



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

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MEMORANDUM

Date	Action Requested
March 9, 2015	Support and Co-sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Daniel Pone, Senior Attorney	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov
Subject	
SB 213 (Block), as introduced	
Juries: criminal trials: peremptory challenges	

Sponsor

California Judges Association

Description of Bill

Reduces the number of peremptory challenges available in misdemeanor trials from ten (10) to six (6) in cases where the offense is punishable with a maximum term of imprisonment of one year or less. Specifies further that, in cases where two or more defendants are tried jointly, the number of additional “non-joint” peremptories (i.e., those that may be exercised separately by each defendant and the state) would be reduced from four (4) to two (2). Contains a five-year sunset of the bill’s provisions.

According to the author:

California ranks among the states with one of the highest number of peremptory challenges in misdemeanor trials. High numbers of peremptory challenges cost more in terms of the additional volumes of jury summons as well as the need for high-capacity jury rooms and infrastructure to support those jurors. Additionally, jurors express that jury service is often a waste of valuable time, where an expedited selection process would reduce the burden both on jurors and on employers. Overall, a reduction in the number of misdemeanor peremptory challenges is expected to reduce costs and to increase juror satisfaction, with no diminution in justice for anyone.

The sponsor also argues that the bill will result in increased fairness in the jury system since greater numbers of peremptory challenges have been correlated with significant numbers of potential jurors being dismissed for improper reasons. In addition, courts should realize important savings from reducing the size of jury pools, with corresponding reductions in court staff time, mailing, and other costs. Moreover, the sponsor points to the bill's positive impacts on public safety since law enforcement officers would spend less non-productive time in the courtroom while jury selection is being conducted. Furthermore, the sponsor states that the bill will produce significant cost savings for the community by helping to mitigate the millions of dollars annually in lost income and productivity that result from calling jurors when they are not needed. Public and private employers alike should also experience cost savings with the loss of fewer paid juror-hours.

Background:

Report of the Presiding Judges Advisory Committee Jury Working Group (PJ Working Group) on Reducing Peremptory Challenges and Reducing Jury Size (Revised January 23, 2013):

The Trial Court Presiding Judges Advisory Committee voted at its meeting on January 25, 2013, to recommend to the Judicial Council that it support their proposal to reduce peremptory challenges and jury size, as set forth in their January 23, 2013, report. The report of the PJ Working Group noted that currently the number of peremptory challenges mandated under California law ranks consistently among the highest in the country in all categories. The presiding judges believe that reducing peremptory challenges would result in significant new efficiencies and costs savings for the court. The report recommended that for misdemeanors involving a sentence of more than six (6) months, the number of challenges would be reduced from ten (10) to three (3), and that the five (5) additional challenges for each additional defendant would be reduced from five (5) to three (3). For misdemeanors involving a sentence of six (6) months or less, the report recommended bench trials only, thereby eliminating the need for peremptory challenges for those cases. The report also recommended reductions in the number of peremptory challenges in civil cases.

Judge Rene Chouteau, Chair of the PJ Working Group, presented the proposal to the Criminal Law Advisory Committee and to the Civil and Small Claims Advisory Committee in March 2013 for preliminary feedback. Both committees engaged in robust discussion about the specific

proposals in the report, with the judicial officer members generally in favor of the concept of reducing peremptory challenges and the attorney members generally opposed to the concept.

Recommendation

Support and Co-sponsorship

Previous Council Action

On May 2, 2013, PCLC adopted a support position on SB 794 (Evans) of 2014, last year's bill sponsored by CJA that would have reduced peremptory challenges in misdemeanor cases from 10 to 5. That bill passed the Senate, but was held in the Assembly Public Safety Committee.

The Judicial Council also supported CJA's earlier attempt in this area—AB 1557 (Feuer) of 2007—which would have provided for 6 peremptory challenges per side in all misdemeanor cases, rather than only those misdemeanors resulting in imprisonment for 90 days or less. Staff recommended a support position because California has been engaged in efforts to improve jury system management and trial procedures, including improvements to jury selection practices, for more than a decade. In 1996, the Blue Ribbon Commission on Jury System Improvement recommended a reduction in peremptory challenges in all criminal trials, noting that a reduction would “bring significant relief to jury commissioners who are charged with the responsibility of producing for the courts enough jurors to staff pending trials...[More] importantly, it should result in a reduction in the number of jurors who are summarily dismissed without explanation and who then leave the courthouse with an extremely unfavorable view of the jury system, determined never to participate in the future.”¹

Rationale for Recommendation

The Criminal Law Advisory Committee (CLAC) considered SB 213 and voted 12-3 to recommend to PCLC that the Judicial Council both support and co-sponsor the bill. Similar to its consideration of last year's SB 794, the committee was split evenly between judicial officer members and attorney members. The judges' position on SB 213 is based on their continued belief that, while a modest start, the bill would be a good way to examine whether the reduction in the number of peremptory challenges brings with it the predicted benefits of efficiency and reduced costs for courts. The attorneys' opposition is based on their continued belief that the potential savings are elusive and cannot be quantified. With savings unknown, the attorneys believe reducing the number of peremptory challenges, even in this limited fashion, is not a reasonable trade-off for potentially infringing on a defendant's due process rights to have a fair jury trial, which they believe the state's longstanding statutes on peremptory challenges protect.

The Joint Legislation Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (JLS) also considered SB 213, and they were unanimous in recommending support and co-sponsorship of the bill. Like the judicial officer

¹ Blue Ribbon Commission on Jury System Improvement, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, at page 64 (May 6, 1996).

members of CLAC, the JLS believes that the reductions in peremptory challenges made by SB 213 are an appropriate approach to jury management, and the bill's passage will allow courts to examine whether the reduction in the number of peremptory challenges brings with it the predicted benefits of efficiency and reduced costs for courts.

Impact on Jury Size

In 2004, the Administrative Office of the Courts contracted with the National Center for State Courts (NCSC) to analyze current peremptory challenge usage practices, and to assess the potential impact of a reduction of peremptory challenges on jury management practices. The study determined that the reduction recommended by the Blue Ribbon Commission would affect jury management practices mainly by permitting courts to reduce panel sizes. The NCSC report concluded that by reducing panel sizes, there would be a decrease in the number of Californians required to report for jury service. Though SB 213 does not go as far as the Blue Ribbon Commission's recommendations, the reduction in the number of peremptory challenges in misdemeanor cases is consistent with the goals and outcomes contained in the report.

Comments, Alternatives Considered, and Policy Implications

None

Implementation Requirements, Costs, and Operational Impacts

Staff estimated that if SB 794, last year's peremptory challenges bill, had been enacted, it would have resulted in annual court cost savings of \$1.2 million. Staff also notes that the NCSC report concluded that reductions in the number of peremptory challenges would result in the need for less jurors, thus courts would save overall costs related to calling and processing jurors.

Relevant Strategic Plan Goals and Operational Plan Objectives

SB 213 is consistent with Goal IV - Quality of Justice and Service to the Public, which states "[t]he judicial branch will deliver the highest quality of justice and service to the public." By reducing the number of peremptory challenges in misdemeanor cases, SB 213 allows courts to operate more efficiently as well as reduce costs that courts would otherwise expend to support a larger number of peremptory challenges. By making courts more efficient while at the same time reducing costs, SB 213 allows courts to redirect scarce resources to improve service to the public.