

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

SB 271 (Wiener)  
Version: January 3, 2022  
Hearing Date: January 12, 2022  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Juries

**DIGEST**

This bill requires the Franchise Tax Board to furnish a list of resident state tax filers to federal district courts in California upon request after entering into a data protection agreement, as specified.

**EXECUTIVE SUMMARY**

A jury, by law, must represent a cross section of the population in a community in order to ensure that a defendant is afforded their constitutional right to an impartial jury. This philosophy underpins the foundation of California's jury system. The courts, through the respective jury commissioners, have an obligation arising from both the United States and California Constitutions to ensure that jury pools are properly representative. State and federal courts rely on the records of various state agencies to identify the pool of eligible jurors within each respective court's jurisdiction. This includes records from the Department of Motor Vehicles, voter registration rolls from the Secretary of State, and state tax filer information from the Franchise Tax Board (FTB).

In response to issues regarding the flow of information from FTB to federal district courts in California, this bill explicitly provides that FTB shall furnish state tax filer information regarding residents that report a primary residence within a county in the relevant federal court's jurisdiction upon request of the court. Prior to furnishing such records, FTB shall enter into a data protection agreement with each court by which the court agrees to certain data use limitations and security measures.

This bill is author-sponsored. It is supported by the California Public Defenders Association. As this bill has recently been gutted and amended, all prior votes on, and opposition to, this bill are irrelevant.

**PROPOSED CHANGES TO THE LAW**

Existing state law:

- 1) Provides that a defendant has a right to trial by a jury drawn from a representative cross section of the community, guaranteed by the Sixth Amendment of the United States Constitution and article I, section 16, of the California Constitution. (*Rubio v. Superior Court* (1979) 24 Cal.3d 93, 97; *see also People v. Garcia* (2000) 77 Cal.App.4th 1269, 1274 & fn.3.)
- 2) Provides that the Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship. It is the policy of the State of California 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, in accordance with this chapter, to be considered for jury service in the state and an obligation 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) Requires that all persons selected for jury service 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. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists. (Code Civ. Proc. § 197(a).)
- 4) Specifies that the list of registered voters, the DMV's list of licensed drivers and identification cardholders resident within the area served by the court, and the list of resident state tax filers are appropriate source lists for selection of jurors. As of January 1, 2022, these three lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population as required. (Code Civ. Proc. § 197(b).)
- 5) Requires the DMV to furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older, and who are holders of a current driver's license or identification card, as specified. The conditions under which these lists shall be compiled semiannually shall be determined by the director, consistent with any rules which may be adopted by the Judicial Council. The jury commissioner shall not disclose the information furnished by the DMV pursuant to this section to any person, organization, or agency. (Code Civ. Proc. § 197(c).)

- 6) Requires FTB to annually furnish, by November 1, the jury commissioner of each county with a list of resident state tax filers for their county in consultation with the Judicial Council. (Code Civ. Proc. § 197(d).)
- 7) Requires the jury commissioner of each county to maintain records regarding selection, qualification, and assignment of prospective jurors. All records and papers maintained or compiled by the jury commissioner in connection with the selection or service of a juror shall be preserved for at least three years after the list used in their selection is prepared. (Code Civ. Proc. § 207.)
- 8) Provides that all persons are eligible and qualified to be prospective trial jurors except for certain specified persons. (Code Civ. Proc. § 203.)

Existing federal law:

- 1) Declares it the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. (28 U.S.C. § 1861.) It further prohibits the exclusion of any citizen from service as a juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status. (28 U.S.C. § 1861.)
- 2) Requires United States district courts to devise and place into operation a written plan for random selection of grand and petit jurors. The plan must specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to effectuate the policies outlined above. (28 U.S.C. § 1863.)
- 3) Provides that state, local, and federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the courts for inspection, reproduction, and copying. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance by appropriate process. (28 U.S.C. § 1863(d).)

This bill:

- 1) Requires FTB to furnish a list of resident state tax filers with a reported principal residence within a federal court's jurisdiction to the relevant federal district court in California upon request.

- 2) Requires FTB to enter into a data protection agreement with each respective federal court before providing the relevant list. The agreement shall require that information provided shall not be furnished to, or used by, any person other than a designated employee or contractor of that federal district and shall be utilized in a form and manner to safeguard the information as required by FTB.
- 3) Prohibits the use of this information for any purpose other than for expanding jury pools.

