

Date of Hearing: April 9, 2024

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1811 (Alvarez) – As Introduced January 9, 2024

As Proposed to be Amended

SUBJECT: JURY DUTY: ELIGIBILITY

KEY ISSUES:

- 1) SHOULD LEGAL PERMANENT RESIDENTS BE ELIGIBLE FOR JURY DUTY?
- 2) SHOULD THE JUDICIAL COUNCIL CREATE A PROGRAM TO PERMIT LEGAL PERMANENT RESIDENTS TO ELECT TO PARTICIPATE IN JURY DUTY?

SYNOPSIS

In an effort to solve two problems in one measure – ensuring adequate diversity on juries and facilitating courts' efforts to efficiently empanel juries – this bill would allow legal permanent residents to serve on juries in the state. Numerous states across the country have considered allowing noncitizens to serve on juries, although none currently make legal permanent residents (LPRs) eligible for jury service. A common point throughout the debate has been whether excluding noncitizens from juries is inherently unfair to either the prospective juror or the individual being tried. With respect to both, the Supreme Court has regularly held that exclusion of noncitizens from juries does not violate Constitutional protections. While seemingly legally permissible, the proposal raises potential concerns around fairness and implementation. In order to address these concerns, the author is proposing to amend the bill to make LPRs participation in jury duty optional, rather than mandatory. These amendments are incorporated into the SUMMARY and discussed further in the COMMENTS sections of this analysis.

This bill is supported by the California Federation of Teachers, California Public Defenders Association and Chinese for Affirmative Action (CAA).

SUMMARY: Expands eligibility for jury duty to lawful permanent residents beginning January 1, 2026 and directs Judicial Council to develop a corresponding program. Specifically, **this bill:**

- 1) As of January 1, 2026, makes lawful permanent residents eligible for jury service.
- 2) Prohibits any government agency or department, law enforcement agency, commercial entity, or other person from obtaining, accessing, using, or otherwise disclosing information maintained for purposes of 1) for the purpose of immigration enforcement as defined in specified sections of the Government Code.
- 3) Requires Judicial Council, by January 1, 2026, to develop a program to allow legal permanent residents to participate in jury duty. Specifies that the program must include all of the following:

- a) Notice and information regarding the program, including notice that new eligibility requirements will be expanded to include legal permanent residents as of January 1, 2026;
 - i) Specifies that all notice and information must state that legal permanent residents are eligible, but not required, to participate in jury duty.
 - b) An opportunity for eligible participants to affirmatively attest that they wish to participate in the program;
 - c) Procedures for courts, consistent with 2), to limit the sharing and disclosure of information maintained by the courts and about the program and its participants.
- 4) Reverts to existing law as of January 1, 2031.

EXISTING LAW:

- 1) Establishes the Trial Jury Selection and Management Act. (Code of Civil Procedure Section 190 *et seq.* All further statutory references are to this code, unless otherwise indicated.)
- 2) 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, and 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. (Section 191.)
- 3) Provides that all persons selected for jury service are to 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, including but not limited to Department of Motor Vehicle records, voting rolls, tax filer lists, customer mailing lists, telephone directories, and utility company lists. (Section 197.)
- 4) Provides that all persons are eligible and qualified to be prospective trial jurors, except the following:
 - a) Persons who are not citizens of the United States.
 - b) Persons who are less than 18 years of age.
 - c) Persons who are not domiciliaries of the State of California, as specified.
 - d) Persons who are not residents of the jurisdiction they are summoned to serve.
 - e) Persons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored.
 - f) Persons who are not possessed of sufficient knowledge of the English language, provided that no person is to be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability that impedes the person's ability to communicate or that impairs or interferes with the person's mobility.

