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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2240                      **Hearing Date:** June 26, 2018  
**Author:** Grayson  
**Version:** April 9, 2018  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Trial Jury Selection and Management Act*

## HISTORY

**Source:** Chief Probation Officers of California

**Prior Legislation:** SB 1133 (Anderson) Failed Senate Judiciary 2014 (Fish and Game officers)  
AB 1708 (Alejo) not heard Senate Public Safety 2014(parole officers, CDCR officers, state hospital officers etc.)  
AB 1993 (Nakanishi) not heard Senate Judiciary 2005-06 (nurses)  
AB 270 (Bates) Failed Senate Public Safety 2003(harbor and port police)  
AB 1978 (Haynes) Failed Assembly Judiciary 2003 (single parents)  
AB 2253 (Mountjoy) Failed Assembly Judiciary 2004 (75 years or older)  
AB 2271 (Parra) Failed Senate Public Safety 2004 (CDCR officers)  
AB 1660 (Negrete McLeod) Failed Assembly Judiciary 2002  
AB 1970 (Matthews) - not heard in Senate 2001-02 (Parole, Probation and Correctional officers)  
AB 303 (Torlakson) Chapter 55, Stats. 2001 (Bart officers)  
AB 1814 (Lempert) - Chapter 266, Stats. 2000 (Breastfeeding moms)  
SB 801 (Poochigian) Failed Senate Judiciary 1999 (Judges)  
AB 2608 (Wildman) - held Senate Approps. 1997-98 (Firefighters)  
AB 316 (Morrissey) - held Senate Judiciary 1997-98 (LA County Park Rangers, Safety Police and Security Officers)  
SB 2066 (Rogers) - Chapter 742, Stats. 1994 (UC and CSU Police)  
AB 2577 (Wright) - Chapter 324, Stats. 1992 (Peace Officers and CHP)

**Support:** California Public Defenders Association; State Coalition of Probation Organizations

**Opposition:** California Judges Association; Judicial Council of California

**Assembly Floor Vote:** 59 - 7

## PURPOSE

*The purpose of this bill is to exempt probation, parole, correctional officers from jury service in criminal trials.*

*Existing law* provides a right to a jury trial in felony and misdemeanor cases. (Cal. Const., art I § 16.)

*Existing law* states the policy of California is that all persons selected for jury service shall 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; that all qualified persons have an obligation to serve as jurors when summoned; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civil Procedure (CCP) § 191.)

*Existing law* provides that persons who are not residents of the jurisdiction where the trial is held are not eligible to be jurors. (Civil Code § 203 (a)(4).)

*Existing law* states that all persons selected for jury service shall be selected at random, from sources that include a representative cross section of the population of the area served by the court. (CCP § 197.)

*Existing law* states that no person shall be excluded from eligibility for jury service in California unless they:

- a) Are not citizens of the United States;
- b) Are under 18 years of age;
- c) Are not domiciliaries of the State of California, or residents of the jurisdiction wherein they are summoned to serve;
- d) Have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored;
- e) Do not hold sufficient knowledge of the English language;
- f) Currently serve as a grand or trial juror in any court of this state; or
- g) Are currently in conservatorship. (CCP § 203.)

*Existing law* states that no eligible person shall be exempt from jury service as a trial juror by reason of occupation. (CCP § 204 subd. (b).)

*Existing law* requires the jury commissioner to randomly select jurors for jury panels to be sent to courtrooms for *voir dire*. (CCP § 219 (a).)

