SENATE THIRD READING
SB 645 (Umberg)
As Amended July 3, 2025
Majority vote

SUMMARY

Exempts most civil cases from the modernized procedures for evaluating peremptory challenges currently utilized in all criminal matters.

Major Provisions

1) Exempts civil cases from the modernized peremptory challenge rules utilized in criminal cases.

2) Provides that, notwithstanding 1), the following case types are to utilize the modernized peremptory challenge procedures utilized in criminal cases:

   a) Civil actions alleging a violation against a protected class, as specified;

   b) Civil actions alleging a violation of the Tom Bane Civil Rights Act or Unruh Civil Rights Act;

   c) Actions alleging a violation of Section 1983 of Title 42 of the United States Code;

   d) Actions alleging a violation of Title VI of the federal Civil Rights Act of 1964 or the federal Fair Housing Act;

   e) Actions alleging a violation of the Fair Employment and Housing Act;

   f) Actions for the civil commitment of a person who is deemed a sexually violent predator;

   g) Civil actions arising from an alleged hate crime; and

   h) Dependency actions.

3) Requires the judicial officer overseeing a civil case, after the final status conference is held, or if no conference is held at least 15 days prior to the trial date, to inform the parties which procedures will govern jury selection.

4) Makes technical and conforming changes.

COMMENTS

Beginning in the 1970s, California and federal courts ruled that the use of peremptory challenges to remove potential jurors from a jury panel could be discriminatory. In 1978, the California Supreme Court, forbid the use of peremptory challenges based on the belief that certain individuals are biased because they are members of a specific racial, ethnic, or religious group. (*People v. Wheeler* (1978) 22 Cal.3d 258.) The United States Supreme Court followed suit in 1986. (*Batson v. Kentucky* (1986) 476 U.S. 79.) These two rulings, and the progeny, created the "Batson-Wheeler" test, which governed the biased use of peremptory challenges in California law for decades. However, in 2020, at the height of the George Floyd protests, the Legislature

acknowledged that Batson-Wheeler permitted attorneys to utilize proxies for race in dismissing jurors. The Legislature enacted AB 3070 (Weber) Chapter 318, Statutes of 2020, to codify that specific traits being utilized as a proxy for protected classes could not be utilized to dismiss jurors and overhauled the procedures and standards of review for evaluating peremptory challenges. That bill delayed the use of its procedures for civil juries until 2026. This bill recognizes that the AB 3070 framework was largely designed for criminal trials, and permanently exempts *most* civil cases from the AB 3070 framework.

Notwithstanding all Californians' obligation to serve on a jury, the existing law allows the parties in criminal and civil cases to remove jurors from the jury panel by exercising challenges for cause and peremptory (without cause) challenges. For cause challenges are based on specific statutorily provided characteristics including: incapacity; consanguinity or affinity; fiduciary, domestic or business relationships; serving as a juror or witness in a previous trial involving the parties; interest in the action; opinions on the merits; bias or prejudice; or being a party to another action. (Code of Civil Procedure Section 129; see also 7 Witkin Cal. Proc. Trial Sec. 130.) When making a for cause challenge, the parties are required to specifically state the cause to the judicial officer.

Conversely, each party is authorized to request a certain number of peremptory challenges to remove jurors without cause during the voir dire process. So long as these challenges are not made for a discriminatory purpose, parties need not state a rationale for removing a juror. California court procedural manuals note "the purpose of the peremptory challenge is to insure an impartial jury by allowing a specific number of jurors to be excused even though no statutory challenge for cause can be made; e.g., where a juror is believed to be biased but the bias cannot be proved." (7 Witkin Cal. Proc. Trial Sec. 125.) However, much like for cause challenges, if a party believes a peremptory challenge is being made for an unlawful purpose, the challenge must be evaluated by the court.

