

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1981 (Lee)
Version: May 19, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Jury duty

DIGEST

This bill: (1) increases the amount of travel reimbursement that jurors can receive statewide; (2) provides for free or reimbursed public transit to and from the courthouse for jurors statewide; and (3) directs the Judicial Council to conduct a study in six counties on whether increasing juror compensation and travel reimbursement increases juror diversity and participation.

EXECUTIVE SUMMARY

Trial by a jury of one's peers is a bedrock principle of the U.S. judicial system. However, for several decades now, studies have shown that juries in California are disproportionately older, whiter, and more affluent than the overall population from which they are drawn. Simple economics may explain this phenomenon: the compensation for jury service is a mere \$15 per day and only partial reimbursement of travel expenses is available. Given this, low-income Californians, who are disproportionately younger and people of color, may not be able to afford to serve on juries as easily. This bill proposes two modest statewide responses: increasing the amount that jurors receive in travel reimbursement by including the trip home and offering jurors the option to use public transit for free or reduced cost. In addition, the bill tasks the Judicial Council with conducting a six-county study of what impact increasing juror compensation and travel reimbursement rates has on juror diversity and participation.

The bill is sponsored by the Judicial Council. Support comes from the public and private criminal defense bar who applaud the effort to diversify juries. There is no known opposition. The bill passed off of the Assembly Floor by a vote of 75-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Trial Jury Selection and Management Act. (Code Civ. Proc. § 190 *et seq.*)
- 2) States the policy of the State of California is that all persons selected for jury service must be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the state, as specified; that it is an obligation of all Californians to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civ. Proc. § 191.)
- 3) Provides that all persons selected for jury service are to be selected at random from a source or sources inclusive of a representative cross section of the population of the area served by the court including, but not limited to, Department of Motor Vehicle records, voting rolls, tax filer lists, customer mailing lists, telephone directories, and utility company lists. (Code Civ. Proc. § 197.)
- 4) Provides that, unless a juror is employed by a public entity that pays a regular salary when an employee is serving on a jury, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars (\$15) a day for each day's attendance as a juror after the first day. (Code Civ. Proc. § 215 (a).)
- 5) Provides that jurors in the superior court, in civil and criminal cases, are to be reimbursed for mileage at the rate of thirty-four cents (\$0.34) per mile for each mile actually traveled on the way to court after the first day. (Code Civ. Proc. § 215 (c).)

This bill:

- 1) Increases the amount of travel reimbursement to which a juror is entitled by including all mileage actually traveled returning from court after the first day of service.
- 2) Provides that all jurors and prospective jurors who have been summoned for jury service must be provided with public transit services at no cost utilizing either of the following options:
 - a) a new or existing partnership between the court and a local public transit agency that provides no-cost service for jurors and prospective jurors.
 - b) a method of reimbursement established by the court to reimburse up to twelve (\$12) dollars in transit costs.

- 3) Provides that the public transit reimbursement set forth in (2), above, does not apply to a court in an area where a public transit operator does not provide existing service that is reasonably available to the proximity of the court facility, as determined by the court upon consideration of specified factors.
- 4) Requires the Judicial Council of California to conduct a pilot program over two fiscal years in six geographically diverse counties, including Alameda County, to study whether increases in juror compensation and travel reimbursement result in increases in juror diversity and overall participation.
- 5) Requires the Judicial Council to collect juror demographic information, as self-reported by jurors, for the purposes of the pilot program.
- 6) Requires the Judicial Council to report the results of the pilot program authorized pursuant to (4), above, to the Legislature no later than September 1, 2026.
- 7) States that it is the intent of the Legislature to seek to improve the juror experience, promote juror diversity, and encourage participation in jury service by increasing the compensation and reimbursements that jurors receive for their service.

COMMENTS

1. The constitutional right to a jury of one's peers

The U.S. Constitution guarantees the right to trial by jury in criminal matters and in civil cases in which the amount in controversy is over \$20. (U.S. Const., amend VI, VII.) The state constitution similarly makes the right to a jury trial in both criminal and civil matters "an inviolate right" that "shall be secured to all." (Cal. Const., art. I, § 16.)

Inherent in the concept of a jury is that it is composed of the peers of the defendant or, in the case of a civil matter, the parties to the dispute. "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds." (*Strauder v. W. Va.* (1879) 100 U.S. 303, 308.)

2. Juries are not currently representative of the demographic makeup of the surrounding community

According to the author of this bill, in spite of California's rich diversity, jurors in our state are disproportionately whiter, older, and more affluent than the state's population as a whole. The author suspects that this is the result of simple economics: jury service is so woefully undercompensated (at just \$15 per day; the equivalent of one hour's

work at minimum wage) that only those with sufficient means or paid time off of work can undertake it without enduring significant financial hardship as a result.

There have been ongoing efforts to correct this and other problems with the jury system in California for at least several decades now. The California courts convened a Blue Ribbon Commission in the 1990s for the purpose of determining how to make jury service easier and how to get more Californians to do it.¹ The recommendations from that Commission led to the formation of a Task Force on Jury System Improvement in the early 2000s.² Among other ideas, the Task Force suggested several ways of improving juror compensation. Some of those ideas now inform this bill. For example, the Task Force noted that juror travel reimbursement rates have not kept up with inflation and that low or no-cost public transit options might reduce the financial burden of traveling for jury duty.³ Of perhaps greatest significance, the Task Force strongly encouraged greater compensation for jury service, though in contrast to what is proposed in the study portion of this bill, the Task Force mostly focused on the prospect that employers could be required to give their employees paid time off for serving on a jury, at least for the first three days.⁴

3. Immediate steps proposed by this bill

This bill proposes two immediate steps intended to begin to increase juror compensation. First, the bill would increase the amount that jurors receive in reimbursement for travel expense associated with jury duty. Current law only provides jurors with reimbursement for the miles they actually travel getting from home to the courthouse each day, beginning on their second day of jury duty. This bill proposes that jurors should also receive reimbursement for their return mileage as well, effectively doubling the reimbursement amount for jurors who drive to the courthouse.