*Existing law* excludes the following peace officers from random selection to be sent to courtrooms for *voir dire* civil and criminal matters:

- a) Any sheriff, undersheriff, or deputy sheriff employed in the capacity by a county government;
- b) Any chief of police, of a city, or a chief, a director, or a chief executive officer of a municipal public safety agency, and any police officer appointed by one of these

individuals;

- c) Any police officers or port wardens employed by the San Diego Unified Port District Police or the Harbor District of the City of Los Angeles;
- d) Any marshal or deputy marshal of a superior court or county;
- e) The Attorney General of California;
- f) All special agents and investigators of the Department of Justice;
- g) Any chief, assistant chief, deputy chief, deputy director, and division director of the Department of Justice designated as a peace officer by the Attorney General;
- h) Any deputy sheriff from 32 counties, as specified, employed to perform duties related to custodial responsibilities at any county custodial facility;
- i) Any member of the Department of the Highway Patrol provided that their duty is the enforcement of the law or the protection of state officers, state properties, and the occupants of state properties; and,
- j) A member of the San Francisco Bay Area Rapid Transit District Police Department provided that their duty is the enforcement of the law in or about the property owned by the District. (CCP § 219 (b)(1).)

*Existing law* excludes the following peace officers from random selection to be sent to courtrooms for *voir dire* in criminal matters:

- a) A member of the University of California Police Department provided that the officer is assigned to the enforcement of the law within one mile of a University of California campus or property owned and administered by the University of California; and
- b) A member of the California State University Police Department provided that the officer is assigned to the enforcement of the law within one mile of a California State University campus. (CCP § 219 (b)(2).)

*Existing law* allows an eligible person to be excused from jury duty in cases of undue hardship, upon the person or the public, as defined by Judicial Council. (CCP § 204 (b).)

*Existing law* provides that it is an undue hardship for a prospective juror whose services are immediately needed for the protection of the public health and safety, if it is not feasible to make alternative arrangements to relieve the person of those responsibilities during the period of service as a juror without substantially reducing essential public services. (California Rule of Court 2.1008 (d)(6).)

*Existing law* requires Judicial Council to adopt a rule of court, requiring the trial courts to establish procedures for jury service that gives peace officers scheduling accommodations when necessary. (CCP § 219.5.)

*This bill* would prohibit parole officers and probation officers from being selected for *voir dire* in a criminal matter.

## COMMENTS

### 1. Need for This Bill

According to the author:

Currently sheriffs, police, CHP, San Francisco BART police, and UC and CSU police are exempted from jury duty, due to the role they have in pretrial responsibilities. AB 2240 would similarly exempt probation officers from jury duty in criminal matters.

As an arm of the court, probation officers have pre-conviction responsibilities such as operating pretrial programs and conducting risk assessments, as well as preparing probation reports and making recommendations to the bench on suitability and eligibility for probation, which may involve interviewing the defendant and witnesses, and reviewing information on the circumstances of the offense.

Probation officers also have significant post-conviction responsibilities including supervision and programming of approximately 350,000 persons on probation, mandatory supervision, PRCS, as well as administering the operation and programming of juvenile halls and serving youth in the community. As of 2016, there are approximately 39,000 youth at varying levels of the county probation system. The role probation plays at multiple parts of the system puts officers in a position where the defendant in a criminal trial could potentially be under their department's jurisdiction, creating an inherent conflict of interest. Furthermore, recently there have been instances where a mistrial has been sought due to having a probation officer empaneled in criminal trials.

AB 2240 recognizes the role of probation officers in the adult and juvenile justice systems, both from a pre-conviction and post-conviction perspective, and ensures that officers can continue to best serve the needs of those under care and supervision.

### 2. Jury Service Exemptions

Prior to the 1980's, jury service exemptions were provided for legislators, congressmen, military personnel, peace officers, local office holders, attorneys, clergy, teachers, doctors, dentists, merchant seamen, telephone and telegraph operators, firefighters, and railroad employees. However, because those exemptions limited the available jury pool, the Legislature subsequently repealed jury service exemptions. The view of the Legislature at that time was that adding specific exemptions for jury service was a "slippery slope," especially considering the difficulties in having members of the public serve the court.