For most of the past 50 years, following the California Supreme Court's decision in *People v. Wheeler, supra,* case law required judicial officers to determine if a peremptory challenge was offered for a discriminatory purpose. In evaluating a challenge to a peremptory challenge the court was required to apply the three-part "Batson-Wheeler" test. In applying the Baston-Wheeler test, first, the trial court must resolve whether or not the proponent has raised a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *(Johnson v. California* (2005) 545 U.S. 168.) Evidence of such a discriminatory purpose may include a party using a disproportionate number of their peremptory challenges against members of a specific group, or a party has failed to engage the prospective juror in meaningful questioning. (*People v. Wheeler*, supra, at pp. 280-281.)

Second, upon determining that the prima facie showing was made, the judicial officer must then ask the striking party to provide a justification for each peremptory challenge. To be considered valid, the reason given must be facially neutral. Examples of reasons considered valid and non-discriminatory include: antipathy towards prosecutor or criminal justice system, bad feelings towards law enforcement, family member with criminal conviction, a juror's occupation, hostile looks, hunches, or manner of dress. (*People v. Mayfield* (1997) 14 Cal.4th 668; *People v. Johnson* (1989) 47 Cal.3d 1194; (*People v. Cummings* (1993) 4 Cal.4th 1233; *People v. Semien* (2008) 162 Cal.App.4th 701; *People v. Gutierrez* (2002) 28 Cal.4th 1083; *People v. Hall* (1983) 35 Cal.3d 161; *People v. Barber* (1988) 200 Cal.App.3d 378, respectively.)

Third and finally, following the attorney's explanation, the trial court must decide if their reasons are genuine or merely a pretext cloaking discriminatory intent. In making this decision, the court may consider an evaluation of the striking party's "state of mind" based on demeanor and credibility; comparison of the dismissed juror against similar jurors who are not members of the cognizable group whom the attorney did not dismiss; or whether or not the striking party failed to fully question the juror they now seek to dismiss. (*Hernandez v. New York* (1991) 500 U.S. 352; *Miller-El v. Dretke* (2005) 545 U.S. 231, 246, respectively.) If a peremptory challenge is ultimately determined to have been made with discriminatory intent, the court may decide to reseat the prospective juror, dismiss the panel and recommence voir dire, or give the aggrieved party additional peremptory challenges.

As facially comprehensive as the Batson-Wheeler test appears, by 2020, it was clear that gaps existed in the law that permitted discriminatory intent to seep through as a valid rationale for dismissing a juror. As noted in this Committee's analysis of AB 3070, studies demonstrated that minority voters were still subjected to a disproportionate portion of peremptory challenges. (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 3070 (2019-2020 Reg. Sess.) as amended May 4, 2020, p. 8.) Given the inadequacies of Baston-Wheeler, AB 3070 adopted new procedures for peremptory challenges in California, based on best practices identified by academics and criminal justice reform groups.

Recognizing that Batson-Wheeler was a creation of case law, AB 3070 explicitly codified that a peremptory challenge on the basis of a prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups is unlawful. AB 3070 then outlined specified procedures for determining if a challenge was unlawful on the basis of a protected class. AB 3070 also requires courts to use an objective, rather than subjective, test to determine whether a challenge was motivated by the juror's membership in a protected group. Lastly, one of the most important aspects of the AB 3070 procedures requires court to look for both explicit and implicit biases when ruling on a peremptory challenge. The bill provides specific criteria that might serve as a proxy for a protected class, for example, one's prior interactions with the criminal justice system, or an opinion regarding law enforcement.

Given that AB 3070 was sponsored by criminal justice reform advocates, much of the discussion of the bill surrounded criminal proceedings. To that end, civil matters were, at one point, exempted from the bill before being inserted into the measure before its final passage. However, reflecting the different issues and potential biases at play in civil versus criminal proceedings, applying the AB 3070 procedures to civil cases was delayed until 2026.

This bill exempts most civil cases from the AB 3070 procedures. In practice, this means that most civil cases will be subject to the Batson-Wheeler test when evaluating peremptory challenges while criminal cases continue to use the AB 3070 procedures. As a result of stakeholder discussions, civil cases in which a litigant's membership in a protected class is an element of the case will continue to use the AB 3070 procedures. Specifically, cases involving claims under the Unruh and Bane Civil Rights Acts, Fair Employment and Housing Act, and specified federal civil rights statutes will remain in the AB 3070 framework in addition to dependency cases and some civil commitments.

