
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 310 **Hearing Date:** April 2, 2019
Author: Skinner
Version: March 21, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Jury Selection*

HISTORY

Source: American Civil Liberties Union of California
A New Way of Life
All of Us of None
California Public Defender's Association
Legal Services for Prisoners with Children

Prior Legislation: SB 576 (Wiener), held in Senate Appropriations 2017
AB 535 (Jones-Sawyer), died on third reading 2018
AB 324 (Jones-Sawyer), never heard Assembly Judiciary 2015

Support: California Employment Lawyers Association; Californians United for a Responsible Budget; East Bay Community Law Center; Ella Baker Center for Human Rights; Fair Chance Project; Friends Committee on Legislation of California; Lawyers' Committee for Civil Rights of the San Francisco; Root and Rebound; San Francisco Public Defender's Office; Tides Advocacy

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) permit a person with a felony conviction, who is not incarcerated in prison or jail, to serve on a jury; 2) repeal the presumption that voter registration and Department of Motor Vehicle (DMV) lists provide a representative cross section of the population; and 3) require jury commissioners to collect specified demographic data and produce reports aggregating that data two times per year.

Existing case law provides that a defendant has a right to trial by a jury drawn from a representative cross section of the community, guaranteed by the Sixth Amendment of the United States Constitution and article I, section 16, of the California Constitution. (*Rubio v. Superior Court* (1979) 24 Cal.3d 93, 97; *see also People v. Garcia* (2000) 77 Cal.App.4th 1269, 1274 & fn.3.)

Existing law requires that all persons selected for jury service 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. Provides that sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists. (Code Civ. Pro., § 197, subd. (a).)

This bill amends the sources from which prospective jurors are drawn to include the list of registered voters, the DMV list of licensed drivers and identification cardholders, the list of state tax filers, and the list of utility company recipients, who reside within the area served by the court.

Existing law provides that the list of registered voters and the DMV list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. Provides that these two source lists, when substantially purged of duplicate names, be considered inclusive of a representative cross section of the population. (Code Civ. Pro., § 197, subd. (b).)

This bill repeals this provision of law.

Existing law provides that all persons are eligible and qualified to be prospective trial jurors, except the following:

- Persons who are not citizens of the United States.
- Persons who are less than 18 years of age.
- Persons who are not domiciliaries of the State of California, as specified.
- Persons who are not residents of the jurisdiction wherein they are summoned to serve.
- Persons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored.
- Persons who are not possessed of sufficient knowledge of the English language, provided that no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person's ability to communicate or which impairs or interferes with the person's mobility.
- Persons who are serving as grand or trial jurors in any court of this state.
- Persons who are the subject of conservatorship. (Code Civ. Pro., § 203, subd. (a).)

Existing law defines a felony as a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of Section 1170 (h). (Pen. Code, § 17.)

This bill removes language from existing law making persons who have been convicted of a felony subject to an exclusion from jury service.

This bill provides that a person is ineligible for jury service while incarcerated in any prison or jail.

Existing law requires the jury commissioner to maintain records regarding selection, qualification, and assignment of prospective jurors. Requires the jury commissioner to maintain records providing a clear audit trail regarding a juror's attendance, jury fees, and mileage. Provides that all records and papers maintained or compiled by the jury commissioner in connection with the selection or service of a juror may be kept on an electronic or microfilm medium and requires such records to be preserved for at least three years after the list used in

their selection is prepared, or for any longer period ordered by the court or the jury commissioner. (Code Civ. Pro., § 207.)

This bill requires the jury commissioner to develop a single-page, anonymous form for the purpose of determining whether the pool of prospective jurors who appear for jury service pursuant to a jury summons accurately represents a cross section of the population of the area served by the court.

This bill requires the jury commissioner to provide the form to each prospective juror when the juror first appears for jury service pursuant to a jury summons.

This bill provides that the form is solely used to collect the following information from a prospective juror: (1) race; (2) gender; (3) ethnicity; (4) national origin; and (5) zip code.

This bill prohibits the form from collecting any personally identifying information.

This bill requires the jury commissioner to produce a report twice each year that aggregates the demographic data listed above, and requires the superior court of each county to maintain a copy of the jury commissioner's reports and make them publicly available.

This bill requires that litigants seeking to obtain copies of the lists of all jurors' names, including the identifying information of all persons who have previously served as jurors, in support of a motion to quash the venire or in discovery for that motion, be provided copies of the lists upon request.

COMMENTS

1. Need for This Bill

According to the author:

SB 310 would allow a person with a felony conviction to be eligible to serve on a jury as long as the person was not incarcerated in any prison or jail.

...

According to a report by the U.S. Bureau of Labor Statistics, thirteen million people, including approximately 30% of black men, are banned for life from jury service because they are ex-felons. These numbers are based on the incarceration rates from 1925 to 2001, and do not include any recent incarceration statistics, which would most likely increase that number significantly due to the prison boom that only began to decrease in recent years. According to a 2013 study by the Public Policy Institute of California (PPIC), "African American men are dramatically more likely to be imprisoned than other minority groups. More than half of California's adult male population is nonwhite or Latino (56%), but these groups make up three of every four men in prison...."

Maine allows felons to serve on jurors without condition, while four other states allow jury service by former felons in some circumstances. There is no evidence of negative consequences in either Maine ... or the four states which allow jury

service by former felons.... In fact, there is evidence to support positive impacts of allowing former felons to serve on juries....

