

# AB 3070: Anti-Discrimination Jury Selection Act

Assemblymember Shirley Weber (D – 79)

## SUMMARY

Citizens are too often excluded from serving on juries because of their race, ethnicity, gender, sexual orientation, or other legally-protected characteristics.

Broadening jury selection laws to address both conscious and unconscious discrimination will ensure that parties are able to fully exercise their rights under the state and federal Constitutions and strengthen the public's trust in California courts.

## BACKGROUND

Over the last four decades, courts have employed the *Batson* procedure, which was designed to root out intentional acts of discrimination by lawyers when they exercise peremptory challenges (or “strikes”) to eliminate prospective jurors. However, this procedure has failed to achieve its constitutionally mandated purpose. Social science research shows that African Americans are excluded from juries by peremptory challenges at a much higher rate—as much as 2.5 times—than prospective jurors of other races are eliminated.

Courts have acknowledged that it can be difficult and often impossible for the trial judge to determine whether the lawyer making the challenge actually intended to discriminate. Even when judges require reasons for a challenge, both the trial courts and the reviewing courts have been strongly inclined to accept whatever justifications are offered. Reasons given by the party making the strike will almost always suffice even if they are “trivial” or “arbitrary or idiosyncratic”

— so long as they are not patently discriminatory or patently false.

The result has been especially detrimental to African Americans, Latinos and other people of color. California courts routinely permit justifications that are supposedly “neutral,” but are clearly substitutes for discrimination, such as whether the juror has had negative experiences with police, lives in a particular neighborhood, wears his or her hair in a certain way, or believes that the law enforcement system treats people of color unfairly.

Currently, the courts can only remedy acts shown to be intentionally discriminatory, but trial courts rarely require attorneys to present their reasons for excluding a juror. When reasons are given, judges rely on a subjective test that requires the court to determine the actual motivation of the attorney challenging a jury selection. Additionally, California courts are also free to invent their own reasons an attorney challenged a juror after a trial is already completed. Equally important, under the current procedure, judges may not consider whether the lawyer's strike was motivated by implicit bias, that is, unconscious or automatic attitudes and stereotypes. Numerous studies have shown that implicit bias is pervasive and affects all actors in the criminal legal system.

## EXISTING LAW

Code of Civil Procedure Section 231.5 prohibits the use of a peremptory challenge to remove a juror “on the basis of an assumption that the prospective juror is biased merely because of a characteristic listed or defined in Section 11135 of the Government Code, or similar grounds.” The procedure for

determining whether a party has exercised a legally impermissible peremptory challenge, including possible remedies for such conduct, is not codified. The procedure is set forth in *People v. Wheeler*, 22 Cal. 3d 258 (1978), *Batson v. Kentucky*, 476 U.S. 79 (1986), and in a number of subsequent state and federal judicial opinions that have clarified the procedure.

### **THIS BILL**

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AB 3070 will address unlawful discrimination in the selection of juries, regardless of intentional or implicit bias, by using an objective test to determine whether discrimination has occurred and requiring the attorney challenging a juror to state the reasons for the challenge whenever an objection is made that the challenge is discriminatory.

Further, AB 3070 will require courts to examine the reasons actually given and not allow courts to speculate on whether there are unstated reasons for the challenge. In addition, the bill will disallow the reasons that are frequently given to justify the exclusion of racial and ethnic groups.

This bill is based on Washington Supreme Court General Rule 37, which was adopted in 2018.

### **PREVIOUS LEGISLATION**

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None to replace the current procedure for determining whether a party has exercised an unlawful peremptory challenge.

### **SUPPORT**

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California Attorneys for Criminal Justice  
(Sponsor)  
8th Amendment Project ACLU  
California Anti-Defamation League  
Asian Americans Advancing Justice -  
California  
California Appellate Defense Counsel, INC.

California Coalition for Women Prisoners  
California for Safety and Justice  
California Public Defenders Association  
California United for A Responsible Budget  
(CURB)  
Ella Baker Center for Human Rights  
Equal Justice USA  
Friends Committee on Legislation of  
California  
Harm Reduction Coalition  
Initiate Justice  
National Association of Social Workers,  
California Chapter  
Re:store Justice  
San Francisco Public Defender  
Showing Up for Racial Justice (SURJ) Bay  
Area

### **OPPOSITION**

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Alameda County District Attorney's Office  
California District Attorneys Association  
Santa Cruz County District Attorney's Office

### **FOR MORE INFORMATION**

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