

Introduced by Senator Umberg

February 21, 2025

An act to amend Section 231.7 of the Code of Civil Procedure, relating to juries.

LEGISLATIVE COUNSEL'S DIGEST

SB 758, as introduced, Umberg. Juries: peremptory challenges.

Existing law provides for the exclusion of a prospective juror from a trial jury by peremptory challenge. Existing law prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of the sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation of the prospective juror, or on similar grounds. Under existing law, a peremptory challenge for specified reasons, including a prospective juror expressing a distrust of or having a negative experience with law enforcement or the criminal legal system, expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner, or having a close relationship with people who have been stopped, arrested, or convicted of a crime, are presumed to be invalid unless the party exercising the peremptory challenge meets specified requirements.

This bill would, in cases where a law enforcement officer is a defendant or alleged victim, remove the presumption of invalidity for a peremptory challenge for a prospective juror's expressing a distrust of or having a negative experience with law enforcement or the criminal legal system, expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a

discriminatory manner, or having a close relationship with people who have been stopped, arrested, or convicted of a crime.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 231.7 of the Code of Civil Procedure, as
2 added by Section 2 of Chapter 318 of the Statutes of 2020, is
3 amended to read:

4 231.7. (a) A party shall not use a peremptory challenge to
5 remove a prospective juror on the basis of the prospective juror's
6 race, ethnicity, gender, gender identity, sexual orientation, national
7 origin, or religious affiliation, or the perceived membership of the
8 prospective juror in any of those groups.

9 (b) A party, or the trial court on its own motion, may object to
10 the improper use of a peremptory challenge under subdivision (a).
11 After the objection is made, any further discussion shall be
12 conducted outside the presence of the panel. The objection shall
13 be made before the jury is impaneled, unless information becomes
14 known that could not have reasonably been known before the jury
15 was impaneled.

16 (c) Notwithstanding Section 226, upon objection to the exercise
17 of a peremptory challenge pursuant to this section, the party
18 exercising the peremptory challenge shall state the reasons the
19 peremptory challenge has been exercised.

20 (d) (1) The court shall evaluate the reasons given to justify the
21 peremptory challenge in light of the totality of the circumstances.
22 The court shall consider only the reasons actually given and shall
23 not speculate on, or assume the existence of, other possible
24 justifications for the use of the peremptory challenge. If the court
25 determines there is a substantial likelihood that an objectively
26 reasonable person would view race, ethnicity, gender, gender
27 identity, sexual orientation, national origin, or religious affiliation,
28 or perceived membership in any of those groups, as a factor in the
29 use of the peremptory challenge, then the objection shall be
30 sustained. The court need not find purposeful discrimination to
31 sustain the objection. The court shall explain the reasons for its
32 ruling on the record. A motion brought under this section shall
33 also be deemed a sufficient presentation of claims asserting the

1 discriminatory exclusion of jurors in violation of the United States
2 and California Constitutions.

3 (2) (A) For purposes of this section, an objectively reasonable
4 person is aware that unconscious bias, in addition to purposeful
5 discrimination, have resulted in the unfair exclusion of potential
6 jurors in the State of California.

7 (B) For purposes of this section, a “substantial likelihood” means
8 more than a mere possibility but less than a standard of more likely
9 than not.

10 (C) For purposes of this section, “unconscious bias” includes
11 implicit and institutional biases.

12 (3) In making its determination, the circumstances the court
13 may consider include, but are not limited to, any of the following:

14 (A) Whether any of the following circumstances exist:

15 (i) The objecting party is a member of the same perceived
16 cognizable group as the challenged juror.

17 (ii) The alleged victim is not a member of that perceived
18 cognizable group.

19 (iii) Witnesses or the parties are not members of that perceived
20 cognizable group.

21 (B) Whether race, ethnicity, gender, gender identity, sexual
22 orientation, national origin, or religious affiliation, or perceived
23 membership in any of those groups, bear on the facts of the case
24 to be tried.

