

CONCURRENCE IN SENATE AMENDMENTS

AB 1452 (Ting)

As Amended August 26, 2021

Majority vote

SUMMARY

Creates a pilot program in the San Francisco Superior Court, in conjunction with the City and County of San Francisco and their justice partners, to determine whether paying low-income jurors \$100 a day for their service on a criminal jury would lead to a more diverse panel of jurors.

Senate Amendments

Delete the previous version of this bill, and instead:

- 1) Authorizes the San Francisco Superior Court, along with the City and County of San Francisco and the justice partners, to conduct a pilot program to increase the pay for low-income jurors during a trial in an attempt to diversify the jury panel and create a more accurate representation of the community.
- 2) States a juror shall be paid a fee of one hundred dollars (\$100) per day for each day they report for trial, if their household income for the past 12 months is less than 80% of the San Francisco Bay area median income and they meet one of the additional following:
 - a) The trial juror's employer does not compensate for any trial jury service.
 - b) The trial juror's employer does not compensate for trial jury service for the estimated duration of the criminal jury trial.
 - c) The trial juror is self-employed.
 - d) The trial juror is unemployed.
- 3) States this program court shall only fund the one-hundred-dollar (\$100) fee to eligible jurors using funding through The Financial Justice Project of the City and County of San Francisco, with no cost to the San Francisco Superior Court.
- 4) Requires self-reported data collection from the jurors including race, ethnicity, and income level to provide a thorough analysis of whether increasing the fee for certain low income jurors has an effect on the demographics of the panel.
- 5) Requires the pilot program court and the justice partners to select a third-party entity to prepare an analysis of the data collected by the jurors and present their findings to the Court and the Legislature.
- 6) Requires the pilot program court to terminate the pilot program on or before December 31, 2023.
- 7) Requires this code section to be repealed on January 1, 2025.

COMMENTS

California, like many states, requires employers to provide time off for employees who are summoned to jury duty. While time off work is guaranteed, California law does not require employers to pay employees who serve on a jury. If a juror's employer does not cover their salary, jurors earn nothing on their first day of service and \$15 per day after that. Because many low-income families cannot afford to forfeit days, weeks, or months of their salary, many minimum wage, low-income workers or workers file a claim of financial hardship and are excused from service.

As a result, jury pools tend to be composed of people who can afford to serve unpaid or who have employers who'll pay them while they're serving. Diverse juries are critical to the fair delivery of justice in San Francisco. In a city with increasing income inequality, it is more important than ever to ensure all San Franciscans can have a jury of their peers.

Judicial Council Task Force on Jury System Improvements. In a 2004 report presented to the Judicial Council by the Task Force on Jury System Improvements, the task force called the rate paid to California jurors for daily service and mileage "insulting." The report demonstrated that if the \$5-per-day fee and \$0.15-per-mile mileage reimbursement had merely been adjusted for inflation since being enacted in the 1950s, jurors would receive \$28.42 per day and \$0.85 per mile in 1996 dollars.

In response to comments received about report's recommendation to increase juror compensation, the Judicial Council approved the proposal calling for increased juror compensation, specifying that any increase should be assured through state funds. Comments reflected concerns about the potential increased costs, but there was widespread recognition of the importance of raising the fee above \$5 per day and the mileage reimbursement above \$0.15 cents per mile one way. Because of the financial impact of pending state trial court funding legislation (Stats. 1997, Chap. 850), the Judicial Council approved an incremental increase in juror compensation.

Subsequently, Judicial Council-sponsored legislation was introduced to implement the first phase of increased juror fees and mileage reimbursement: SB 14 (Calderon, 1996), calling for juror fees of \$16 per day after the first day and mileage reimbursement of \$0.28 per mile one way for jurors traveling more than 50 miles. Although SB 14 did not pass, from 1997 through 1999, various pieces of legislation that called for increased juror fees, developed in concert with the AOC's Office of Governmental Affairs and the task force's Jury Management Working Group, were introduced. (See AB 2551 (Migden), of 1998), calling for \$40 per diem and \$0.28 round-trip mileage reimbursement; and AB 592 (Migden), of 1999), calling for \$15 per diem and mileage and dependent-care reimbursement up to \$50 per day.) Ultimately, juror fees were raised to \$15 a day for the second and subsequent days of jury service, starting July 1, 2000. (Stats. AB 2866 (Migden) Chapter 127, Statutes of 2000) This represented the first raise in juror pay in California since 1957.

However, first-day juror pay was eliminated in concert with the implementation of one-day or one-trial jury service. (See BRC Recommendation 3.21.) Because the length of jury service was being considerably shortened for most jurors, a contribution of one day to jury service on the part of citizens was not seen as a significant hardship. In addition, the savings from eliminating the first-day payment helped fund the increased payment for jurors whose service extended beyond one day.

