

Date of Hearing: August 12, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
SB 592 (Wiener) – As Amended July 28, 2020

SENATE VOTE: Not relevant

SUBJECT: JURY SERVICE

KEY ISSUE: SHOULD THE DATA SOURCES THAT ARE USED TO CREATE LISTS FOR THE SELECTION OF POTENTIAL TRIAL JURORS, AND CONSIDERED BY LAW TO BE REPRESENTATIVE OF THE POPULATION, BE EXPANDED TO INCLUDE DATA ABOUT CALIFORNIA TAX FILERS WITHIN A JURISDICTION?

SYNOPSIS

In the wake of widespread public protests regarding police brutality and systemic discrimination in the justice system, the public's demand for meaningful reforms of the justice system has never been greater. One critical area in which California's justice system consistently fails defendants is the ability to produce potential jury pools that are truly representative of the community. Much of the failure to produce diverse jury pools stems from the data sources utilized by the courts that are deemed sufficient under the law for producing juries that are considered representative of the community. Presently, courts need only utilize driver licensee data from the Department of Motor Vehicles and voter registration data to produce potential juror lists, despite the fact that these two sources of data tend to provide the names of potential jurors that appear to be more affluent and whiter than the general population of California.

Seeking to ensure a more diverse jury, this bill builds upon prior legislative efforts to expand the categories of those eligible for jury service and improve the sources of data utilized by courts to develop eligible juror lists. Last year, this Committee approved SB 310 (Skinner) Chap. 591, Stats. 2019, which dramatically expanded the rights of formerly incarcerated persons to serve on juries. At the time this Committee approved SB 310, that bill also provided for the use of tax filer data in developing eligible juror lists. However, those provisions were later removed due to logistical and cost concerns. Recognizing the need to expand the sources of data utilized to develop eligible juror lists, this bill once again would require the courts to utilize tax filer data in the development of these lists. Acknowledging the challenges such a mandate poses to the courts and the Franchise Tax Board, this bill prudently delays the implementation of this requirement until 2022 in order to provide the Judicial Council of California and the Franchise Tax Board with the time necessary to update tax filing forms and develop processes to efficiently obtain this data. Although neither agency has a formal position on this bill, these modifications to the language originally proposed in SB 310 appear to mollify the concerns that were raised in 2019.

As currently in print, this measure is supported by a coalition of advocates for criminal justice reforms including the Ella Baker Center for Human Rights and the California Public Defenders Association as well as civil litigators including the Consumer Attorneys of California. As currently in print this bill has no known opposition.

SUMMARY: Requires, beginning in 2022, California courts to utilize taxpayer lists when developing the lists of potential jurors to be summoned for voir dire. Specifically, **this bill:**

- 1) Provides that the list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by a court, are appropriate source lists for selection of jurors until January 1, 2022.
- 2) Provides that, commencing on January 1, 2022, the list of resident state tax filers, the list of registered voters, and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by the court, when substantially purged of duplicate names, are to be considered inclusive of a representative cross section of the population.
- 3) Requires the Franchise Tax Board to furnish the jury commissioner of each county with a list of resident state filers for their county in consultation with the Judicial Council.
- 4) Requires the Franchise Tax Board to submit the list of resident state tax filers described in 3) to the jury commissioner of each county by November 1, 2021, and each November 1 thereafter.
- 5) Adds a jury commissioner to the list of persons who are guilty of a misdemeanor for disclosing or making known in any manner information as to the amount of income or any particulars, including the business affairs of a corporation, set forth or disclosed in a tax document.
- 6) Requires the Franchise Tax Board to revise the California Resident Income Tax Return to include a space for the taxpayer's address of their principal residence and their county of principal residence.
- 7) Defines, for the purpose of this bill, the following terms:
 - a) "List of resident state tax filers" to mean a list that includes the name, date of birth, principal residence address, and county of principal residence, of persons who are 18 years of age or older and have filed a California Resident Income Tax Return for the preceding taxable year;
 - b) "County of principal residence" to mean the county in which the taxpayer has their principal residence on the date that the taxpayer filed their California resident income tax return.
 - c) "Principal residence" to be used in the same manner it is used in Section 121 of Title 26 of the United States Code.