- g) Persons who are serving as grand or trial jurors in any court of this state.
 - h) Persons who are the subject of conservatorship. (Section 203 (a).)
- 5) Provides that no person is to be excluded from eligibility for jury service in the State of California, for any reason other than those reasons provided by 4). (Section 203 (b).)
 - 6) Makes the names of qualified jurors drawn from the qualified juror list for the superior court available to the public upon request unless the court determines that a compelling interest requires the information to be kept confidential or its use limited in whole or in part. Allows any person to petition the court for access to these records. (Section 237 (a) – (b).)

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

COMMENTS: In an effort to solve two problems in one measure – increasing diversity on juries and facilitating courts’ efforts to seat full juries – this bill would allow legal permanent residents to serve on juries in the state. According to the author:

AB-1811 (Jury Duty for All*) seeks to democratize California’s jury pools while also assisting the courts in meeting their demand for jurors by allowing all lawful permanent residents (LPRs) to be eligible for jury service.

Making LPRs eligible to serve on juries is a desirable reform as our justice system is based upon judgment by one's peers and juries that represent a cross-section of the community. California is home to approximately 3 million LPRs (8% of the state’s population) who pay taxes, live and work in the community, serve in the military and possess the right to remain indefinitely. LPRs are subject to the laws just like U.S. citizens, but play no role in resolving legal disputes. They can be parties and witnesses in court proceedings, work as attorneys, and serve as judges or in other positions in the courts. The only role from which they are excluded is juror.

Jury service is an important mode of civic engagement for permanent residents, who make up a significant portion of our neighbors, friends, family and coworkers, and it is an appropriate obligation for those who benefit from the protection of our laws and can be rightfully called on to contribute to their communities.

Passing a test about the law or the Constitution is not a prerequisite for a citizen to be eligible for jury service. Some citizens have basic knowledge in these areas, while some do not. The same will be true of LPRs serving as jurors. There is no reason to assume that they are less knowledgeable about or less committed to the system than United States citizens. This requirement is an historical artifact that unreasonably excludes many qualified members of the community who are fully able and willing to contribute. Citizenship is not required of other participants in the justice system, such as lawyers, judges, other court personnel, witnesses and parties, and is not a sensible requirement for jurors.

It is also no secret that courts often struggle to seat juries. Of all the self-reported reasons excluding someone from serving on a jury, not having citizenship is the most common. By making LPRs eligible for jury service, we can help California’s courts in meeting their needs for jurors and improve efficiency in the jury summons process.

The legal history of jury service for noncitizens. Eligibility for jury service has fluctuated over the centuries. Although no state currently make noncitizens eligible for jury service, numerous states, including California, have allowed their participation or considered the proposal. A common point throughout the debate has been whether excluding noncitizens from juries is inherently unfair to either the prospective juror or the individual being tried. With respect to both, courts have regularly held that exclusion of noncitizens from juries does not violate Constitutional protections.

Exclusion of noncitizens from jury service does not appear to run afoul of Constitutional protections. Questions of potential discrimination on the basis of race or ethnicity typically trigger a strict scrutiny analysis which requires a statute to be narrowly tailored to serve a compelling governmental interest in order to pass muster. However, the Supreme Court has created an exception known as the “political function” exception, which “applies to laws that exclude aliens from positions intimately related to the process of democratic self-government.” (*Bernal v. Fainter* (1984) 467 U.S. 216, 220.) While the Court has not issued a decision directly answering which level of scrutiny statutes excluding noncitizens from jury service should receive, they have suggested in dictum that the question would, in fact, fall into the “political function” exception, and have even gone so far as to affirm a lower court ruling upholding such an exclusion which applied the more exacting strict scrutiny analysis. (*Foley v. Connelie*, (1977) 435 U.S. 291, *Perkins v. Smith*, 370 F. Supp 1234 (Md. 1974) aff’d 426 U.S. 913 (1976).)