### COMMENTS

#### 1. A jury drawn from a fair cross section of the community

Each defendant has a right to a jury drawn from a fair cross section of the community. The cross section requirement functions as a means of ensuring a defendant has access to an impartial jury, as required by the Sixth Amendment of the United States Constitution and article I, Section 16, of the California Constitution. Under current law, persons shall be selected at random for jury service from sources that are inclusive of a representative cross section of the population of the area served by the court. (Code Civ. Proc. § 197.) The law provides that potential sources include, but are not limited to, customer mailing lists, telephone directories, or utility company lists.

In 1988, California enacted a statute that provided that when purged of duplicate names, the list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders that reside in the area served by a court are inclusive of a representative cross section of the population. This established a presumption, oft-cited by courts when considering challenges to a jury venire, that these lists are by law adequate for protecting defendants' rights to an impartial jury.

However, concerns arose about the validity of this presumption. In fact, some studies showed that limiting jury pools to voter rolls and those with DMV documentation deprived courts of a large number of eligible prospective jurors and disproportionately affected already marginalized communities. SB 592 (Wiener, Ch. 230, Stats. 2020) responded to these concerns by explicitly naming the list of resident state tax filers as an appropriate source list for selection of jurors. In addition, SB 592 revised the presumption such that, as of January 1, 2022, the presumption is triggered only when drawing from all three lists – the list of registered voters, the DMV list, and the state tax filer list.

To facilitate the process, SB 592 required FTB to furnish the jury commissioner of each county with a list of resident state tax filers for their county by November 1 of each year, starting in 2021. For these purposes, "list of resident state tax filers" was defined as a list that includes the name, date of birth, principal residence address, and county of principal residence, of persons who are 18 years of age or older and have filed a

California resident income tax return for the preceding taxable year. "County of principal residence" means the county in which the taxpayer has their principal residence on the date that the taxpayer filed their California resident income tax return. FTB was required to include a space for taxpayers to identify this principal residence.

## 2. Ensuring a fair cross section in federal courts

Federal law declares it the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. (28 U.S.C. § 1861.) It further prohibits the exclusion of any citizen from service as a juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status. (28 U.S.C. § 1861.)

In order to effectuate these policies, existing law requires federal district courts to devise and implement plans for random jury selection. (28 U.S.C. § 1863.) The plans must specify whether the names of prospective jurors are to be selected from the voter registration lists or the lists of actual voters and shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights detailed above.

In order to ensure access to appropriate sources, federal law specifically states:

State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process. (28 U.S.C. § 1863.)

Therefore, while Section 197 of the Code of Civil Procedure currently explicitly requires the DMV and FTB, for instance, to provide such lists to state courts, federal law provides federal courts the authority to request, and to compel, if necessary, such lists for their purposes.

In current practice, federal courts generally submit formal requests to state agencies in California for relevant lists for juror selection purposes. Federal district courts in California indicate, as part of their required jury selection plans, that they will obtain such lists for jury selection purposes. Agencies such as the Secretary of State and DMV

then provide these lists upon request.<sup>1</sup> As an example, the District Court for the Southern District of California's official Jury Plan states:

The Court finds that county voter registration lists, supplemented by the California driver's license for non-AB 60 licenses and state ID information, will be used for the creation of the master jury wheel. The court finds this "multiple-source list" represents a fair cross section of the citizens residing in the district.<sup>2</sup>

As discussed, state law specifically requires FTB to provide the resident state tax filer list to jury commissioners in superior courts throughout the state. And, just as with any other state agency, 28 U.S.C. Section 1863 provides authority to federal district courts to include such a source list in their jury selection plan and to request such lists from FTB. However, at least one federal district court in California has raised issues with getting these lists from FTB for federal jury pools in the state.

In response, this bill specifically requires FTB to provide such lists to federal district courts upon request. At the request of FTB, the bill requires FTB to enter into data protection agreements with the federal district courts before they share the lists. The agreements provide limitations on what the information can be used for, the personnel that may use it, and certain training and disclosure requirements on the part of the federal courts.

As stated, federal courts likely already have the power to compel the sharing of these lists, however, going through a formal legal process at the very least creates additional hurdles to making use of these lists and gaining the benefits discussed above. This bill makes clear that such data sharing must take place and obviates the need for any compulsion. In addition, while the provision requiring that a data protection agreement be in place is phrased as a requirement on FTB, it should be noted that the Legislature lacks jurisdiction to regulate what federal district courts must do. In any event, data protection agreements that limit the use of this information and ensure proper handling of it furthers the stated policy of both California and the United States.