This bill also makes several minor technical amendments. The bill modifies the existing AB 3070 procedures as it relates to historic misbehavior by attorneys in public employment during

jury selection to better define what entities are subject to that provision. The bill also requires judicial officers in civil cases to inform the parties which procedures will be used in jury selection at least 15 days prior to the trial.

According to the Author

In 2020, AB 3070 sought to improve the peremptory challenge process in California for both civil and criminal cases. Civil justice advocates supported an exclusion for civil cases, which was accepted by the author prior to Senate hearings. However, contrary to the author's wishes, a civil sunrise provision was inserted into the bill in Senate Appropriations, applying AB 3070 to civil cases beginning in 2026.

The jurisprudence concerning peremptory challenges and their improper use by counsel has been almost exclusively a phenomenon in criminal cases. Criminal proceedings implicate liberty interests in a way that civil cases do not. Take for example, the concept of patterns of conduct. In every case, the "plaintiff" in a criminal case is the people, represented by city, county, or state prosecutors. In criminal matters, judges and counsel can evaluate patterns of conduct in the use of peremptory challenges that are completely different than in civil matters, since plaintiffs in civil cases are very rarely repeat parties, and even defendants may well only be named in one or a small number of cases.

Second, civil cases encompass a broad range of issue areas, including personal injury, employment, class actions, environmental toxic exposure, privacy/data breaches, civil rights, elder abuse, and more. AB 3070 was crafted specifically with criminal court in mind to avoid all the case types in civil cases.

Third, criminal voir dire is often a lengthy process, longer than civil voir dire. Consequently, civil counsel often must make decisions on jury selection less information from potential jurors.

SB 645 honors the policy process engaged in by Dr. Weber and stakeholders and agreements therein by deleting the sunrise provision applying the new peremptory challenge framework to civil proceedings in January 2026. Under SB 645, California's new and improved peremptory challenge policies and rules will only apply to the much more complicated and nuanced cases of criminal court and only certain types of civil cases. In doing so, this measure will allow for the continued streamlining of California's civil court proceedings as the courts work to clear longstanding backlogs and will preserve the Batson-Wheeler process for civil cases, ensuring civil proceedings remain protected from unlawful discrimination in the jury selection process.

Arguments in Support

This bill is co-sponsored by the California Defense Counsel and the Consumer Attorneys of California. On behalf of the civil litigators they represent a coalition letter from the sponsors states:

The jurisprudence concerning peremptory challenges, and their improper use by counsel, has been almost exclusively a criminal phenomenon. In terms of Batson-Wheeler challenges in California, our research suggests that Batson v. Kentucky has been cited in 1,569 published and unpublished appellate decisions, of which 1,559 were criminal and only 10 were civil. With respect to citations to Wheeler v. California, we have located 2,090 published and unpublished appellate decisions citing the case, of which 2,065 were criminal cases and only

25 were civil. Indeed, California Supreme Court Associate Justice Goodwin Liu's dissent in People v. Harris is focused on the use of peremptory challenges and the perception of bias in the criminal justice system. In sum, 99% of the case law in this area is related to criminal challenges while only 1% related to civil proceedings.

Criminal proceedings implicate liberty interests in a way that civil cases do not. In every case, the "plaintiff" in a criminal case is the people, represented by city, county or state prosecutors. In criminal matters, judges and counsel can evaluate patterns of conduct in the use of peremptory challenges that are completely different than in civil matters, since plaintiffs in civil cases are very rarely repeat parties, and even defendants may well only be named in one or a small number of cases.

Second, civil cases cover a far-ranging variety of issue areas such as personal injury, employment, class actions, environmental toxic exposure, privacy/data breach, civil rights, elder abuse, and more. The provisions of AB 3070 are crafted specifically with criminal in mind rather than considering all the case types in civil cases. For example, in law enforcement whistleblower cases where a law enforcement officer is suing their department for misconduct, whether a juror has a distrust in law enforcement is relevant to the proceedings. Instead of this factor being racially motivated as in criminal cases, in a civil whistleblower case distrust would provide counsel insight as to how the juror views the case at hand.

