, Kern, Los Angeles, and Monterey Counties.*

*Existing law* guarantees the right of the accused, in all criminal prosecutions, to a speedy and public trial, by an impartial jury of the State and district where the crime was committed. (U.S. Const., 6th Amend.)

*Existing law* provides that a trial by jury is an inviolate right. (Cal. Const., art. I, § 16.)

*Existing law* establishes the Trial Jury Selection and Management Act, which applies to the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial courts of the State. (Code Civ. Proc., § 190 et seq.)

*Existing law* states the policy of the State of California is that all persons selected for jury service must 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, as specified; that it is an obligation of all Californians to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code of Civil Procedure (CCP) § 191.)

*Existing law* provides that 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. (CCP § 197.)

*Existing law* provides that no eligible person shall be exempt from service as a trial juror because of their economic status. (CCP § 204.)

*Existing law* sets the fee for trial jurors in civil and criminal cases, at \$15 a day for each day's attendance as a juror after the first day. (CCP § 215.)

*Existing law* provides that a juror who is employed by a federal, state, or local government entity, or by any other public entity as defined, and who receives regular compensation and benefits while performing jury service, shall not be paid the fee. (Code Civ. Proc., § 215(b).)

*Existing law* requires the Judicial Council to sponsor a pilot program for two fiscal years to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation. No later than September 1, 2026, the Judicial Council shall provide a report to the Legislature describing the findings of the pilot program and providing information for promoting juror diversity. (CCP § 241.)

*Existing law* authorizes the Superior Court of San Francisco, to conduct a pilot program to analyze and determine whether paying certain low-income trial jurors \$100 for each day they are required to report for service as a trial juror promotes a more economically and racially diverse trial jury panel. (CCP § 240.)

*This bill* expands the existing pilot program authorizing the Superior Court of San Francisco to pay low-income trial jurors \$100 per day for each day of service as a trial juror in a criminal case to the Superior Courts of Alameda, Kern, Los Angeles, and Monterey Counties.

*This bill* would require Judicial Council to administer the funding for the pilot project and provides that Judicial Council may accept private or other funds for administration of the pilot program court.

This bill removes the requirement that a third party entity collect and report specified data related to the pilot program, and instead require the Judicial Council to collect data and prepare a report for the Legislature.

*This bill* extends the date that the court shall terminate the pilot program from December 31, 2023, to December 31, 2025.

*This bill* changes the sunset date from January 1, 2025, to January 1, 2027

## COMMENTS

### 1. Need for This Bill

According to the author:

In order to increase jury diversity in California, juror pay must be raised so that economic hardship is no longer a barrier to the fair delivery of justice. In 2021, Governor Newsom signed AB 1452 (Ting), which created the “Be The Jury” pilot program at San Francisco Superior Court where jury pay for criminal cases was increased to \$100 for low to moderate income San Franciscans. The results have produced more economically and racially diverse jury panels that more accurately reflected the City’s demographics. Results have shown 60% of participants identified as people of color, and 81% said they couldn’t have participated without this financial assistance. AB 881 would apply the “Be The Jury Pilot” in five counties: San Francisco, Alameda, Los Angeles, Monterey and Kern, by increasing jury pay for criminal cases to \$100 per day of jury service for low to moderate-income Californians.

### 2. Constitutional Right to a Representative Jury

The Sixth Amendment states that in all criminal prosecutions, the accused shall enjoy the right to trial, by *an impartial jury*. The Sixth Amendment right to an impartial jury is rooted in “the essential demands of fairness.” (*Aldridge v. United States* (1931) 283 U.S. 308, 310.)

In the landmark U.S. Supreme Court case *Hernandez v. Texas* (1954) 347 U.S. 475, the Court recognized the necessity of inclusion to achieve fairness in our criminal justice system when it held that the defendant, a Mexican-American migrant farm worker convicted for the murder of another man, did not get a fair trial in a county where non-whites, and specifically Mexican-Americans, were routinely prohibited from serving on the jury. The Supreme Court has since attempted to address these issues by requiring juries to be selected from a “fair cross-section” of society. “The selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial. (*Taylor v. Louisiana* (1975) 419 U.S. 522, 533.) Jurors 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.)