25 (C) The number and types of questions posed to the prospective
26 juror, including, but not limited to, any the following:

27 (i) Consideration of whether the party exercising the peremptory
28 challenge failed to question the prospective juror about the
29 concerns later stated by the party as the reason for the peremptory
30 challenge pursuant to subdivision (c).

31 (ii) Whether the party exercising the peremptory challenge
32 engaged in cursory questioning of the challenged potential juror.

33 (iii) Whether the party exercising the peremptory challenge
34 asked different questions of the potential juror against whom the
35 peremptory challenge was used in contrast to questions asked of
36 other jurors from different perceived cognizable groups about the
37 same topic or whether the party phrased those questions differently.

38 (D) Whether other prospective jurors, who are not members of
39 the same cognizable group as the challenged prospective juror,

1 provided similar, but not necessarily identical, answers but were
2 not the subject of a peremptory challenge by that party.

3 (E) Whether a reason might be disproportionately associated
4 with a race, ethnicity, gender, gender identity, sexual orientation,
5 national origin, or religious affiliation, or perceived membership
6 in any of those groups.

7 (F) Whether the reason given by the party exercising the
8 peremptory challenge was contrary to or unsupported by the record.

9 (G) Whether the counsel or counsel's office exercising the
10 challenge has used peremptory challenges disproportionately
11 against a given race, ethnicity, gender, gender identity, sexual
12 orientation, national origin, or religious affiliation, or perceived
13 membership in any of those groups, in the present case or in past
14 cases, including whether the counsel or counsel's office who made
15 the challenge has a history of prior violations under Batson v.
16 Kentucky (1986) 476 U.S. 79, People v. Wheeler (1978) 22 Cal.3d
17 258, Section 231.5, or this section.

18 (e) A peremptory challenge for any of the following reasons is
19 presumed to be invalid unless the party exercising the peremptory
20 challenge can show by clear and convincing evidence that an
21 objectively reasonable person would view the rationale as unrelated
22 to a prospective juror's race, ethnicity, gender, gender identity,
23 sexual orientation, national origin, or religious affiliation, or
24 perceived membership in any of those groups, and that the reasons
25 articulated bear on the prospective juror's ability to be fair and
26 impartial in the case:

27 (1) ~~Expressing~~ *Except in cases where a law enforcement officer*
28 *is the defendant or an alleged victim, expressing* a distrust of or
29 having a negative experience with law enforcement or the criminal
30 legal system.

31 (2) ~~Expressing~~ *Except in cases where a law enforcement officer*
32 *is the defendant or an alleged victim, expressing* a belief that law
33 enforcement officers engage in racial profiling or that criminal
34 laws have been enforced in a discriminatory manner.

35 (3) ~~Having~~ *Except in cases where a law enforcement officer is*
36 *the defendant or an alleged victim, having* a close relationship
37 with people who have been stopped, arrested, or convicted of a
38 crime.

39 (4) A prospective juror's neighborhood.

40 (5) Having a child outside of marriage.

1 (6) Receiving state benefits.

2 (7) Not being a native English speaker.

3 (8) The ability to speak another language.

4 (9) Dress, attire, or personal appearance.

5 (10) Employment in a field that is disproportionately occupied
6 by members listed in subdivision (a) or that serves a population
7 disproportionately comprised of members of a group or groups
8 listed in subdivision (a).

9 (11) Lack of employment or underemployment of the
10 prospective juror or prospective juror's family member.

11 (12) A prospective juror's apparent friendliness with another
12 prospective juror of the same group as listed in subdivision (a).

13 (13) Any justification that is similarly applicable to a questioned
14 prospective juror or jurors, who are not members of the same
15 cognizable group as the challenged prospective juror, but were not
16 the subject of a peremptory challenge by that party. The
17 unchallenged prospective juror or jurors need not share any other
18 characteristics with the challenged prospective juror for peremptory
19 challenge relying on this justification to be considered
20 presumptively invalid.

