

SUPREME COURT JURY SELECTION WORK GROUP

350 McAllister Street, San Francisco, California 94102-3688

<https://www.courts.ca.gov/Jury-Selection-Work-Group.htm>

INVITATION TO COMMENT

Title

Jury Selection Work Group: Questions for Public Comment

Action Requested

Review and submit comments by June 4, 2021

Proposed by

Supreme Court Jury Selection Work Group
Hon. Kathleen O’Leary, Chair

Proposed Effective Date

N/A

Contact

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Background

In January 2020, the California Supreme Court announced the formation of the Jury Selection Work Group. Acknowledging the jurisprudence established by *People v. Wheeler* (1978) 22 Cal.3d 258 and *Batson v. Kentucky* (1986) 476 U.S. 79, as well as recent steps taken by other states to reexamine their jury selection process, the Court created this work group to study the practical application of the *Batson/Wheeler* framework and to consider whether additional measures could further the twin goals of eliminating discrimination during jury selection and achieving a more fair cross-section of the community in juries.

The Court’s [charge](#) included the following key questions: whether a purposeful discrimination standard imposes an appropriate burden on litigants; the extent to which unconscious bias affects the jury selection process; whether facially neutral grounds for peremptory challenges – such as a juror’s negative experience or views regarding law enforcement – disproportionately exclude jurors with certain backgrounds; whether current standards of appellate review for peremptory challenges adequately serve the goal of eliminating discrimination in jury selection; whether other impediments exist to eliminate discrimination and ensure a fair cross-section in juries and how could those impediments be addressed; whether particular training or guidance could help advocates and judges to promote fairness during jury selection and to create an adequate record for meaningful appellate review; and whether standard jury instructions that address bias should be modified or supplemented to provide more guidance to jurors during deliberations.

Due to the impact of the COVID-19 pandemic, membership of the work group was not established until July 2020. During the intervening months, Dr. Shirley Weber introduced [Assembly Bill No. 3070](#) (Stats. 2020, ch. 318) in the California Assembly by. Signed into law by Governor Newsom in September 2020, this legislation created a new procedural framework for the exercise of peremptory challenges in jury selection, which is codified in Code of Civil

This proposal has not been approved by the Supreme Court and is not intended to represent its views. It is circulated for comment purposes only.

Procedure section 231.7. The legislation modifies the existing *Batson/Wheeler* framework in several important respects, including eliminating the “purposeful discrimination” standard for sustaining an objection to a peremptory challenge exercised on an impermissible ground, setting forth an “objectively reasonable person” standard that takes into account the reality of unconscious bias, designating certain justifications for excluding jurors as historically associated with improper discrimination and therefore presumptively invalid, and requiring a de novo standard of review for appellate courts.

Thus, by the time the work group began to regularly meet, the Legislature and Governor had already enacted legislation to modify the existing *Batson/Wheeler* framework and addressed some of the key questions outlined in the Court’s charge to the work group. The work group therefore focused its efforts on studying issues and factors that impact the make-up of juries beyond the new procedural framework embodied in this legislation, and considering best practices for implementing the new legislation.

Request for Public Comment

Consistent with its charge, the Jury Selection Work Group has been studying and continues to study different areas and issues that may impact representativeness in juries. As part of this endeavor, the work group now seeks comment from the public, the courts, and justice partner stakeholders on the following topics.

- 1) What can be done to better ensure that juries represent a cross-section of their communities? In particular, what can courts do?
- 2) How can courts improve engagement with underrepresented communities to increase summons response rates in those communities?
- 3) Are there any other ways in which the summons process could be improved?
- 4) How can courts determine trends and track progress in order to make the jury pool more representative of the community?
- 5) What do you see as the biggest barriers to jury service? What can be done to resolve each of the barriers you identify?
- 6) If economic hardships are a barrier, which financial reasons impact prospective jurors the most and what solutions would be the most helpful?
- 7) Last year, Assembly Bill 3070 (AB 3070) was signed into law and its provisions appear to directly address many of the key questions outlined in the Jury Selection Work Group’s charge. Are there *Batson/Wheeler* related issues, whether or not addressed in AB 3070, that should be studied by the work group?

Comments may be submitted to kara.portnow@jud.ca.gov by 5:00 p.m. on June 4, 2021.