EXISTING LAW:

- 1) States that the policy of the State of California is that all persons selected for jury service shall 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 of Civil Procedure Section 191.)

- 2) Requires that all persons selected for jury service shall be selected at random, from sources that include a representative cross section of the population of the area served by the court. (Code of Civil Procedure Section 197 (a).)
- 3) Provides that the list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders residing within the area served by the court shall be considered inclusive of a representative cross section of the population, as required pursuant to 2). (Code of Civil Procedure Section 197 (b).)
- 4) Requires the Department of Motor Vehicles to furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older and who are holders of a current driver's license or identification card. (Code of Civil Procedure Section 197 (c).)
- 5) Presumes a person is eligible for jury service unless they:
 - a) Are not citizens of the United States;
 - b) Are under 18 years of age;
 - c) Are not domiciliaries of the State of California, or residents of the jurisdiction wherein they are summoned to serve;
 - d) Have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored;
 - e) Do not hold sufficient knowledge of the English language;
 - f) Currently serve as a grand or trial juror in any court of this state;
 - g) Are currently in conservatorship;
 - h) Are incarcerated in any prison or jail; or
 - i) Have convicted of a felony and are currently on parole, postrelease community supervision, felony probation, or mandated supervision for the conviction of a felony. (Code of Civil Procedure Section 203.)
- 6) Provides that the jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire. (Code of Civil Procedure Section 219 (a).)
- 7) Provides that if a jury commissioner requires a person to complete a questionnaire, the questionnaire shall ask only questions related to juror identification, qualification, and ability to serve as a prospective juror. (Code of Civil Procedure Section 205 (a).)
- 8) Provides that a court may require a prospective juror to complete such additional questionnaires as may be deemed relevant and necessary for assisting in the voir dire process or to ascertain whether a fair cross section of the population is represented as required by law, if such procedures are established by local court rule. (Code of Civil Procedure Section 205 (c).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: The right to a trial by a jury of one's peers is a foundational right afforded to criminal defendants. However, too frequently minority defendants find themselves being judged by a jury that does not look a great deal like their peers. In California, significant evidence exists to demonstrate that jury pools skew whiter and richer than the population as a whole, likely due in part to the data sources utilized by courts when summoning jurors. Accordingly, this bill seeks to expand the diversity of the potential jury pool by requiring courts to begin utilizing information regarding California tax filers when compiling the jury pool. In support of this bill, the author states:

SB 592 ensures that jury pools will be more diverse and demographically representative of California's population. Currently, juries are selected using lists of registered voters and licensed drivers or identification card holders. However, these lists are not demographically representative, and thus the jury pool pulled from these lists tends to skew whiter, wealthier, and overall less diverse than the state as a whole. To ensure juries – the backbone of our justice system – reflect their communities, SB 592 requires that Jury Commissioners include a broader, more representative list of state tax filers when establishing jury pools. With the recent deaths of George Floyd and Breonna Taylor at the hands of the police, we must double down on the fight for racial justice and equity in our criminal justice system. Criminal justice reform efforts must not end with police reform; California must take holistic approach that to change to all broken pieces of the system, including our jury selection process. We need to make sure that everyone going through our justice system can receive a fair trial by a jury of one's peers – and that means we must ensure we are creating demographically representative jury pools.

Studies show that by limiting jury pools to voter rolls and people with drivers licenses/I.D. cards, California courts are deprived of a large number of eligible prospective jurors, and that people of color are primarily the ones negatively impacted by underrepresentation. This underrepresentation denies civil and criminal litigants a jury pool that truly reflects their communities at large. Using the list of state tax filers will allow courts to broaden the jury pool, pulling from a more representative list of Californians. As of today, the National Center for State Courts reports that 21 states and U.S. territories already use tax rolls to summon jurors.

