

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 223 (Pacheco)
Version: January 9, 2025
Hearing Date: June 17, 2025
Fiscal: No
Urgency: No
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SUBJECT

Jury selection: acknowledgment and agreement

DIGEST

This bill updates the language used in the acknowledgments and agreements obtained from prospective jurors before conducting voir dire and from jurors once selected for trial regarding their obligations and duties.

EXECUTIVE SUMMARY

The United States and California Constitutions protect the right to a trial by an impartial jury in criminal and civil cases. The voir dire process, in which the court and counsel select a jury, involves a series of questions to assess the fitness of prospective jurors to serve on the jury.

Before this examination begins, the court is required to read language to prospective jurors, that they must acknowledge and agree to, regarding their obligations to answer the questions posed accurately and truthfully and the consequences for failing to do so. After the jury is impaneled, another oath is taken by the jurors by which they agree to hear the case and render a verdict appropriately.

However, the language used in these acknowledgments is outdated and potentially confusing for jurors. This bill therefore modernizes and simplifies the language.

This bill is sponsored by Judicial Council of California. No timely support or opposition has been received by the Committee. Should the bill pass out of this Committee, it will next be heard by the Senate Public Safety Committee.

PROPOSED CHANGES TO THE LAW

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. (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); 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 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:¹
 - 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) Requires, prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury acknowledgement and agreement to be obtained from the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that

¹ There are slight differences between the criminal and civil voir dire process that are not relevant to this analysis. (Compare Code Civ. Proc., § 222.5 with *id.*, § 223.)

failure to do so may subject you to criminal prosecution?" (Code Civ. Proc. § 232(a).)

- 5) Requires, as soon as the selection of the trial jury is completed, the following acknowledgment and agreement to be obtained from the trial jurors, which shall be acknowledged by the statement "I do":

"Do you and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court?" (Code Civ. Proc. § 232(b).)

This bill:

- 1) Updates the language in the agreement for prospective jurors to read: "Do you understand and agree, under penalty of perjury, that you will accurately and truthfully answer all questions about your qualifications and ability to serve as a juror in this case, and that failure to do so may result in criminal prosecution?"
- 2) Updates the language for the agreement jurors must make after being impaneled but before trial to read: "Do you understand and agree that you will carefully consider the case being heard in this court, and that you will reach a verdict based only on the evidence presented to you and the instructions on the law given by the court?"

COMMENTS

1. The voir dire process in civil cases

The right to trial by jury is protected in both the federal and state Constitutions.² While the Seventh Amendment's guarantee of a trial by jury in civil cases has not been incorporated to apply to the states by way of the Fourteenth Amendment,³ California's Constitution separately guarantees the parties the right to a trial by jury.⁴ The right may be waived with the consent of both parties, and unlike in a criminal case, a civil jury verdict may be rendered when only three-fourths of the jurors agree.⁵

The TJSMA governs the jury selection process in California state court proceedings.⁶ The TJSMA covers matters from who is qualified to serve as a juror⁷ to how lists of

² U.S. Const., 6th & 7th amends.; Cal. Const., art. I, § 16.

³ E.g., *Curtis v. Loether* (415 U.S. 189, 192, fn. 6).

⁴ Cal. Const., art. I, § 16.

⁵ *Ibid.*

⁶ Code Civ. Proc., pt. 1, tit. 3, ch. 1, §§ 190 et seq.

⁷ *Id.*, § 203.

qualified jurors are created for jury selection⁸ to jurors' duties during trial.⁹ Relevant to this bill are the TJSMA's provisions for voir dire.

In voir dire, or the jury selection process, members of the jury pool are asked questions to determine their fitness to serve in the particular trial. The judge first asks the potential jurors a standardized set of general questions, and then counsel for the parties are permitted to ask more probing questions to determine if there are reasons why the juror may not be fit to serve.¹⁰

Relevant here, prior to this examination of prospective trial jurors in the panel assigned for voir dire, each juror must acknowledge and agree to the following:

Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution?

Each prospective juror must answer, "I do." After jury selection is completed, jurors must also acknowledge and agree to the following: "Do you and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court?" They must again answer, "I do."

Given the archaic phrasing and language included in these acknowledgments, this bill modernizes and simplifies the respective provisions to read as follows:

"Do you understand and agree, under penalty of perjury, that you will accurately and truthfully answer all questions about your qualifications and ability to serve as a juror in this case, and that failure to do so may result in criminal prosecution?"

"Do you understand and agree that you will carefully consider the case being heard in this court, and that you will reach a verdict based only on the evidence presented to you and the instructions on the law given by the court?"

⁸ *Id.*, §§ 198, 198.5.

⁹ *Id.*, § 236.

¹⁰ *Id.*, §§ 222.5, 223.

2. Stakeholder positions

According to the author:

AB 223 updates the language of the statutory oaths administered to jurors by replacing outdated legal language with clear, plain language that all jurors can easily understand. This proposal is comprised of technical amendments, and otherwise leaves the substance of the oaths intact.

SUPPORT

Judicial Council of California (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 645 (Umburg, 2025) permanently exempts civil cases from requiring certain procedures to be used when a peremptory challenge is exercised against a potential juror. SB 645 is pending referral in the Assembly.

SB 758 (Umburg, 2025) limits certain bases relating to beliefs and feelings about law enforcement, and the juror's history with law enforcement, in Section 231.7's list of presumptively invalid bases for a peremptory challenge, so that they do not apply in cases where a law enforcement officer is the defendant or alleged victim. SB 758 is currently in the Senate Public Safety Committee.

AB 387 (Alanis, 2025) prohibits probation officers from being selected for voir dire in criminal matters. AB 387 is currently in the Senate Public Safety Committee.

Prior Legislation: AB 3070 (Weber, Ch. 318, Stats. 2020) established a new process by which courts would determine whether a peremptory challenge was the product of improper discrimination. It required courts to look for not only for deliberate discrimination but also implicit and unconscious bias. AB 3070 required 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, and required courts to consider a number of factors in reaching this decision.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)
