

HOUSE BILL REPORT

2SSB 5128

As Passed House - Amended:

April 7, 2023

Title: An act relating to jury diversity.

Brief Description: Concerning jury diversity.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Trudeau, Dhingra, Billig, Hasegawa, Hunt, Kuderer, Pedersen, Stanford, Valdez, Wellman and Wilson, C.; by request of Administrative Office of the Courts).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/15/23, 3/24/23 [DPA];

Appropriations: 4/1/23, 4/4/23 [DPA(CRJ)].

Floor Activity:

Passed House: 4/7/23, 89-8.

Brief Summary of Second Substitute Bill (As Amended by House)

- Requires the Administrative Office of the Courts to provide the courts with a method to collect data on juror demographics.
- Requires the Administrative Office of the Courts to establish a work group to make recommendations for the creation of a childcare assistance program available to jurors.
- Permits electronic service of jury service summons.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Staff: Matt Sterling (786-7289).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Civil Rights & Judiciary. Signed by 26 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Without recommendation. Signed by 5 members: Representatives Chambers, Assistant Ranking Minority Member; Dye, Harris, Schmick and Steele.

Staff: Yvonne Walker (786-7841).

Background:

A jury is a body of individuals temporarily selected from the qualified residents of a particular district who are vested with the power to present or indict a person for a public offense or try a question of fact. All individuals are considered competent to serve as a juror unless that person is:

- less than 18 years old;
- not a citizen of the United States;
- not a citizen of the county in which they have been summoned to serve;
- not able to communicate in the English language; or
- a convicted felon who has not had their civil rights restored.

Jury Source List.

The Consolidated Technology Services Agency must annually provide the superior court of each county a list of the registered voters residing in that county as supplied by the Secretary of State and a list of driver's license and identicaid holders residing in that county as supplied by the Department of Licensing, or a merged list of all such persons.

A jury source list is a list of all registered voters of a county that is merged with a list of licensed drivers and identicaid holders who reside in that county. The list specifies each person's first and last name, middle initial, date of birth, gender, and residence address. Information provided to the court for preliminary determination of qualification for jury duty may only be used for the term the person is summoned and may not be used for any other purpose. Jury source lists are used to create a master list from which jurors are randomly selected.

Jury Service.

Individuals selected for jury service are selected at random from a fair cross section of the population of the area served by the court. The county clerk issues jury summons to persons selected for jury duty by mail or personal service.

Individuals may not be excluded from jury service on account of membership in a protected class or on account of economic status. Jurors may be excused by the court if jury duty is an undue hardship or extreme inconvenience, for public necessity, or as the court deems necessary. The court must excuse from further jury service any juror who, in the opinion of the court, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention, or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

The rate of pay for jurors is set by state law. Jurors must be paid a minimum of \$10 per day, and local jurisdictions may determine to pay jurors up to \$25 per day. Additionally, jurors receive reimbursement for mileage at the rate set for state officials and employees by the director of the Office of Financial Management. The local jurisdictions bear the cost of paying jurors, but the state reimburses the county in which trial is held for all jury and witness fees related to criminal cases which result from incidents occurring within an adult or juvenile correctional institution.

Summary of Amended Bill:

Jury Source List.

The Administrative Office of the Courts (AOC) is required to provide all courts with a method to collect data on juror demographics, including race, ethnicity, age, sex, employment status, educational attainment, and income. This data must be reported in a manner that preserves juror anonymity.

Beginning January 1, 2024, individuals on lists of registered voters and driver's license and identocard holders, may opt in to the Secretary of State and Department of Licensing sharing their email address with the consolidated technology services agency to facilitate receiving jury summons and other communications related to jury service by electronic means.

Childcare for Jurors.