Trial by jury of one's peers is fundamental to our democracy, and a representative jury pool is crucial to making that principle a reality. Our current system for selecting jury pools undermines our ability to ensure people have a jury of their peers. We need to include all eligible Californians on our jury lists, not just those who are registered to vote or have a driver's license. SB 592 is a vital, common-sense reform that is long overdue. This simple change will promote fairness, diversity, and legitimacy in California's jury system.

Throughout history trial juries have been utilized to protect democratic institutions and ensure that the people can check the power of the state. Although the United States Constitution was the first document to formally codify the right to a trial by jury, the use of panels comprised of members of the public to adjudicate legal matters long predates the founding of the United States. Rather, the American tradition of trial juries has roots in early Nordic influences on the English Common Law. Norway long utilized courts comprised of “laugrettomadr,” or lawmen, who were citizens nominated from various districts to hear cases of national importance. During

the Norman Conquest, these traditions took hold in England. However, as the English legal scholar Blackstone noted, trial by jury in England is a privilege, not a right. Nonetheless, the use of jury trials became an established practice in the American colonies.

Seeking to maintain royal order in North America, colonial juries were frequently made up of colonists loyal to the English monarch. However, as the interests of the American colonists and the English monarch began to diverge in the mid-1700s, colonial attorneys sought to exclude persons perceived as biased from juries. Following the widely publicized trial of John Peter Zenger for seditious libel in 1735, the legislature of the Massachusetts Bay Colony passed the America's first jury selection law, removing the monarch's control of the jury selection process and granting sole control of jury selection to the colony's courts. The Massachusetts courts then developed a system to select jury pools encompassing all land-owning men within the colony. Believing that the Massachusetts law provided too much control over the questioning and selection of jurors to the people, the English Parliament passed a law restoring full control of jury selection in the colonies to the crown. (Hans, Valerie P., and Neil Vidmar. *Judging the Jury*. Perseus, 2001.)

The pro-monarch juries of the pre-Revolutionary period convinced early Americans of the need for unbiased juries to handle legal matters as a check on unrestrained government power. To protect these beliefs, the jury process was codified in the Fifth, Sixth, and Seventh Amendments to the United States Constitution, enshrining the American notion that democratic deliberation, "by jurors of different backgrounds and perspectives, to reach consensus through debate and discussion" was a right guaranteed to all Americans. (Robert P. Burns, *The History and Theory of the American Jury* (1995) 83 Cal. L.Rev. 1477.)

Throughout American history jury participation has, generally, been expanded to better reflect the community as a whole. Unlike England, which dramatically scaled back the use of juries due to the lack of men available for jury service during World War I, the United States has significantly broadened the pool of potential jurors throughout its history. While early American juries were limited to white, land-owning men, as civil and voting rights expanded, so did eligibility for jury service, albeit slowly. Not until the passage of the Federal Civil Rights Act of 1875 (now codified at 18 U.S.C. Section 243) did Congress formally require African Americans to be included in the jury pool for federal cases. The first record of women serving on a trial jury was in the Wyoming Territory in 1870, although that right was removed upon the Territory obtaining statehood. As late as 1961, the U.S. Supreme Court held that a "woman is still regarded as the center of home and family life. We cannot say that it is constitutionally impermissible for a State . . . to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities." (*Hoyt v. Florida* (1961) 368 U.S. 57.) The *Hoyt* decision was not formally overturned until 1975.

California law has long held that a broad pool of potential jurors is needed to ensure fairness in the legal process. California expanded jury service faster than the nation as a whole such that by 1975, the only groups exempt from jury duty were those that the Legislature believed worked in occupations that provided a valuable public service that should not be interrupted by a requirement of jury service. Those occupations included the legislators themselves, members of Congress, military personnel, peace officers, local office holders, attorneys, clergy, teachers, doctors, dentists, merchant seamen, telephone and telegraph operators, firefighters, railroad employees, faith healers, and cloister monks and nuns. In 1975, AB 681 (Siegler, Chap. 593,

Stats. 1975) replaced the remaining jury duty exemptions with a generic provision allowing any person to be excused from jury duty for undue hardship on themselves or the public. Although several categorical exemptions to jury service have been granted since the 1970s, the Legislature has long sought to ensure that California's trial juries accurately reflect society at large.