21 (f) For purposes of subdivision (e), the term "clear and
22 convincing" refers to the degree of certainty the factfinder must
23 have in determining whether the reasons given for the exercise of
24 a peremptory challenge are unrelated to the prospective juror's
25 cognizable group membership, bearing in mind conscious and
26 unconscious bias. To determine that a presumption of invalidity
27 has been overcome, the factfinder shall determine that it is highly
28 probable that the reasons given for the exercise of a peremptory
29 challenge are unrelated to conscious or unconscious bias and are
30 instead specific to the juror and bear on that juror's ability to be
31 fair and impartial in the case.

32 (g) (1) The following reasons for peremptory challenges have
33 historically been associated with improper discrimination in jury
34 selection:

35 (A) The prospective juror was inattentive, or staring or failing
36 to make eye contact.

37 (B) The prospective juror exhibited either a lack of rapport or
38 problematic attitude, body language, or demeanor.

39 (C) The prospective juror provided unintelligent or confused
40 answers.

(2) The reasons set forth in paragraph (1) are presumptively invalid unless the trial court is able to confirm that the asserted behavior occurred, based on the court's own observations or the observations of counsel for the objecting party. Even with that confirmation, the counsel offering the reason shall explain why the asserted demeanor, behavior, or manner in which the prospective juror answered questions matters to the case to be tried.

(h) Upon a court granting an objection to the improper exercise of a peremptory challenge, the court shall do one or more of the following:

(1) Quash the jury venire and start jury selection anew. This remedy shall be provided if requested by the objecting party.

(2) If the motion is granted after the jury has been impaneled, declare a mistrial and select a new jury if requested by the defendant.

(3) Seat the challenged juror.

(4) Provide the objecting party additional challenges.

(5) Provide another remedy as the court deems appropriate.

(i) This section applies in all jury trials in which jury selection begins on or after January 1, 2022.

(j) The denial of an objection made under this section shall be reviewed by the appellate court de novo, with the trial court's express factual findings reviewed for substantial evidence. The appellate court shall not impute to the trial court any findings, including findings of a prospective juror's demeanor, that the trial court did not expressly state on the record. The reviewing court shall consider only reasons actually given under subdivision (c) and shall not speculate as to or consider reasons that were not given to explain either the party's use of the peremptory challenge or the party's failure to challenge similarly situated jurors who are not members of the same cognizable group as the challenged juror, regardless of whether the moving party made a comparative analysis argument in the trial court. Should the appellate court determine that the objection was erroneously denied, that error shall be deemed prejudicial, the judgment shall be reversed, and the case remanded for a new trial.

(k) This section shall not apply to civil cases.

1 (l) It is the intent of the Legislature that enactment of this section
2 shall not, in purpose or effect, lower the standard for judging
3 challenges for cause or expand use of challenges for cause.

4 (m) The provisions of this section are severable. If any provision
5 of this section or its application is held invalid, that invalidity shall
6 not affect other provisions or applications that can be given effect
7 without the invalid provision or application.

8 (n) This section shall remain in effect only until January 1, 2026,
9 and as of that date is repealed.

10 SEC. 2. Section 231.7 of the Code of Civil Procedure, as added
11 by Section 3 of Chapter 318 of the Statutes of 2020, is amended
12 to read:

13 231.7. (a) A party shall not use a peremptory challenge to
14 remove a prospective juror on the basis of the prospective juror's
15 race, ethnicity, gender, gender identity, sexual orientation, national
16 origin, or religious affiliation, or the perceived membership of the
17 prospective juror in any of those groups.

18 (b) A party, or the trial court on its own motion, may object to
19 the improper use of a peremptory challenge under subdivision (a).
20 After the objection is made, any further discussion shall be
21 conducted outside the presence of the panel. The objection shall
22 be made before the jury is impaneled, unless information becomes
23 known that could not have reasonably been known before the jury
24 was impaneled.