Of course, not all jurors will drive to the courthouse. Some – particularly those who cannot afford a car or gas – may take public transit instead. As a second immediate step toward making it easier for lower-income individuals to serve on juries, this bill would direct the courts to reduce the cost of taking public transit to the courthouse for jurors. The bill authorizes courts to accomplish this goal either by making arrangements for jurors to use public transit for free throughout their jury service or by providing reimbursement of each juror’s public transit expenses up to \$12 per day. Courts would not be obligated to provide jurors with this free or reduced cost public transit option if, after considering specified factors, the court concludes that public transportation is not reasonably available to the court facility.

¹ *Task Force on Jury System Improvements: Final Report* (Apr. 15, 2003) Judicial Council of California https://www.courts.ca.gov/documents/tfjsi_final.pdf (as of Jun. 10, 2022) at p. 1.

² *Id.* at p. 2.

³ *Id.* at p. 26.

⁴ *Id.* at 38.

With respect to this second proposal, there may be a simpler way to achieve the same end. The bill in print tasks each court with figuring out the logistics of free public transit for jurors. Instead, it may be more straightforward just to require public transit operators to allow anyone with an active summons for jury duty to ride for free. Since the summons comes with a dated badge, such a system seems like it would be relatively simple to implement and could be done at a statewide scale almost immediately. Some logistical challenges might arise, particularly where machines are responsible for giving users access to the public transit in question. Still, contrasted with painstaking coordination between each court and local public transit agency, such an approach could be advantageous overall. Moreover, assuming that every juror badge entitled the bearer to a week of free transit, people might come to view the arrival of a jury summons as more of a pleasant surprise.

4. Study proposed by this bill

Looking more toward the future, the bill also directs the Judicial Council to sponsor⁵ a two year pilot program in six geographically diverse counties to test the impact of increasing juror compensation and travel reimbursement rates on juror diversity and participation. Geographically diverse counties are needed, since the factors influencing jury participation in Modoc County, for example, may be quite different from those in Los Angeles County. Presumably, the study will involve varying levels of increased juror compensation across the different counties, allowing comparison of the impact of those various rates and some conclusion about what level of increase is needed to produce noticeable change in juror demographics and participation rates.

Upon completion of the study, the Judicial Council is to report back to the Legislature “describing the findings of the pilot program and providing information for promoting juror diversity.” The deadline for the submission of this report is September 1, 2026.

5. Arguments in support of the bill

According to the author:

The right to a trial by jury is recognized as the foundation of the American court system. Our juries lack the representation of California’s diverse communities largely due to the fact they are not compensated at a fair rate. Currently, jurors are paid \$15 per day for jury service after the first day. This incredibly low pay results in jurors being excused for financial hardship, which in turn decreases the diversity of juries that that are not as representative of the community. AB 1981 sets to increase juror diversity by

⁵ The use of the word “sponsor” vaguely suggests that the Judicial Council will pay all of the costs associated with these pilot programs including, one imagines, the increased juror compensation. Presumably, however, the Judicial Council would only undertake these pilot programs upon appropriation of the necessary funds by the Legislature.

allowing jurors to be reimbursed for using public transportation, which will encourage greener ways to travel, and expand access to Californians without cars to fulfill their civic duties. In addition, the bill will also create a pilot program to increase juror compensation, so that it does not become a financial hardship to serve on a jury. Our juries lack the representation of California's diverse communities largely due to the fact they are not compensated at a fair rate. If juror pay as it was originally set in 1957 were adjusted for inflation, it would be approximately \$50 per day. AB 1981 will create a pilot program to increase juror compensation and help facilitate a more representative jury in our court systems.

As sponsor of the bill, the Judicial Council writes:

The legislation supports Goal I (Access, Fairness and Diversity) and Goal IV (Quality of Justice and Service to the Public) of the Strategic Plan for California's Judicial Branch. Specifically, AB 1981 advances those goals by promoting policies designed to increase access, fairness, and diversity in the courts and better serve the needs of California's diverse population.

In support, the California Public Defenders Association writes:

Prospective jurors should not be excluded from jury service due to their lack of the financial resources to afford transportation to and from the courthouse. [...] We hope that this legislation will be another step toward the goal of having California's trials decided by jurors who reflect the rich diversity of the California communities where the controversies arise giving life to the principal embodied in the United States and California Constitutions, that an individual will be tried by a jury of their peers.

SUPPORT

Judicial Council of California (sponsor)
California Attorneys for Criminal Justice
California Public Defenders Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1972 (2022, Ward) increases compensation for individuals selected as grand jurors and requires demographic data to be collected during the grand jury selection process. AB 1972 is currently pending consideration before the Senate Public Safety Committee.

Prior Legislation: AB 1452 (Ting, Ch. 717, Stats. 2021) authorized the Superior Court of San Francisco, in conjunction with the City and County of San Francisco and their justice partners, as defined, to conduct a privately financed pilot program to analyze and determine whether paying certain low-income trial jurors \$100 per day for each day they are required to report for service as a trial juror in a criminal case results in a trial jury panel that more accurately reflects the demographics of the community.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