The California Supreme Court has rejected the argument that excluding noncitizens from jury service violates one’s constitutional right to be tried to be judged by a jury of their peers. The Sixth Amendment promises criminal defendants the right to a jury trial and the Supreme Court has ruled that this right necessitates “a jury drawn from a fair cross section of the community.” (*Taylor v. Louisiana* (1975) 419 U.S. 522, 528.) The argument that exclusion of noncitizens from juries violates the rights of the accused rests on the assumption that the exclusion of noncitizens from jury pools necessarily prevents a sufficiently diverse jury pool. In *Rubio v. Superior Court of San Joaquin County*, the plaintiff appealed his conviction arguing that he was not tried by a jury of his peers because the jury included neither ex-felons nor noncitizens. The California Supreme Court upheld the conviction, ruling that neither were a “cognizable group”:

“[I]t cannot be shown that no other members of the community adequately represent the particular viewpoints of ex-felons and resident aliens. [...] [The exclusion of noncitizens] from the political process and their exposure to discrimination have also been experienced by another group in our society: naturalized citizens. [...] These are memories not soon forgotten, and many naturalized citizens still carry with them the deep imprint of their former status. Between them and resident aliens, in this respect, there may be differences of degree but not of kind.” (*Rubio v. Superior Court of San Joaquin County* (1979) 24 Cal.3d 93, 100.)

Case law indicates that inclusion of noncitizens on juries likewise poses no Constitutional threat. A number of cases have determined that the presence of an ineligible noncitizen on a jury resulting in a guilty verdict is insufficient to challenge the verdict. (See e.g. *Kohl v. Lehlback* (1895) 160 U.S. 293, *Hollingsworth v. Duane* (1801) 4. U.S. 353.) In a recent case, a Maryland Court of Appeals ruled that the petitioner’s verdict could stand despite the presence of a noncitizen permanent resident on the jury. The Maryland Appeals Court reasoned that various Supreme Court cases made clear that the “federal Constitution does not require that jurors be U.S. citizens.” (*Owens v. State* (2008) 924 A.3d 1072.) In reaching its conclusion, the Appeals Court cited *Carter v. Jury Commission*, in which the Supreme Court stated:

“[I]t has long been accepted that the Constitution does not forbid the States to prescribe relevant qualifications for their jurors. The States remain free to confine the selection to citizens [...] ‘Our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civil duty.’” (*Carter v. Jury Commission* (1970) 396 U.S. 320, 332 – 333.)

The petitioner in *Owens* subsequently appealed the matter to the Supreme Court, which declined to hear the case. (*Owens v. Maryland* (2008) 2008 U.S. LEXIS 1009.)

California Code of Civil Procedure Section 197 states “[a]ll 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.” Subdivision (b) (1) of the same section provides “[t]he list of registered voters and [DMV’s] list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. Until January 1, 2022, only these two source lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population[.]” In sum, the Code of Civil Procedure appears to ensure that each county is drawing potential jurors from a source substantially diverse enough to ensure a jury sufficiently representative of the community to satisfy the requirements of the Sixth Amendment.

It seems clear that neither the statutory or accidental inclusion nor exclusion of noncitizens from juries violates the Sixth Amendment. Moreover, as suggested by the California Supreme Court in *Rubio*, it is unclear whether mandating noncitizens to participate in jury service actually increases the overall diversity of thought or experience of the state’s jury pool, in light of the participation of naturalized citizens who may share many experiences with noncitizens.

It is important to note that jury duty is considered “another responsibility of citizenship” (*What Are the Benefits and Responsibilities of Citizenship*, U.S. Citizenship and Immigration Services, available at: <https://www.uscis.gov/sites/default/files/document/guides/chapter2.pdf>.) There is no doubt that noncitizens are just as capable as citizens to complete jury service, as discussed by the author above. That is not, however, the only question that needs answering. An additional question is whether it is *just* to impose an obligation of citizenship on a discrete group of people who do not receive any of the concurrent benefits. Under existing law, noncitizens who elect to naturalize choose to do so with the full knowledge and acceptance of the responsibilities of citizenship and receive the concurrent benefits. As currently written, however, this bill would impose an obligation of citizenship on a group that receives none of the benefits.