25 (c) Notwithstanding Section 226, upon objection to the exercise
26 of a peremptory challenge pursuant to this section, the party
27 exercising the peremptory challenge shall state the reasons the
28 peremptory challenge has been exercised.

29 (d) (1) The court shall evaluate the reasons given to justify the
30 peremptory challenge in light of the totality of the circumstances.
31 The court shall consider only the reasons actually given and shall
32 not speculate on, or assume the existence of, other possible
33 justifications for the use of the peremptory challenge. If the court
34 determines there is a substantial likelihood that an objectively
35 reasonable person would view race, ethnicity, gender, gender
36 identity, sexual orientation, national origin, or religious affiliation,
37 or perceived membership in any of those groups, as a factor in the
38 use of the peremptory challenge, then the objection shall be
39 sustained. The court need not find purposeful discrimination to
40 sustain the objection. The court shall explain the reasons for its

1 ruling on the record. A motion brought under this section shall
2 also be deemed a sufficient presentation of claims asserting the
3 discriminatory exclusion of jurors in violation of the United States
4 and California Constitutions.

5 (2) (A) For purposes of this section, an objectively reasonable
6 person is aware that unconscious bias, in addition to purposeful
7 discrimination, have resulted in the unfair exclusion of potential
8 jurors in the State of California.

9 (B) For purposes of this section, a “substantial likelihood” means
10 more than a mere possibility but less than a standard of more likely
11 than not.

12 (C) For purposes of this section, “unconscious bias” includes
13 implicit and institutional biases.

14 (3) In making its determination, the circumstances the court
15 may consider include, but are not limited to, any of the following:

16 (A) Whether any of the following circumstances exist:

17 (i) The objecting party is a member of the same perceived
18 cognizable group as the challenged juror.

19 (ii) The alleged victim is not a member of that perceived
20 cognizable group.

21 (iii) Witnesses or the parties are not members of that perceived
22 cognizable group.

23 (B) Whether race, ethnicity, gender, gender identity, sexual
24 orientation, national origin, or religious affiliation, or perceived
25 membership in any of those groups, bear on the facts of the case
26 to be tried.

27 (C) The number and types of questions posed to the prospective
28 juror, including, but not limited to, any the following:

29 (i) Consideration of whether the party exercising the peremptory
30 challenge failed to question the prospective juror about the
31 concerns later stated by the party as the reason for the peremptory
32 challenge pursuant to subdivision (c).

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36 asked different questions of the potential juror against whom the
37 peremptory challenge was used in contrast to questions asked of
38 other jurors from different perceived cognizable groups about the
39 same topic or whether the party phrased those questions differently.

1 (D) Whether other prospective jurors, who are not members of
2 the same cognizable group as the challenged prospective juror,
3 provided similar, but not necessarily identical, answers but were
4 not the subject of a peremptory challenge by that party.

5 (E) Whether a reason might be disproportionately associated
6 with a race, ethnicity, gender, gender identity, sexual orientation,
7 national origin, or religious affiliation, or perceived membership
8 in any of those groups.

9 (F) Whether the reason given by the party exercising the
10 peremptory challenge was contrary to or unsupported by the record.

11 (G) Whether the counsel or counsel's office exercising the
12 challenge has used peremptory challenges disproportionately
13 against a given race, ethnicity, gender, gender identity, sexual
14 orientation, national origin, or religious affiliation, or perceived
15 membership in any of those groups, in the present case or in past
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17 the challenge has a history of prior violations under *Batson v.*
18 *Kentucky* (1986) 476 U.S. 79, *People v. Wheeler* (1978) 22 Cal.3d
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31 having a negative experience with law enforcement or the criminal
32 legal system.

33 (2) ~~Expressing~~ *Except in cases where a law enforcement officer*
34 *is the defendant or an alleged victim, expressing* a belief that law
35 enforcement officers engage in racial profiling or that criminal
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6 (9) Dress, attire, or personal appearance.

7 (10) Employment in a field that is disproportionately occupied
8 by members listed in subdivision (a) or that serves a population
9 disproportionately comprised of members of a group or groups
10 listed in subdivision (a).

