

Judges association tells members to lobby against voir dire bill

By L.J. Williamson

The California Judges Association has emailed members a "legislative alert and call to action," emphatically encouraging them to call their representatives to voice opposition to a bill that would change voir dire in criminal proceedings.

AB 1541, authored by Assemblyman Ash Kalra, D-San Jose, would require all potential jurors in criminal cases to complete a written questionnaire and would require counsel for each party to have a minimum of one hour for oral questioning of a prospective jury panel.

"The proposed additional processes would unnecessarily prolong jury selection and would be costly and burdensome for the courts," the judges association message said.

Mandating a juror questionnaire in all criminal trials would be time-consuming and "raises questions about how this would work where this is difficult or impossible because of language, disability, or other limitations" as well as raising privacy concerns, the message added.

"This is in all cases — misdemeanor and felony," said retired Santa Clara County Superior Court Judge Eugene M. Hyman. "It's ridiculous, and this is going to be incredibly time-consuming."

Hyman said that questionnaires may sometimes be useful, but a mandate would create an unnecessary burden.

"In the average case, even the average serious case, I think regular voir dire, assuming it's done competently, is more than adequate to protect the interests of both the people and the defense," he said. "I'm unaware of any studies or case law showing the present system is somehow creating negative consequences."

The California Public Defender's Association, the bill's sponsor, said the bill is in response to the reduction of peremptory challenges created by a 2016 budget trailer bill and enacted at the beginning of this year.

In a sponsor letter, Margo George and Jennifer Friedman, co-chairs of the public defenders' Legislative Committee, said the bill "will enable both prosecutors and defense counsel to identify jurors who are unable to be fair and impartial to both parties. The defenders said, "Last year the California Supreme Court reversed two death penalty cases more than 15 years after lengthy trials because the trial judges failed to conduct oral voir dire." *People v. Zaragoza* (2016) DJDAR 7006; *People v. Covarrubias* (2016) DJDAR 9396.

"We think this will simply give adequate time at the minimum for individuals to conduct thorough voir dire and truly decipher where bias exists in the jury pool," said Caliph Assagai, lobbyist for the public defenders group. "That would enable counsel to develop enough evidence to kick those jurors for cause rather than using peremptory challenges."

But the judges association is concerned that the bill will limit judicial discretion, said Lexi Howard, its legislative director.

"We understand that the sponsors of the bill are concerned about the rights of defendants and we respect that, but we think judges are mindful of that and that they do their very best given the constraints of the timing and the need to meet criminal defendants' constitutional rights," she said.

The Judicial Council of California is also opposed to the bill. In a letter to Mark Stone, chair of the Assembly Judiciary Committee, the Judicial Council's governmental affairs director — Cory T. Jaspersen — wrote that AB 1541 is a "premature response" to the reduction in peremptory challenges.

While the sponsors of AB 1541 argue that the peremptory challenge reduction curtails the removal of biased jurors, Jaspersen wrote, this argument fails to acknowledge that the trailer bill requires the Judicial Council to conduct a study of the impact of the change and report to the Legislature in 2020.

Howard maintained the bill is premature. "We just ask to be given some time to measure the efficacy of a law enacted on January 1st, and no one has cited any difficulties since the enactment of that law," she said.

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