California's existing protocols for empaneling jurors may omit sizable portions of the population. Existing law provides that if a court utilizes the list of registered voters and the list of those possessing a driver's license or state identification card issued by the Department of Motor vehicles to compile localized lists of persons who are eligible for jury service, then the resulting jury pool is considered sufficiently representative of society. However, the exclusive use of these lists may in practice result in the creation of a jury pool that does not reflect the demographic makeup of California. According to the Public Policy Institute of California, approximately 75 percent of eligible adults are registered to vote in California. (Mark Baldassare, et al., *California's Likely Voters- Just the Facts*, Public Policy Institute of California (2018) <https://www.ppic.org/publication/californias-likely-voters/>.) However, within the ranks of eligible voters, stark demographic differences emerge. For example, only 22 percent of eligible white Californians fail to register to vote, whereas 56 percent of eligible Latinos do not register to vote. (*Ibid.*) Accordingly, the use of voter data in developing jury lists is likely to result in a significant underrepresentation of Latino jurors. Additionally, lower income Californians tend to register to vote at far lower rates than their wealthier peers. Again, the Public Policy Institute of California notes that while 16 percent of those making more than \$80 thousand annually are unregistered, 64 percent of those making less than \$40 thousand annually have not registered to vote. (*Ibid.*) Income disparities also impact the rate at which people apply for government issued identification. Currently, the Department of Motor Vehicles charges \$36 for a driver's license and \$31 for a state identification card. Although the California Department of Motor Vehicles waives certain fees for seniors seeking identification, nationally, evidence suggests that minorities hold driver's licenses at rates that are far lower than their white peers. (Alana Semuels, *No Driver's License, No Job*, The Atlantic (Jun. 15, 2016).)

Given the current data sources for developing juror lists, it would appear that California's existing procedures for developing jury pools are likely to result in the selection of juries that are more affluent and whiter than California's population at large. Accordingly, the data casts significant doubt as to whether minority litigants are truly able to obtain a jury of their peers under California's existing system for generating eligible juror lists.

This bill. Seeking to expand the diversity of the pool of potential jurors for criminal and civil trials in California, this bill would require the Franchise Tax Board to provide jury commissioners with a list of all tax filers in the commissioner's jurisdiction. Beginning in 2022, in addition to the Department of Motor Vehicle and voter file data already utilized, tax filer data must be utilized in compiling the potential juror lists in order for the jury pool to be deemed sufficiently representative of the community under the law. Further, in order to facilitate the collection of tax filer data to develop the potential juror lists, this bill tasks the Franchise Tax Board with collecting specific tax filer information, including the county of their principal residence and other specific address data not currently collected on California tax forms. Finally, this bill adds specified court personnel to the list of persons who may be charged with a misdemeanor for unlawfully disclosing confidential information contained in tax filings.

Expanding the sources of data utilized to generate juror lists will, ideally, remedy several deficiencies in the existing list. As noted above, existing law presumes that jury lists compiled

from voter data and Department of Motor Vehicle records is representative of the population at large. As further noted, this data appears to leave large segments of the population significantly undercounted. Thus, this bill would add the use of lists of California state tax filers to the data used to develop the jury service rolls.

Unlike voting or driving, nearly every California adult is required to file some form of a tax return with the state. By focusing the bill on tax filers as an additional source of information, this bill would appear to encompass persons who may or may not have actually paid taxes. For example, a person qualifying for California's Earned Income Tax credit may not actually pay any tax, however, that person would nonetheless be required to file a tax return. Similarly, even persons on Social Security or receiving unemployment assistance must file tax returns annually, thus by adopting tax filer lists as a source of potential juror data one's employment status will not serve to eliminate that person from potential jury service.

