
UNFINISHED BUSINESS

Bill No: SB 645
Author: Umberg (D)
Amended: 9/4/25 in Assembly
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 4/8/25

AYES: Umberg, Niello, Allen, Ashby, Caballero, Durazo, Laird, Stern,
Valladares, Wahab, Wiener

NO VOTE RECORDED: Arreguín, Weber Pierson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 39-0, 6/4/25

AYES: 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

NO VOTE RECORDED: Reyes

ASSEMBLY FLOOR: 63-0, 9/11/25 – Roll call not available.

SUBJECT: Juries: peremptory challenges

SOURCE: California Defense Counsel
Consumer Attorneys of California

DIGEST: This bill permanently exempts most civil case types from the statutory procedure for reviewing objections to peremptory challenges currently used in criminal cases, while requiring the procedure to apply in civil rights cases, civil commitment actions, and civil cases for damages arising from a hate crime, as specified.

Assembly Amendments of 9/4/25 modify the categories of civil cases in which the statutory peremptory challenge procedure will apply; and require the plaintiff in a

civil case in which the statutory peremptory challenge procedure applies to notify the court and the other parties of that fact within a specified timeframe prior to trial.

ANALYSIS:

Existing law:

- 1) Provides for the right to trial by an impartial jury as follows:
 - a) In all criminal prosecutions; however, in a criminal prosecution in state court, the jury may be waived with the consent of both parties in open court. (United States Constitution (U.S. Const.), 6th amend; *Ramos v. Louisiana* (2020) 590 U.S. 83, 93 (Sixth Amendment applies to the states through incorporation by way of the Fourteenth Amendment); (California Constitution) Cal. Const., art. I, § 16.)
 - b) In civil suits at common law in federal court, where the value in controversy exceeds \$20. (U.S. Const., 7th amend.; *Minneapolis & St. Louis Railroad Co. v. Bombolis* (1916) 241 U.S. 211, 217.)
 - c) In civil suits under state law in state court; a verdict may be rendered by three-fourths of the jury. (Cal. Const., art. I, § 16.)
- 2) Establishes the Trial Jury Selection and Management Act (the TJSMA), which governs the selection of jurors and the formation of trial juries in civil and criminal cases in all trial courts of the state. (Code of Civil Procedure (Code Civ. Proc.), pt. 1, tit. 3, ch. 1, §§ 190 et seq.)
- 3) Provides that voir dire of potential jurors in criminal and civil cases shall be conducted in two steps:
 - a) First, the judge conducts an initial examination of prospective jurors; the judge may, as they deem proper, include in their initial questioning additional questions submitted by the parties.
 - b) Second, upon completion of the judge's initial examination, counsel for each party has the right to examine, by oral and direct questioning, any of the prospective jurors. The scope of counsel's examination shall be within reasonable limits prescribed by the judge, and the judge shall permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case. (Code Civ. Proc., §§ 222.5, 223.)

- 4) Establishes two types of challenges to a potential trial juror:
 - a) Challenges for cause, which may be for one of three reasons: (1) the juror is disqualified from serving in the action or trial (e.g., because they are a party or a witness); (2) the juror's implied bias, based on the facts as ascertained; or (3) the juror's actual bias, which will prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of any party.
 - b) Peremptory challenges. (Code Civ. Proc., §§ 225-231.)
- 5) Establishes the number of peremptory challenges available by case type: 6 challenges per side in a civil case; 6, 10, or 20 challenges per side in a criminal case, depending on the maximum punishment for the offense charged; and additional challenges in which there are multiple parties per side or multiple defendants, as specified. (Code Civ. Proc., § 231.)
- 6) Prohibits a party from using a peremptory challenge on the basis of a juror's membership in a cognizable group, as follows:
 - a) A party may not use peremptory challenges to discriminate against members of a cognizable racial, religious, ethnic, or other identifiable group. (*People v. Arias* (1996) 13 Cal.4th 92, 135; *see also Batson v. Kentucky* (1986) 476 U.S. 79, 84 (deliberate exclusion of an individual from a jury on the basis of the individual's race violates the Equal Protection Clause of the Fourteenth Amendment).)
 - b) A party may not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the juror is biased merely because of the juror's sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, sexual orientation, gender, gender identity, gender expression, or similar grounds. (Code Civ. Proc., § 231.5; Gov. Code, §§ 11135, 12926.)
- 7) Establishes, through case law, a procedure (known as a *Batson-Wheeler* hearing) by which the judge can address a party's objection to another party's peremptory challenge, when the first party believes that the peremptory challenge was improperly exercised. (*Johnson, supra*, 545 U.S. at p. 168; *People v. Scott* (2015) 61 Cal.4th 363, 383-392; *People v. Wheeler* (1978) 22 Cal.3d 258, 278-283, *overruled in part by Johnson, supra*.)