The AOC must establish a work group to make recommendations for the creation of a childcare assistance program for individuals reporting for jury service with the intent to eliminate the absence of childcare as a barrier to performing jury service. The work group must outline the planning and implementation of the program and an estimate of the cost. The AOC must report the findings and recommendations of the work group to the Legislature by December 1, 2024.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The courts have been working on eliminating barriers to jury service for over two decades to improve jury diversity and this bill will provide reliable data to help identify gaps in jury service. Research indicates that poverty and wage gaps disproportionately affect minorities and a significant portion of the jury pool simply cannot afford to participate in jury service. Gender diversity has decreased during the pandemic. Jurors are frequently dismissed for lack of availability of childcare. During the pandemic, we had a task force created by the Chief Justice to increase jury diversity. We know that when you have better diversity on the jury, particularly gender diversity, you get better results. When we try various methods to get jury participation, we get positive results. The bill addresses several significant areas that recognize that equity representation makes a difference on juries. Studies have shown that if women are underrepresented on juries, that might impact the accuracy and efficiency of the jury deliberations and can make a difference on cases involving sexual violence. There are positive impacts from racial and ethnic diversity on juries, particularly when it pertains to conviction rates of non-white defendants. Minority women are underrepresented on jury pools in every county of Washington. Childcare and poverty are significant barriers to jury service and childcare was cited as the biggest barrier to jury service for women. The bill would study the creation of a jury service childcare voucher program. This bill doesn't fund that program, but it would create a process to study the implementation of a program. We recommend funding for childcare access for jurors, but the work groups are a step in the right direction. The bill would also allow for electronic service for jury summons and would hopefully allow the courts to diversify the jury pool by accessing potential jurors in different ways. We are disappointed by the removal of the section that created innovative ways to incentivize and involve people in jury service. We want to revisit the funding necessary for jury service and how much is appropriate, and we need more data on jury compensation at every stage of the process. It is not clear what the threshold is to incentivize people to participate in jury service, but it is certainly more than the \$10 per day that it is now. We recommend that the state increase jury compensation even though it is not in the bill.

(Opposed) Whenever we start to compartmentalize people, we cause problems and this bill would pollute the ways in which juries are formed. There is a lot of awareness of the racial division occurring in society and things like this bill would exacerbate that problem. It is not clear why the state wants to collect racial and demographic data when this is a civic duty for everyone, so this bill creates a burden and division where it doesn't need to exist. Existing jury compensation is insufficient to replace people's income, but that has nothing to do with racial and demographic data. The provisions relating to this data collection should be removed and the bill should be opposed.

(Other) We have concerns with section 4 of the bill. We would like the bill to be amended to remove references to registered voters and the Secretary of State. The collection of information from voters for uses other than voting will cause problems for that data collection to assist voters. There are concerns about the cross-use of governmental information and this could disincentivize the sharing of personal information for voting purposes. Email addresses are a valuable way to contact voters, especially when there is a problem like an unsigned ballot or signatures that do not match. This proposal would cause voters to withhold their information or even not register to vote.

Staff Summary of Public Testimony (Appropriations):

(In support) The issue of juror diversity is not new for the courts. Women are often underrepresented on juries as childcare often falls disproportionately on women. Low-income individuals and individuals of color move more often than others so it is hoped that this workgroup will study ways to increase diversity in juries. In addition, the current jury compensation system as it exists now needs to be updated as it has not been updated since the 1970s.

Jury service is the anchor of our democracy, and the equity of gender and race matters on juries. This bill will continue the AOC's current juror demographics survey that was temporarily funded by the Legislature. It is hoped that this bill will establish a reliable form of data collection and will help address gender and barriers to jury service.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): (In support) Brittany Gregory, Administrative Office of the Courts; Larry Shannon, Washington State Association for Justice; and Dana Raigrodski, Washington Supreme Court Gender and Justice Commission.

(Opposed) Eric Pratt.

(Other) Brian Hatfield, Office of Secretary of State.

Persons Testifying (Appropriations): Brittany Gregory, Administrative Office of the Courts; Elizabeth Hendren, Washington Supreme Court Gender and Justice Commission; and Laurence Shannon, Washington State Association of Justice.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.