However, the Legislature has reinstated the existing exemptions for certain peace officers. The rationale for re-establishing these jury service exemptions was that these particular peace officers perform critical public safety functions and are constantly needed on the job to protect the public. It

was not as the sponsor alleges because there was an “inherent danger that police officers and deputy sheriffs are exposed to through their interactions with potential criminals.” Many law enforcement peace officers, including those who work for the Departments of Fish and Game, Parks and Recreation, Forestry and Fire Protection, Alcoholic Beverages, Motor Vehicles, and State Fire Marshals, as well as the community college and school district police departments, are still not exempt from jury duty.

In the early 1990's, the Legislature recommenced the creation of new "carve outs" from jury service for specified peace officers. An exemption for specified peace officers and CHP officers from civil and criminal matters was created in 1992 and an exemption for University of California police officers and members of the Department of Corrections Law Enforcement Liaison Unit was added in 1994. In 2001, SB 303 (Torlakson), Chapter 55, Statutes of 2001, created a new public safety officer "carve out" that exempts San Francisco Bay Area Rapid Transit District police from jury service in both civil and criminal matters. In 2002, AB 1970 (Mathews) attempted to add probation and parole officers to the jury duty exemptions and it was never heard in Senate Public Safety after it was clear it would not have the votes.

### **3. Exemption from criminal trials**

This bill would exempt parole and probation officers from criminal trials only. Since jury pools are not called separately for criminal or civil trials this bill should not keep a parole or probation officer from showing up for a jury.

The sponsor argues that “as an arm of the court, probation officers have pre-conviction responsibilities such as operating pretrial programs and conduction risk assessments as well as preparing probation reports and making recommendations to the bench on suitability and eligibility for probation which may involve interviewing the defendant and witnesses and reviewing information on the circumstances of the offense.” While this is true, a probation officer who worked on a particular case or had contact with the defendant or witnesses would be immediately dismissed for cause just as any juror would. A probation officer may also not live in the jurisdiction in which he or she serves so thus may not have professional contact with a defendant in the jurisdiction in which he or she works. In addition others, including attorneys, spouses of attorneys, judges, social workers etc. may have contacts with the attorneys involved or the judge or may come in contact with the case during the trial or appellate phase and they still have to appear for jury duty. In fact when he was Chief Justice, Ronald George showed up for jury duty as do many lower court judges throughout the state.  
(<http://articles.latimes.com/2003/may/16/local/me-onthelaw16>)

### **4. Argument in Support**

The Chief Probation Officers support this bill stating:

As an arm of the court, probation officers have pre-conviction responsibilities such as operating pretrial programs and conduction risk assessments as well as preparing probation reports and making recommendations to the bench on suitability and eligibility for probation which may involve interviewing the defendant and witnesses and reviewing information on the circumstances of the offense.

Further, probation officers also have significant post-conviction responsibilities including supervision and programming of persons on probation, mandatory

supervision and PRCS. The role probation plays at multiple parts of the system puts officers in a position where the defendant in a criminal trial could potentially be under their department's jurisdiction, creating an inherent conflict of interest.

## 5. Argument in Opposition

According to the California Judges Association:

CJA's opposition to AB 2240 is consistent with its historical rejection of expanded exemptions from jury service. Many courts already struggle with the challenges of not having enough jurors available for prospective jury service. Further exemptions increase the burden not only on courts, but on the remaining citizens expected to serve. This is particularly true in smaller counties.

AB 2240 seeks to expand categorical exemptions to jury service. Amendments limited those proposed exemptions to criminal matters, thereby further complicating the jury administration process. Proponents assert that this exemption is needed for public safety and privacy purposes. Respectfully, this just isn't the case: any prospective juror can request, and judges grant, private conversations about their reasons they are unable to serve. Further, it seems that corrections can appropriately manage caseloads to avoid the rare conflict of an officer who has served on a jury to prevent later supervision of that defendant.

Existing law and the voir dire process provide adequate opportunity for excuse when needed. Creating further categorical exemptions harms the diversity of the jury pool and increases the burden on the remaining prospective-juror community.

Jury service is a necessary part of our democracy, not an inconvenient impediment to our days. For these reasons, the California Judges Association opposes AB 2240 and respectfully requests your NO vote.

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