

SENATE THIRD READING
SB 592 (Wiener)
As Amended August 24, 2020
Majority vote

SUMMARY:

Requires, beginning in 2022, California courts to utilize taxpayer lists when developing the lists of potential jurors to be summoned for voir dire.

Major Provisions

- 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), above, 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.

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.

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% 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% of eligible white Californians fail to register to vote, whereas 56% 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% of those making more than \$80 thousand annually are unregistered, 64% 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), Chapter 591, Statutes of 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, 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.

According to the Author:

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. 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.

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.

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.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

According to the Assembly Appropriations Committee:

- 1) One-time costs (General Fund (GF)/Trial Court Trust Fund) of \$50,000 to \$100,000 for Judicial Council to contract with a third party vendor to update jury management services.
- 2) Costs (GF) to the FTB of \$209,000 in fiscal year (FY) 2020-21 and approximately \$380,000 annually thereafter for the FTB to provide the jury commissioner of each county a list of resident tax filers and update the California resident income tax return to include space for the taxpayer's principal residence and county of residence.
- 3) Cost pressures (GF)/Trial Court Trust Fund) in the low hundreds of thousands of dollars to the trial courts in increased workload given this bill expands an existing misdemeanor by adding a jury commissioner to the list of people who may not disclose any information learned from tax information. A defendant charged with a misdemeanor or felony is entitled to no-cost legal representation and a jury trial. If 15 new crimes are filed annually statewide and proceed to trial resulting in two days of court time, at an estimated cost of approximately \$7,644 for an eight-hour court day, the approximate annual cost to the trial courts would be \$229,320.

VOTES:

SENATE FLOOR: 38-0-0

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg, Wieckowski, Wiener, Wilk

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-0-2

YES: Chiu, Diep, Gloria, Kiley, Limón, Quirk-Silva
ABS, ABST OR NV: Gabriel, Maienschein

ASM LOCAL GOVERNMENT: 8-0-0

YES: Aguiar-Curry, Lackey, Bloom, Boerner Horvath, Ramos, Gonzalez, Robert Rivas, Voepel

ASM APPROPRIATIONS: 16-0-2

YES: Gonzalez, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Gabriel, Eduardo Garcia, Obernolte, Petrie-Norris, Quirk, Robert Rivas
ABS, ABST OR NV: Diep, Maienschein

ASM RULES: 7-0-5

YES: Cooley, Carrillo, Flora, Grayson, Mathis, Quirk-Silva, Robert Rivas
ABS, ABST OR NV: Cunningham, Kamlager, Maienschein, Ramos, Wicks

ASM JUDICIARY: 8-0-3

YES: Mark Stone, Chau, Chiu, Gonzalez, Holden, Kalra, Limón, Reyes
ABS, ABST OR NV: Gallagher, Kiley, Obernolte

ASM APPROPRIATIONS: 13-5-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas
NO: Bigelow, Megan Dahle, Diep, Fong, Voepel

UPDATED:

VERSION: August 24, 2020

CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

FN: 0003231