

ASSEMBLY BILL

No. 1766

Introduced by Assembly Member Mark Stone

February 3, 2016

An act to amend Sections 222.5 and 223 of the Code of Civil Procedure, relating to jurors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1766, as introduced, Mark Stone. Examination of prospective jurors.

In civil trials, existing law requires a trial judge to examine prospective jurors, and, upon completion of the judge's examination, grants counsel for each party the right to examine, by oral and direct questioning, any prospective juror in order to enable counsel to intelligently exercise peremptory challenges and challenges for cause. Existing law provides that the judge in civil trials should provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called.

Under existing law, which was enacted by initiative measure, in a criminal case, the court is required to conduct the examination of prospective jurors, except that the court may permit the parties, upon a showing of good cause, to conduct a further inquiry. The initiative measure provides that it may be amended by a measure enacted by a 2/3 vote of each house.

This bill would, in criminal trials, require the court to provide the complete names of prospective jurors to counsel for each party, as specified. The bill would also, in civil and criminal trials, require the court and counsel for each party to address a prospective juror using a number assigned by the court or by the potential juror's first name and

last initial. The bill would also make nonsubstantive changes to these provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 222.5 of the Code of Civil Procedure is
 2 amended to read:

3 222.5. (a) To select a fair and impartial jury in civil jury trials,
 4 the trial judge shall examine the prospective jurors. Upon
 5 completion of the *trial* judge’s initial examination, counsel for
 6 each party shall have the right to examine, by oral and direct
 7 questioning, any of the prospective jurors ~~in order to enable so~~
 8 ~~that~~ counsel ~~to~~ *may* intelligently exercise both peremptory
 9 challenges and challenges for cause. During any examination
 10 conducted by counsel for the parties, the trial judge should permit
 11 liberal and probing examination calculated to discover bias or
 12 prejudice with regard to the circumstances of the particular case.
 13 The fact that a topic has been included in the *trial* judge’s
 14 examination ~~should~~ *shall* not preclude additional nonrepetitive or
 15 nonduplicative questioning in the same area by counsel.

16 (b) *To help facilitate the jury selection process, the trial judge*
 17 *in civil trials shall provide to counsel for each party the complete*
 18 *names of the prospective jurors, both alphabetically and in the*
 19 *order in which they will be called. However, a prospective juror*
 20 *shall be addressed by the court and counsel for each party by a*
 21 *number assigned by the court or by the potential juror’s first name*
 22 *and last initial.*

23 ~~The~~
 24 (c) *The trial judge should allow a brief opening statement by*
 25 *counsel for each party ~~prior to~~ before the commencement of the*
 26 *oral questioning phase of the voir dire process.*

27 ~~The~~
 28 (d) *The scope of the examination conducted by counsel shall*
 29 *be within reasonable limits prescribed by the trial judge in the *trial**
 30 *judge’s sound discretion. In exercising his or her sound discretion*
 31 *as to the form and subject matter of voir dire questions, the trial*
 32 *judge should consider, among other criteria, any unique or complex*
 33 *elements, legal or factual, in the case and the individual responses*

1 or conduct of jurors ~~which~~ *that* may evince attitudes inconsistent
2 with suitability to serve as a fair and impartial juror in the particular
3 case. Specific unreasonable or arbitrary time limits shall not be
4 imposed in any case. The trial judge shall not establish a blanket
5 policy of a time limit for voir dire.

6 ~~The~~

7 (e) *The* trial judge should permit counsel to conduct voir dire
8 examination without requiring prior submission of the questions
9 unless a particular counsel engages in improper questioning. For
10 purposes of this section, an “improper question” is any question
11 that, as its dominant purpose, attempts to precondition the
12 prospective jurors to a particular result, indoctrinate the jury, or
13 question the prospective jurors concerning the pleadings or the
14 applicable law. A court shall not arbitrarily or unreasonably refuse
15 to submit reasonable written questionnaires, the contents of which
16 are determined by the court in its sound discretion, when requested
17 by counsel. If a questionnaire is ~~utilized~~, *used*, the parties should
18 be given reasonable time to evaluate the responses to the
19 questionnaires before oral questioning commences. ~~To help~~
20 ~~facilitate the jury selection process, the judge in civil trials should~~
21 ~~provide the parties with both the alphabetical list and the list of~~
22 ~~prospective jurors in the order in which they will be called.~~

23 ~~In~~

24 (f) *In* civil cases, the court may, upon stipulation by counsel for
25 all the parties appearing in the action, permit counsel to examine
26 the prospective jurors outside ~~a~~ *the* trial judge’s presence.

27 SEC. 2. Section 223 of the Code of Civil Procedure is amended
28 to read:

29 223. (a) In a criminal case, the court shall conduct an initial
30 examination of prospective jurors. The court may submit to the
31 prospective jurors additional questions requested by the parties as
32 it deems proper. ~~Upon~~

33 (b) *The court shall provide to counsel for each party the*
34 *complete names of the prospective jurors, both alphabetically and*
35 *in the order in which they will be called. However, a prospective*
36 *juror shall be addressed by the court and counsel for each party*
37 *by a number assigned by the court or by the potential juror’s first*
38 *name and last initial.*

39 (c) *Upon* completion of the court’s initial examination, counsel
40 for each party shall have the right to examine, by oral and direct

1 questioning, any or all of the prospective jurors. The court may,
2 in the exercise of its discretion, limit the oral and direct questioning
3 of prospective jurors by counsel. The court may specify the
4 maximum amount of time that counsel for each party may question
5 an individual juror, or may specify an aggregate amount of time
6 for each party, which can then be allocated among the prospective
7 jurors by counsel. ~~Voir~~

8 (d) *Voir dire* of any prospective jurors shall, where practicable,
9 occur in the presence of the other jurors in all criminal cases,
10 including death penalty cases. Examination of prospective jurors
11 shall be conducted only in aid of the exercise of challenges for
12 cause.

13 ~~The~~
14 (e) *The* trial court's exercise of its discretion in the manner in
15 which voir dire is conducted, including any limitation on the time
16 which will be allowed for direct questioning of prospective jurors
17 by counsel and any determination that a question is not in aid of
18 the exercise of challenges for cause, shall not cause any conviction
19 to be reversed unless the exercise of that discretion has resulted
20 in a miscarriage of justice, as specified in Section 13 of Article VI
21 of the California Constitution.