Proposed amendments mitigate concerns over obligating legal permanent residents to participate in jury duty. The term “noncitizen” refers to any individual who is not a citizen of the United States, and includes legal permanent residents (also referred to as green card holders), visa holders, and undocumented immigrants. While legal permanent residents (LPRs) face less severe legal jeopardy than the state’s undocumented residents, there are nonetheless potential risks associated with jury duty that citizens do not face. Under existing law, each person eligible to serve on a jury who receives a summons is obligated to either appear and report for service or respond to the court to be excused. (Code of Civil Procedure Section 209 (a).) A person’s failure to do either authorizes the court to “find the prospective juror in contempt of court, punishable by a fine, incarceration, or both[.]” (*Ibid.*) For citizens, these potential punishments may be

financially burdensome and inconvenient. For noncitizens, however, they may threaten their prospects of future immigration relief. LPRs who wish to naturalize, or become a citizen, have to meet specified requirements, including demonstrating that they are “of good moral character.” (8 C.F.R. Section 316.10 (a)(1).) While numerous criminal convictions are clearly identified as either permanent or conditional bars to establishing good moral character, the United States Citizenship and Immigration Services (USCIS) retains discretion to determine whether factors beyond those definitions are also disqualifying. Specifically, the Immigration Nationality Act states, “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” (INA Section 101 (f), found at 8 U.S.C. Section 1101 (f).)

As citizenship has long been a requirement to serve on a jury, it would not be unreasonable for an LPR to receive a jury summons and simply ignore or forget to respond to it. In the event LPRs were obligated to serve on juries, as is proposed by the current version of this bill, they would be at risk of being held in contempt. It is potentially unlikely that a USCIS officer would determine that a contempt finding arising out of an LPR’s failure to appear for a jury summons which they reasonably believed they were not obligated to respond to would result in a determination that the applicant failed to establish good moral character. However, USCIS clearly retains discretion to “evaluate claims of good moral character on a case-by-case basis[.]” (8 CFR Section 316.10 (a)(2).) Considering the immensity of the impact on the LPR-applicant, such a risk is not one that should be taken lightly or be left entirely to chance.

In order to address these concerns while still providing an opportunity for LPRs to serve on juries, the author proposes the amendments outlined below.

Proposed amendments. As currently in print, the bill would make LPRs eligible for jury duty beginning January 1, 2025. To provide the Judicial Council the opportunity to develop the program and align the proposed statutory changes with the implementation of the new program, the author proposes to amend the bill delay the eligibility of LPRs for jury duty until 2026.

Additionally, the amendments direct Judicial Council to develop a program for LPRs to opt-in to participating in jury duty. By making the program optional rather than obligatory, the bill ensures two things. First, those that wish to participate in jury service and engage in this unique civic duty will have the opportunity to do so with full knowledge of their obligation. Moreover, making the program optional, rather than obligatory, would seem to address the question of whether requiring LPRs to participate in one of the obligations of citizenship without any of the corresponding benefits promotes a degree of unfairness. By allowing LPRs to *choose* to participate, the program arguably provides a benefit to the population by creating an opportunity to engage in another civic duty and unique facet of our democracy.

The amendments specify key elements to be included in the Judicial Council’s program development. First, amendments require the Judicial Council to provide specified notice and information regarding the new program, including updated eligibility requirements and the inclusion of LPRs. Judicial Council would also be required to specify that LPRs would not be *obligated* to report for service. Third, the program would need to provide an opportunity for LPRs to affirmatively attest that they wish to participate. These requirements ensure that the population of newly eligible potential jurors are aware of the new opportunity and its nonobligatory nature. The affirmative attestation seems a reasonable way to make sure that people know they have to appear for jury duty on a certain date is to have them confirm that they

are electing to do so. Finally, the program is required to be developed in such a manner as to ensure the protection of potential participants' personal information, and makes corresponding changes to Code of Civil Procedure Section 237 which provides public access to jury rolls.