In *Taylor v. Louisiana*, the Supreme Court described the purpose of the fair cross-section requirement as (1) “guard[ing] against the exercise of arbitrary power” and ensuring that the “common sense judgment of the community” will act as “a hedge against the overzealous or mistaken prosecutor,” (2) preserving “public confidence in the fairness of the criminal justice system,” and (3) implementing our belief that “sharing in the administration of justice is a phase of civic responsibility.” (*Taylor, supra*, (1975) 419 U.S. at p. 530) Jury pools that result in underrepresentation due to systematic exclusion of a group in the jury-selection process violates the fair cross section guarantee. (*Duren v. Missouri* (1979) 439 U.S. 357, 364.)

Further, it is the policy of the State of California that all qualified persons have an equal opportunity to be considered for jury service in the state. (CCP § 191.) In order to prevent systemic exclusion of low-income jurors, and to facilitate the selection of diverse grand juries that represent the demographics of their counties.

### 3. Diverse Juries Make Better Decisions

Research shows that diverse juries “deliberated longer and considered a wider range of information than did homogeneous groups.” (Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations* (2006) 90 J. Personality and Social Psychology 597, 606.) Being part of a diverse group seems to make people better jurors; for example, when white people were members of racially mixed juries, they “raised more case facts, made fewer factual errors, and were more amenable to discussion of race-related issues.” (*Ibid.*) People on racially mixed juries “are more likely to respect different racial perspectives and to confront their own prejudice and stereotypes when such beliefs are recognized and addressed during deliberations.” (Ramirez, *Affirmative Jury Selection: A Proposal to Advance Both the Deliberative Ideal and Jury Diversity* (1998) 7 Univ. Chicago Legal Forum 161, 164.) In addition, the decisions diverse juries render are more likely to be viewed as legitimate by the public. (*Ibid.*)

### 4. Service as a Trial Juror can be costly to many Californians

One factor contributing to systemic underrepresentation of diverse jurors is that jury service is cost-prohibitive for many low-income Californians. Under existing law trial jurors are paid \$15 per day. (CCP § 215.) They are not compensated for the first day of service. (*Ibid.*) 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. (Labor Code, § 230,(l).)

California’s current minimum of \$15 per day was last adjusted in 2000, by AB 2866 (Migden), Chapter 127, Statutes of 2000. AB 2866 raised the minimum from \$5 to \$15. Prior to AB 2866, pay for trial jurors had not been raised since it was enacted in the 1950s. As measured by the Consumer Price Index (CPI), \$15 in 2000 is worth over \$26.59 today based on the CPI inflation calculator of the U.S. Bureau of Labor Statistics. Worse, the \$5 jurors were paid for their service in the 1950s is worth over \$63 today. In a 2004 Judicial Council report, the blue ribbon commission called the current \$15 rate paid to California jurors for daily service “insulting.” (Judicial Council of California, *Task Force on Jury System Improvements* (April 2004) <[https://www.courts.ca.gov/documents/tfjsi\\_final.pdf](https://www.courts.ca.gov/documents/tfjsi_final.pdf)> [as of March 10, 2023].)

By comparison, federal jurors are paid \$50 a day. While the majority of federal jury trials last less than a week, jurors can receive up to \$60 a day after serving 10 days on a trial. (U.S. Courts, *Juror Pay* <<https://www.uscourts.gov/services-forms/jury-service/juror-pay#:~:text=Petit%20Jury,in%20lieu%20of%20this%20fee>> [as of March 10, 2023].) Also, despite having one of the highest costs of living<sup>1</sup>, California pays its jurors less than average compared to other states<sup>2</sup>:

<sup>1</sup> California has the fourth highest cost of living, followed by Massachusetts, Washington D.C. and Hawaii, all of which pay their jurors at least double than the rate of California. (See Missouri Economic Research Center, *Cost of*

California’s \$15 current daily pay is pennies on the dollar compared to that could be earned at work—the total daily compensation for jury service is the minimum pay for one hour of work for most Californians,<sup>3</sup> and well below the daily equivalent of the poverty threshold. However, even though jurors are compensated far less than what they would earn for a day of work in California, the penalty for failing to serve is steep: the court may find the juror in contempt of court, punishable by fine, incarceration, or both. The monetary sanctions imposed range from \$250 to \$1,500. (Code Civ. Proc., § 209.)

## 5. Be The Jury Pilot Program

AB 1452 (Ting), Chapter 717, Statutes of 2021, authorized the Superior Court of San Francisco to conduct a pilot program to determine whether paying low-income trial jurors \$100 per day in criminal cases promotes a more economically and racially diverse trial jury panel. (CCP § 240.)