Presence on a potential juror list does not automatically make one eligible for jury service. As noted above this bill seeks to remedy the fact that California's existing list of persons called for potential jury service tends to skew whiter and more affluent than the state at large. As any Californian who has been summoned for jury duty knows, being summoned to appear as a potential juror and serving on a trial jury is not the same thing. Furthermore, being summoned for jury service does not automatically make a person eligible for jury service. One of the first tasks assigned to potential jurors, before they are ever sent to a courtroom for voir dire is to fill out a juror questionnaire. These questionnaires typically ask whether or not a person is eligible for jury service. Thus for example, if a person is not a United States citizen or the potential juror is a formerly incarcerated person who is not yet eligible for jury service, they are immediately excused as they are ineligible for jury service under existing law. Furthermore, should a person be subject to voir dire and the judge determines they lack sufficient knowledge of the English language, per existing law, that person would also be deemed ineligible for jury service under the law. Thus, to reiterate, nothing in this bill modifies existing law related to juror eligibility or deems a person eligible for jury service if they are not presently eligible under existing law, rather this bill simply seeks to expand the universe of Californians called to the court to serve as a potential juror in an attempt to create juries that better represent the diversity of California.

Ensuring the Franchise Tax Board and the Judicial Council of California can successfully expand the jury pool. This bill is not the first attempt by the Legislature in recent years to increase the diversity of juries in California. Last year, the Legislature approved SB 310 (Skinner) Chap. 591, Stats. 2019, which enabled many formerly convicted persons to serve on juries. In addition to enabling former felons to serve on juries, at one point in the legislative process (including when it was approved by this Committee), SB 310 also made tax filer data a source for developing the jury pool. However, that provision was amended out of SB 310 after concerns were raised by the Franchise Tax Board and the Judicial Council of California regarding the availability of the tax information in a form that would be useful to the courts.

Building on the progress made by SB 310, this bill seeks to add tax filer data to the sources of data used to develop jury pools. Recognizing the legitimate logistical concerns raised by the Franchise Tax Board and Judicial Council, this bill will delay the use of tax filer data by one year. Additionally, recognizing that the 2020 California state tax forms did not collect address data with the specificity required to develop jury lists, the bill requires the Franchise Tax Board to use the year-long delay in implementation to modernize California state tax forms to ensure that proper address and residency data for tax filers can be collected in a manner that can be

easily transmitted to the courts. Although the recent protests against police brutality and discrimination in the justice system have highlighted the need for meaningful and immediate reforms to the justice system, including the reforms provided by this bill, the delayed implementation of this measure appears warranted to ensure that the expanded data for developing jury pool can be obtained and utilized in a responsible and efficient manner.

ARGUMENTS IN SUPPORT: This bill is supported by a coalition of criminal justice reform advocates. Representative of the coalition, Californians for Safety and Justice write:

The presumption that a fair cross section of the community can be obtained by using only lists of registered voters and licensed drivers (or identification card holders) is not borne out by empirical evidence and has been subject to decades of scrutiny. Studies have shown that utilizing only these two lists excludes large swaths of our communities and disproportionately discourages the participation of racial minorities. In practice, using only Department of Motor Vehicles and the Registrar of Voters lists results in jury pools that are more affluent and less diverse than the community at large.

Current law deprives California courts of thousands of eligible prospective jurors and similarly deprives civil and criminal litigants of being judged by a jury of their peers. SB 592 seeks to broaden the pool of eligible jurors and, as a result, bring California juries closer to the ideal of a “fair cross section of the community.”

Juries are the backbone of our justice system. The idea that litigants can have their cases heard by peers of their community is a primary source of the justice system’s legitimacy. Juries can only speak with the voice and authority of the community if they truly and accurately reflect that community. SB 592 is a vital, common-sense reform that will promote fairness, diversity, and legitimacy in California’s jury system.

REGISTERED SUPPORT / OPPOSITION:

Support

#cut50
Anti-defamation League
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
Californians for Safety and Justice
Consumer Attorneys of California
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
San Francisco Public Defender
Tides Advocacy

Opposition

None on file

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