11 (11) Lack of employment or underemployment of the
12 prospective juror or prospective juror's family member.

13 (12) A prospective juror's apparent friendliness with another
14 prospective juror of the same group as listed in subdivision (a).

15 (13) Any justification that is similarly applicable to a questioned
16 prospective juror or jurors, who are not members of the same
17 cognizable group as the challenged prospective juror, but were not
18 the subject of a peremptory challenge by that party. The
19 unchallenged prospective juror or jurors need not share any other
20 characteristics with the challenged prospective juror for peremptory
21 challenge relying on this justification to be considered
22 presumptively invalid.

23 (f) For purposes of subdivision (e), the term "clear and
24 convincing" refers to the degree of certainty the factfinder must
25 have in determining whether the reasons given for the exercise of
26 a peremptory challenge are unrelated to the prospective juror's
27 cognizable group membership, bearing in mind conscious and
28 unconscious bias. To determine that a presumption of invalidity
29 has been overcome, the factfinder shall determine that it is highly
30 probable that the reasons given for the exercise of a peremptory
31 challenge are unrelated to conscious or unconscious bias and are
32 instead specific to the juror and bear on that juror's ability to be
33 fair and impartial in the case.

34 (g) (1) The following reasons for peremptory challenges have
35 historically been associated with improper discrimination in jury
36 selection:

37 (A) The prospective juror was inattentive, or staring or failing
38 to make eye contact.

39 (B) The prospective juror exhibited either a lack of rapport or
40 problematic attitude, body language, or demeanor.

1 (C) The prospective juror provided unintelligent or confused
2 answers.

3 (2) The reasons set forth in paragraph (1) are presumptively
4 invalid unless the trial court is able to confirm that the asserted
5 behavior occurred, based on the court's own observations or the
6 observations of counsel for the objecting party. Even with that
7 confirmation, the counsel offering the reason shall explain why
8 the asserted demeanor, behavior, or manner in which the
9 prospective juror answered questions matters to the case to be
10 tried.

11 (h) Upon a court granting an objection to the improper exercise
12 of a peremptory challenge, the court shall do one or more of the
13 following:

14 (1) Quash the jury venire and start jury selection anew. This
15 remedy shall be provided if requested by the objecting party.

16 (2) If the motion is granted after the jury has been impaneled,
17 declare a mistrial and select a new jury if requested by the
18 defendant.

19 (3) Seat the challenged juror.

20 (4) Provide the objecting party additional challenges.

21 (5) Provide another remedy as the court deems appropriate.

22 (i) This section applies in all jury trials in which jury selection
23 begins on or after January 1, 2022.

24 (j) The denial of an objection made under this section shall be
25 reviewed by the appellate court de novo, with the trial court's
26 express factual findings reviewed for substantial evidence. The
27 appellate court shall not impute to the trial court any findings,
28 including findings of a prospective juror's demeanor, that the trial
29 court did not expressly state on the record. The reviewing court
30 shall consider only reasons actually given under subdivision (c)
31 and shall not speculate as to or consider reasons that were not given
32 to explain either the party's use of the peremptory challenge or
33 the party's failure to challenge similarly situated jurors who are
34 not members of the same cognizable group as the challenged juror,
35 regardless of whether the moving party made a comparative
36 analysis argument in the trial court. Should the appellate court
37 determine that the objection was erroneously denied, that error
38 shall be deemed prejudicial, the judgment shall be reversed, and
39 the case remanded for a new trial.

- 1 (k) It is the intent of the Legislature that enactment of this
2 section shall not, in purpose or effect, lower the standard for
3 judging challenges for cause or expand use of challenges for cause.
- 4 (l) The provisions of this section are severable. If any provision
5 of this section or its application is held invalid, that invalidity shall
6 not affect other provisions or applications that can be given effect
7 without the invalid provision or application.
- 8 (m) This section shall become operative January 1, 2026.