Third, criminal voir dire is often a lengthy process, longer than civil voir dire. Therefore, civil counsel often must make decisions on jury selection based off less information from the jurors. For example, one of the factors a court can consider in whether a peremptory challenge was improper relates to the length of time questioning the specific juror. With more stringent time constraints, this factor would be problematic for either side's counsel to challenge an alleged AB 3070 violation by clear and convincing evidence as required under the bill.

With the targeted exceptions noted above, SB 645 will preserve the Batson-Wheeler process for civil cases, ensuring civil proceedings remain protected from unlawful discrimination in the jury selection process. We would be happy to respond to any questions you might have and urge your aye vote on SB 645.

Arguments in Opposition
The bill is opposed by California Attorneys for Criminal Justice (CACJ). They write:

CACJ typically does not take a position on civil-related legislation, and acknowledges that it is unusual for the organization to weigh in on a measure that is limited to civil jury trials. However, CACJ is uniquely positioned to do so as it was the sole official sponsor of AB 3070 (Weber) in 2020, which SB 645 will amend to exclude civil jury trials. To that end, we would be remiss if we did not stand on principle in opposing this effort to amend AB 3070 and explain our reasons for doing so.

The core principle of AB 3070 is that our judicial system should not tolerate jury selection practices that disproportionately exclude people of color. It is critical to note that the legislation also prohibits discriminatory practices based upon ethnicity, gender, gender identity, sexual orientation, religious affiliation, or national origin.

As introduced and consistent with Washington's approach, AB 3070 applied to both civil and criminal trials. The bill made its way through the first house with the dual application intact. In the State Senate, around the time of the hearing in the policy committee hearing, the civil plaintiffs and defense bar raised concerns about the bill and requested that civil trials be removed from the legislation. Ultimately, the author of the bill amended the legislation to do just that.

However, when AB 3070 was released from the State Senate Appropriations Committee suspense file, it was amended to once again include civil trials, allowed a five-year ramp up period for civil attorneys to prepare for the change, or possibly, develop their own legislation. At that juncture CACJ continued as sponsor and helped to move the bill through the final stages of the legislative process until it was signed into law by the Governor.

CACJ understands that the majority of Batson/Wheeler appeals, though not exclusively, involve criminal cases. It is unclear to us whether there is evidence that implicit/explicit bias does not exist within the civil arena, especially since it appears is just about every other facet of social life.

Rather, there are far fewer civil trials than criminal trials. According to the most recent Judicial Council of California statistics, out of approximately 4000 jury trials in the state, less than 600 were civil. More important, however, only a fraction of civil jury trial judgments are appealed.

As an organization, CACJ stands for the constitutional principle that bias based upon race, ethnicity, gender, sexual identity or orientation, and religious affiliation in the selection of juries has no place in our judicial system. Our criminal defense attorneys have found that AB 3070 has measurably reduced prosecutors' reliance on racial stereotypes and racial proxies to justify their peremptory challenges and judges' endorsement of reasons historically associated with discrimination. The result is more diverse juries overall—juries that are more representative of their communities. CACJ believes that more representative juries are vital to the fair administration of justice and to confidence in jury verdicts, whether they are delivered in criminal or civil trials. As sponsors of the bill, we stand by AB 3070 in its final form, as it was passed by the Legislature and signed by the Governor.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, cost pressures (Trial Court Trust Fund, General Fund) to the courts of an unknown but potentially significant amount, possibly in excess of $150,000, to make the required notifications described in item 2, above. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides $82 million ongoing General Fund to the Trial Court Trust Fund for court operations.

VOTES

SENATE FLOOR: 39-0-1
YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
ABS, ABST OR NV: Reyes

ASM JUDICIARY: 12-0-0
YES: Kalra, Dixon, Hart, Bryan, Connolly, Harabedian, Macedo, Pacheco, Papan, Sanchez, Stefani, Zbur

ASM APPROPRIATIONS: 15-0-0
YES: Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache, Ta, Tangipa

UPDATED

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CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334 FN: 0001457