SB 310 also adds to the lists from which the state's jury commissioners draw prospective jurors from, in order to obtain a representative cross section of the population. Currently, prospective jurors are drawn from lists provided by the Department of Motor Vehicles and each county Registrar of Voters, but they may also be drawn from sources such as telephone directories or utility company lists. SB 310 requires that the pool of eligible jurors also be drawn from the list of state tax filers and utility company recipients who reside within the area served by the court.

Although current law does not require the exclusive use of the DMV and ROV lists, it does create a presumption that a fair cross section can be obtained using only those two lists. SB 310 would remove the presumption that these lists are considered inclusive of a representative cross section of the population.

Finally, SB 310 would require the jury commissioner to develop a single-page, anonymous form for the purpose of gathering demographic data from prospective jurors in order to determine whether the people who appear for jury service accurately represent a cross section of the population of the area served by the court. The form would be distributed to prospective jurors when they first appear for jury service, and the forms and information contained within them would be prohibited from disclosure to any person, organization, or agency. The data contained in the forms would be aggregated, and the jury commissioner of each county superior court would be required to produce a report biannually on the data.

2. Exclusion of Felons from Jury Service

Forty-nine states, the District of Columbia, and the federal government, have some type of restriction on a convicted felon's eligibility for jury service. (Binnall, *Summoning Criminal Desistance: Convicted Felons' Perspective on Jury Service* (2017) 43 Law and Social Inquiry 4.) Maine is the only state which allows felons to serve on a jury without restriction. (14 M.R.S. § 1211 (2017).)

Among the historical justifications for excluding felons from jury service are the belief that these individuals lack character and harbor an inherent bias, both against the government and in favor of the defendant. These justifications have been challenged by researchers. For example, a recent study which derived data from interviews with former and prospective jurors in Maine who had felony convictions found that inclusion in the jury process found that "convicted felons approach[ed] jury service in a thoughtful, considerate fashion." (Binnall, *Summoning Criminal Desistance: Convicted Felons' Perspective on Jury Service* (2017) 43 Law & Social Inquiry 4, 20-21.) The results of the study also suggest that "juror eligibility facilitates changes in convicted felons' self-concepts, promoting prosocial identity transformation, tempering the stigma of a felony conviction, and prompting the discovery of self-worth." (*Id.* at 21.) The findings of another study suggest that convicted felons' pretrial bias as a group is not significantly different from other groups of non-felon jurors. (See Binnall, *A Field Study of the Presumptively Biased: Is There Empirical Support for Excluding Convicted Felons from Jury Service?* (2014) 36 Law & Policy 1.)

Arguably, the voir dire process should resolve concerns regarding a prospective juror's bias. Voir dire is a formal, pre-trial examination that is used to determine the qualification and suitability of each potential juror. The process is intended to help the parties identify and remove jurors who are biased and would not serve well on a particular case due to the facts and evidence involved in the case. Through questioning by the parties' attorneys, the voir dire process reveals prospective jurors' experiences and beliefs that may affect their perception of the parties and evidence.

The sponsor of the bill also argues that excluding felons from jury service has a disproportionate impact on African Americans, specifically African American men, given their overrepresentation in the criminal justice system. According to the Public Policy Institute of California, "At the end of 2016, 29% of the male prisoners in state prisons were African American, while only 6% of the state's male residents are African American. The incarceration rate for African American men is 4,180 per 100,000. White men are imprisoned at a rate of 420 per 100,000, and imprisonment rates for Latino men and men of other races are 1,028 and 335, respectively." (<<https://www.ppic.org/publication/californias-changing-prison-population/>> [as of Mar. 26, 2019].) A 2011 study examining felon jury exclusion in Georgia underscores the racial disparity in jury service that results from the exclusion of felons from jury service. (Wheelock, A Jury of One's "Peers": The Racial Impact of Felon Jury Exclusion in Georgia (2011) 32 *The Justice System Journal* 335.) The study concluded:

"[O]ver half of African-American men in certain counties are disqualified from jury service solely due to their felon status. Large counties with significant African-American populations, such as Fulton County, might be able to withstand excluding large proportions of a specific subgroup without a significant impact on the racial composition of jury lists. There remains a large pool of eligible African-American men that can replace the ones that find themselves disqualified due to their felon status. However, the ability of counties with relatively small African-American populations and high levels of exclusion, such as Whitfield County, which excludes nearly 64 percent of its approximate 1,300 African-American male residents, to field a representative jury list would seem to be severely hindered by felon jury exclusion." (*Id.* at 352.)

In California, the restoration of a person's civil rights—which would enable a person with a felony conviction to serve on a jury—can only be done via a gubernatorial pardon. (Pen. Code, § 4852.17.) It is worth nothing that there is no right to or guarantee that a pardon applicant will receive one.

This bill removes people with a felony conviction from the list of individuals who are not eligible for jury service. This bill also provides that a person is ineligible for jury service while incarcerated in any prison or jail.

3. Jury Demographic Information

By law, a jury must represent a cross section of the population in a community in order to ensure that a defendant is afforded his or her constitutional right to an impartial jury. The courts, through the respective jury commissioners, have an obligation arising from both the U.S. and California Constitutions to ensure that jury pools are so representative.

The presumption that drawing prospective jurors from the Department of Motor Vehicles' list and the list of registered voters is inclusive of a representative cross section of the population was codified in Code of Civil Procedure section 197 in 1988. This provision of law has not been amended since that time. However, there is limited information over that time period examining whether such jury pooling actually results in representative jury venires.

This bill would eliminate the presumption that using the DMV and voting registration lists are inclusive of a representative cross section of the population. This bill would also require a jury commissioner to collect various demographic data from prospective jurors who appear for jury service, aggregate the data, and produce reports on that data twice each year.

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