However, juror mileage reimbursement remained at \$0.15 per mile one way for all days of service. In many court systems, this resulted in a great number of checks being cut for very small amounts of money—to reimburse jurors who traveled a few miles and served for only one day. The administrative costs were often much greater than the amount of the reimbursement. To eliminate this wasteful practice, legislation was passed effective January 1, 2003, that eliminated first-day mileage and increased the reimbursement rate for mileage to \$0.34 per mile, matching the then-current rate for state employees. AB 2925 (Migden) Chapter 144, Statutes of 2002) Reimbursement was still only paid for one-way travel, however, so the result would be essentially revenue neutral; the anticipated savings from eliminating first-day mileage reimbursements were projected to fund the increased reimbursements for second- and subsequent-day service. (https://www.courts.ca.gov/documents/tfjsi_final.pdf).

This bill would implement "Be The Jury," a pilot program in which low- to moderate-income jurors would be compensated \$100 per day for their criminal jury service in the San Francisco Superior Court. Jurors would be eligible if their household income were less than 80% Area Median Income (\$71,700 for a single person; \$102,500 for a household of four) and they met at least one of the following criteria:

- 1) Their employer does not compensate for jury service;
- 2) Their employer does not compensate for the estimated duration of jury service;
- 3) They are self-employed; or
- 4) They are unemployed.

In order to test whether the pilot program does, in fact, result in more diverse juries in criminal cases, the bill would require that the pilot program court and the justice partners select a third-party entity to prepare an analysis of the data collected by the jurors and present their findings to the Court and the Legislature. The pilot program would be required to end on or before December 31, 2023.

According to the Author

The "Be The Jury" pilot program aims to provide compensation to low-income San Franciscans who would like to serve on juries, but cannot because they would face a financial hardship. Jury duty is perhaps the most meaningful opportunity for true civic engagement that our system provides. However, due to financial constraints, many, often those from the neighborhoods most affected, are deprived of this opportunity for engagement. We believe this effort would help us ensure that San Francisco juries are economically and racially diverse, and therefore better able to administer justice that reflects the values of diverse San Francisco communities.

The "Be The Jury" pilot program was developed through a partnership of stakeholders in the criminal legal system, demonstrating that such a pilot program is critically needed. Working group members include the San Francisco Public Defender's Office, the San Francisco District Attorney's Office, the San Francisco Bar Association, and the San Francisco Financial Justice Project in the Treasurer's Office.

The "Be The Jury" pilot program would test out whether providing increased compensation creates juries that are more economically and racially diverse. Through the pilot program,

stakeholders hope to learn if people who would have claimed a financial hardship can serve because of this program and whether this program impacts the economic and racial diversity of juries in a meaningful way. This pilot program will be funded through philanthropic funds raised by the San Francisco Financial Justice Project in the San Francisco Treasurer's Office.

Arguments in Support

According to Californians for Safety and Justice, "Today a troubling phenomenon has emerged: juries are whiter and wealthier, and not reflective of our communities' economic and racial diversity. To address this issue, a working group of agencies at the City and County of San Francisco has developed the "Be The Jury" pilot program. This program will compensate low- to moderate-income jurors \$100 per day for jury service in the San Francisco Superior Court. Jurors will be eligible if their household income is less than 80 percent Area Median Income and they meet one of the following criteria: (1) their employer does not compensate for jury service; (2) their employer does not compensate for the estimated duration of jury service; (3) they are self-employed; or (4) they are unemployed. The Be The Jury pilot program was borne from feedback given through interviews and listening sessions with San Franciscans with low to moderate incomes and community-based organizations, including Californians for Safety and Justice, to better understand the challenges with creating more diverse juries. These conversations confirmed that for many, the current rate of compensation for jury service in California (\$15 per day) creates significant barriers for people who would like to serve on a jury, but cannot, because they cannot afford to take time off work that is required. Californians for Safety and Justice strongly believes that the Be The Jury pilot program will help ensure that San Francisco juries are more economically and racially diverse, and therefore better able to administer justice that reflects the values of diverse San Francisco communities. The pilot is already fully funded through philanthropic support and has wide buy-in from community organizations, the San Francisco Public Defender, District Attorney, Treasurer's Office, and Bar Association. Now, all that is needed is the state authorization to begin."

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

VOTES:**ASM PUBLIC SAFETY: 8-0-0**

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Quirk, Santiago, Seyarto, Wicks, Lee

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Friedman, Stone

ASSEMBLY FLOOR: 76-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Cunningham, Kalra

SENATE FLOOR: 36-3-1

YES: Allen, Archuleta, Atkins, Bates, Becker, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO: Borgeas, Grove, Nielsen

ABS, ABST OR NV: Stern

UPDATED

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CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

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