In March 2022, the San Francisco Treasurer’s Financial Justice Project, in partnership with the San Francisco Superior Court, Public Defender’s Office, District Attorney’s Office, and Bar Association, launched “Be the Jury.” This first-of-its-kind pilot program in San Francisco increases the daily juror stipend from \$15 per day to \$100 per day for low- to moderate-income San Franciscans who are summoned to serve on juries but cannot serve because they would face a financial hardship. (The San Francisco Financial Justice Project, *Preliminary Findings from First Six Months of Pilot Program* (Nov. 2022) <[https://sfgov.org/financialjustice/files/2022-11/Be%20the%20Jury%20Report\\_Final.pdf](https://sfgov.org/financialjustice/files/2022-11/Be%20the%20Jury%20Report_Final.pdf)> [as of March 10, 2023].) The Be the Jury Pilot Program is funded through philanthropic funds raised by the San Francisco Financial Justice Project in the city’s Treasurer’s Office. (*Ibid.*)

“Through the pilot program, we want to learn if people who would have claimed a financial hardship would now be able to serve because of this program. We also want to learn if increased compensation for people with low incomes impacts the diversity of juries in a meaningful way.” (*Preliminary Findings from First Six Months of Pilot Program, supra*, at p. 2) After six months of the pilot program, preliminary data shows:

- Program participants have a household income of just under \$40,000, on average. 93% of participants have a household income below \$75,000. As a point of comparison, the area median income in San Francisco for a single household is \$97,000.
- Program participants reflect the racial demographics of the broader San Francisco population. 63% of participants self-identified as people of color.
- 81% of participants reported that they could not have served without the \$100 per day stipend. (*Ibid.*)

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*Living Data Series* <<https://meric.mo.gov/data/cost-living-data-series>> [as of March 10, 2023].)

<sup>2</sup> This table was built from data from the National Center for State Courts (NCSC). (NCSC, *Juror Compensation in the United States* <[https://www.ncsc-jurystudies.org/data/assets/pdf\\_file/0024/76191/NCSC-Report-Juror-Compensation\\_P5.pdf](https://www.ncsc-jurystudies.org/data/assets/pdf_file/0024/76191/NCSC-Report-Juror-Compensation_P5.pdf)> [as of March 10, 2023].)

<sup>3</sup> As of January 1, 2023, California’s minimum wage is \$15.50 per hour. (Department of Industrial Relations, *Minimum Wage* <[https://www.dir.ca.gov/dlse/faq\\_minimumwage.htm](https://www.dir.ca.gov/dlse/faq_minimumwage.htm)> [as of March 10, 2023].)

This bill expands this existing pilot project to include the Courts of the Counties of Alameda, Kern, Los Angeles, Monterey and San Francisco. It also clarifies that the Judicial Council shall administer funding for the programs and may accept private funds to fund the pilot programs. It also extends the sunset dates for the program.

## **6. Other looks at jury compensation**

Last year, the Legislature passed AB 1981 (Lee) Chapter 326, Statutes of 2022, which requires the Judicial Council to sponsor a pilot program for two fiscal years to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation. The Judicial Council must select at least six trial courts, in counties with regional and geographic diversity, including the County of Alameda, to participate in the pilot program. As part of the pilot program, the participating pilot courts are required to collect demographic information, as reported by jurors. AB 1981, also instructed the Judicial Council to publish a report describing the findings of the pilot program and providing information for promoting juror diversity. The report is due to the Legislature no later than September 1, 2026. (CCP § 241.)

## **7. Argument in Support**

The California District Attorneys Association supports this bill stating:

Jurors are currently paid \$15 per day of jury service after a civil or criminal trial begins. AB 881 allows jurors who make 80% of the area median income, and who satisfy additional qualifying criteria, to receive up to \$100 per day of jury service after the first day of trial. San Francisco County recently piloted the “Be the Jury” program, implementing the proposed increased stipend for qualifying individuals. There, 81 percent of program participants said they could not have served without the \$100 per day stipend.

By removing financial hardship barriers, AB 881 would allow a greater diversity in our juries, allowing them to be more representative of the communities they serve. When all Californians—regardless of income—can participate in the criminal justice process, our system can render better outcomes for all involved.

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