### 3. Stated intent of the bill

According to the author:

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<sup>1</sup> It should be noted that although the Driver's Privacy Protection Act, 18 U.S.C § 2721 et seq., generally prohibits the sharing of personal information, it does specifically allow for disclosure of such information for use by government agencies, including courts, in carrying out their functions. The Secretary of State has also promulgated regulations that make sharing voter registration information with federal entities permissible, 2 C.C.R. § 19003.

<sup>2</sup> *Jury Plan*, United States District Court for the Southern District of California, [https://www.casd.uscourts.gov/\\_assets/pdf/juror/CASD-Jury-Plan.pdf](https://www.casd.uscourts.gov/_assets/pdf/juror/CASD-Jury-Plan.pdf).

SB 271 seeks to broaden the pool of eligible jurors in federal district courts and, as a result, bring California juries closer to the ideal of a representative cross section of the community. SB 271 does this by allowing the California Franchise Tax Board to provide a list of state tax filers, when requested, to federal courts for purpose of expanding jury pools.

Juries are the backbone of our justice system. Juries can only speak with the voice and authority of the community if they truly and accurately reflect that community. Federal juries are just as important as state juries and can deprive people of their liberty and they should also be reflective of the diversity of their community. In light of the recent acquittal of Kyle Rittenhouse, after he killed two people protesting the murder of a man by two police in Wisconsin, we must double down on the fight for racial justice and equity in our criminal justice system. California must take a holistic approach to change all broken pieces of the system, including our jury selection process. SB 271 is a vital, common-sense reform that will further promote fairness, diversity, and legitimacy in California's jury system.

Writing in support, the California Public Defenders Association argues:

The presumption that a fair cross section of the community can be obtained by using only lists of registered voters and licensed drivers (or identification card holders) is not borne out by empirical evidence and has been subject to decades of scrutiny. Studies have shown that utilizing only these two lists excludes large swaths of our communities and disproportionately discourages the participation of racial minorities. In practice, using only Department of Motor Vehicles (DMV) and the Registrar of Voters (ROV) lists has resulted in jury pools that are more affluent and less diverse than the community at large.

### **SUPPORT**

California Public Defenders Association

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: SB 511 (Bates, 2021) requires the jury commissioner, every 6 months, to share with the county elections official for the same county the information that a potential juror provides about their qualification to be a juror and further requires a county elections official to use that information to cancel the registration of a person

who is ineligible to vote. This bill is currently pending in the Senate Elections and Constitutional Amendments Committee.

Prior Legislation:

AB 1452 (Ting, Ch. 717, Stats. 2021) launches a pilot program through the San Francisco Superior Court, in conjunction with the City and County of San Francisco and their justice partners, to determine whether paying low-income jurors \$100 a day during the trial would lead to a more diverse panel of jurors.

SB 592 (Wiener, Ch. 230 Stats. 2020) *See* Comment 1.

SB 310 (Skinner, Ch. 591, Stats. 2019) made those convicted of a felony eligible to serve on a jury, but excepted those currently incarcerated, those currently on parole, postrelease community supervision, felony probation, or mandated supervision for the conviction of a felony, and those currently required to register as sex offenders.

SB 576 (Wiener, 2017) would have required jury commissioners to collect and maintain demographic data from all prospective jurors who appear for jury service. The demographic data would have been collected to determine if the pool of prospective jurors who appear for jury service pursuant to a jury summons accurately represents a cross section of the population of the area served by the court. This bill died in the Senate Appropriations Committee.

AB 535 (Jones-Sawyer, 2017) would have removed the prohibition of a person with a felony conviction from serving on a jury. The bill would have instead excluded persons who have been convicted of bribery, perjury, forgery, or other high crimes and persons who had not completed probation, parole, post-release community supervision, or mandatory supervision for the conviction of a felony. This bill died on the Assembly Floor.

AB 324 (Jones-Sawyer, 2015) would have removed the prohibition of a person with a felony conviction from serving on a jury. The bill would have instead excluded persons who have been convicted of bribery, perjury, forgery, or other high crimes and persons who had not completed probation, parole, post-release community supervision, or mandatory supervision for the conviction of a felony. This bill died in the Assembly Judiciary Committee.

AB 1401 (Committee on Judiciary, 2013) would have removed the prohibition on lawful permanent residents from serving on juries. This bill was vetoed by Governor Edmund G. Brown Jr. The veto message explained his reasoning for not allowing lawful permanent residents to serve on juries: "I don't think that's right."

**PRIOR VOTES:**



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Prior votes not relevant.

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