- 8) Establishes, by statute, an alternative procedure for a party to object to an allegedly improper use of a peremptory challenge, and for the judge to rule on the objection, in criminal cases. Among other things, this statutory procedure makes certain bases for exercising a peremptory challenge presumptively invalid and requires a judge to consider whether unconscious bias motivated the use of a peremptory challenge. (Code Civ. Proc., § 231.7.)
- 9) Provides the procedures in 8) shall not apply in civil cases until January 1, 2026. (Code Civ. Proc., § 231.7(n); AB 3070 (Weber, Ch. 318, Stats. 2020, § 3.)

This bill:

- 1) Removes the January 1, 2026, sunrise date for the statutory peremptory challenge procedure to apply in civil cases.
- 2) Adds a provision stating that the statutory peremptory challenge procedure shall apply in the following civil cases:
 - a) Civil cases involving civil rights violations, including specified state and federal causes of action.
 - b) Actions for the civil commitment of a person, including a person who is determined to be a sexually violent predator.
 - c) Civil cases for damages arising from a hate crime.
- 3) Requires a party bringing a civil claim described in 2) to notify the court and the other party or parties, after the final status conference, or, if no final status conference is held, at least 15 calendar days before the end of the trial, that the statutory peremptory challenge procedure applies.
- 4) Makes a conforming change to the existing statutory procedure to reflect that a public entity might not be a party in a case.

Comments

Voir dire is the process by which prospective jurors are questioned by the judge and the attorneys from both sides to evaluate their backgrounds and potential biases. Existing law allows the parties in criminal and civil cases to remove jurors from the jury panel by exercising challenges for cause and peremptory challenges, to select a jury composed of individuals who can render a fair judgment about the facts of the case.

Challenges for cause are statutory and include incapacity, relationship to the parties' interests in the action, opinion on the merits, bias, or prejudice. Peremptory challenges, however, may be exercised by a party without an explanation for why the attorney believes the juror is not a good fit for the case. Parties are prohibited, however, from exercising a peremptory challenge to discriminate against jurors on the basis of protected characteristics, such as race, gender, or marital status.

In 2020, the Legislature enacted AB 3070 (Weber, Chapter 318, Statutes of 2020), which created a statutory process for parties to object to a peremptory challenge they believed was exercised for a prohibited reason. AB 3070 was initially drafted to apply in both civil and criminal cases, but civil justice advocates supported an exclusion for civil cases, which was accepted by the author prior to Senate hearings. A civil sunrise provision, however, was inserted into the bill in the Senate Appropriations Committee, applying AB 3070 to civil cases beginning in 2026.

This bill was originally intended to remove the sunrise provision from the AB 3070 peremptory challenge procedure, thereby permanently exempting all civil cases from the procedure. The sponsors of the bill—California Defense Council and Consumer Attorneys of California—argue that the AB 3070 procedure is not well-tailored for civil cases, and that many of the issues the AB 3070 procedure seeks to address are not present, or are not as acute, in civil cases as in criminal cases. After discussions with additional stakeholders, however—including Secretary of State Shirley N. Weber—the author amended the bill to permit the AB 3070 procedure to be used in specified civil case types: civil rights cases, civil commitment actions, and civil cases for damages arising from a hate crime. The stakeholders believe that the issues presented in these case types are sufficiently similar to the issues in criminal cases to warrant the use of the AB 3070 procedure in these cases. The bill continues to exempt the rest of civil cases from the AB 3070 procedure, and requires the plaintiff in a civil case bringing a qualifying civil claim to notify the court and other parties that the statutory peremptory challenge procedure will apply.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, this bill presents:

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.

SUPPORT: (Verified 9/9/25)

California Defense Counsel (source)
Consumer Attorneys of California (source)

OPPOSITION: (Verified 9/9/25)

California Attorneys for Criminal Justice
Greater Sacramento Urban League

ARGUMENTS IN SUPPORT: According to California Defense Counsel and the Consumer Attorneys of California:

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.[...]

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 [cases] 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.

ARGUMENTS IN OPPOSITION: According to the Greater Sacramento Urban League:

AB 3070 was a landmark reform designed to make juries more representative and reduce the longstanding influence of racial bias in jury selection. It requires judges to scrutinize peremptory challenges that appear to rely on racial stereotypes or coded proxies—ensuring that jurors are not dismissed based on assumptions tied to race, gender, or identity. These protections have already taken effect in criminal trials and are scheduled to apply to civil cases beginning in 2026. SB 645 would strip civil litigants—including those seeking justice in cases of police misconduct, prison conditions, and systemic discrimination—of the opportunity to benefit from these protections before they are even implemented. This would undermine the very purpose of AB 3070 and send the wrong message about our state's commitment to fair and impartial justice.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
9/11/25 11:00:26

**** END ****