The amendments would also sunset the new eligibility on January 1, 2031, at which time the statute would revert back to current law. In the event LPRs are not receiving sufficient notice or are experiencing negative consequences as a result of their participation in jury duty, the sunset would allow the program to end without the need for additional legislation. Should this program prove successful the Legislature would easily be able to extend or eliminate the sunset date.

The author proposes the amendments as follows:

SECTION 1. Section 203 of the Code of Civil Procedure is amended to read:

203. (a) All persons are eligible and qualified to be prospective trial jurors, except the following:
(1) Persons who are ~~not lawful permanent residents or~~ citizens of the United States.

[...]

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 2. Section 203 is added to the Code of Civil Procedure , to read:

203. (a) All persons are eligible and qualified to be prospective trial jurors, except the following:
(1) Persons who are ~~not lawful permanent residents or~~ citizens of the United States.

[...]

(e) This section shall become operative on January 1, 2026.

(f) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 3. Section 203 is added to the Code of Civil Procedure, to read:

203. (a) All persons are eligible and qualified to be prospective trial jurors, except the following:
(1) Persons who are not citizens of the United States.

[...]

(d) This section shall become operative on January 1, 2031.

SEC. 4. Section 203.5 is added to the Code of Civil Procedure, to read:

203.5. By January 1, 2026, the Judicial Council shall develop a program to allow lawful permanent residents to participate in jury duty. The program must include all of the following:

(a) Notice and information regarding the program, including notice that new eligibility requirements will be expanded to include lawful permanent residents as of January 1, 2026.

(b) All notices and information shall state that lawful permanent residents are eligible, but not required, to participate in jury duty.

(c) An opportunity for eligible participants to affirmatively attest that they wish to participate in the program.

(d) Procedures for courts, consistent with the provisions of subdivision (d) of Section 203, as amended by Section 2 of Assembly Bill 1811 of the 2023–24 Regular Session, to limit the sharing and disclosure of information about the program and its participants maintained by the court.

SEC. 5. Section 237 of the Code of Civil Procedure is amended to read:

237. (a) (1) ~~The~~ Notwithstanding subdivision (d) of Section 203, as amended by Section 2 of Assembly Bill 1811 of the 2023–24 Regular Session, the names of qualified jurors drawn from the qualified juror list for the superior court shall be made available to the public upon request unless the court determines that a compelling interest, as defined in subdivision (b), requires that this information should be kept confidential or its use limited in whole or in part.

ARGUMENTS IN SUPPORT: This bill is supported by the California Public Defenders Association (CPDA) and Chinese for Affirmative Action. In support of the measure the CPDA posits the following:

AB-1811 would help California courts in meeting their jury needs by expanding the jury pool to lawful permanent residents (LPRs). As our state continues to face challenges in assembling juries, this bill would be a practical solution to ensure that our courts function efficiently and effectively.

California is home to a large population of LPRs (approximately 3 million) who are deeply integrated into the fabric of our society. They work, pay taxes, and contribute to their local communities in numerous ways. LPRs are parties and witnesses in court proceedings, represent parties as attorneys, serve as judges, and are routinely employed in every other capacity in the courts. The only role from which they are excluded is jury service, which means LPRs are subject to the laws just like U.S. citizens but play no role in resolving legal disputes.

The legally enshrined ideal, and constitutional requirement is for American juries to be pulled from a cross-section of the community. By allowing lawful permanent residents to be eligible to serve on juries, California can make its jury pools more representative of the state's population while also instilling permanent residents with the importance of the rule of law.

Allowing LPRs to serve on juries is a desirable reform in a society devoted to judgment by one's peers and juries that represent a cross-section of the community. As public defenders, private defense counsel, and investigators, CPDA members see every day how important it is to the integrity of our criminal legal system to have a diverse venire panel.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
California Federation of Teachers, AFL-CIO
Chinese for Affirmative Action/AACRE

Opposition

2 individuals

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