

**Assembly Bill No. 1766**

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Passed the Assembly August 15, 2016

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*Chief Clerk of the Assembly*

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Passed the Senate August 11, 2016

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2016, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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

## LEGISLATIVE COUNSEL'S DIGEST

AB 1766, Mark Stone. Examination of prospective jurors.

(1) 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.

This bill would make nonsubstantive changes to these provisions.

(2) 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  $\frac{2}{3}$  vote of each house.

This bill would, until January 1, 2022, 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 require the court and counsel for each party to address a prospective juror using a number assigned by the court, by the prospective juror's first name and first initial of his or her last name, or by his or her title and last name, as determined by the court in each criminal trial. The bill would also make nonsubstantive changes to these provisions.

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

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

222.5. (a) To select a fair and impartial jury in civil jury trials, the court shall examine the prospective jurors. Upon completion of the court's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors so that counsel may intelligently exercise both peremptory challenges and challenges for cause. During any examination conducted by counsel for the parties, the court should permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case. The fact that a topic has been included in the court's examination should not preclude additional nonrepetitive or nonduplicative questioning in the same area by counsel.

(b) To help facilitate the jury selection process, the court in civil trials should provide to counsel for each party the complete names of the prospective jurors, both alphabetically and in the order in which they will be called.

(c) The court should allow a brief opening statement by counsel for each party before the commencement of the oral questioning phase of the voir dire process.

(d) The scope of the examination conducted by counsel shall be within reasonable limits prescribed by the court in the court's sound discretion. In exercising its sound discretion as to the form and subject matter of voir dire questions, the court should consider, among other criteria, any unique or complex elements, legal or factual, in the case and the individual responses or conduct of jurors that may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case. Specific unreasonable or arbitrary time limits shall not be imposed in any case. The court shall not establish a blanket policy of a time limit for voir dire.

(e) The court should permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel engages in improper questioning. For purposes of this section, an "improper question" is any question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law. A court shall not arbitrarily or unreasonably refuse to submit reasonable written questionnaires, the contents of which are determined by the court in its sound discretion, when requested

by counsel. If a questionnaire is used, the parties should be given reasonable time to evaluate the responses to the questionnaires before oral questioning commences.

(f) In civil cases, the court may, upon stipulation by counsel for all the parties appearing in the action, permit counsel to examine the prospective jurors outside the court's presence.

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

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

(b) The court shall provide to counsel for each party the complete names of the prospective jurors, both alphabetically and in the order in which they will be called. However, the court, in each criminal trial, shall determine a uniform manner by which each prospective juror shall be addressed by the court and counsel for each party, according to one of the following:

(1) An identification number assigned by the court.

(2) The prospective juror's first name and the first initial of his or her last name.

(3) The prospective juror's title and last name.

(c) Before examining prospective jurors, the court shall advise them that, in accordance with state law, the court and counsel for each party are prohibited, in all criminal cases, from addressing prospective jurors by their full names during jury selection, and are required to address each prospective juror by an identification number, by his or her first name and the first initial of his or her last name, or by his or her title and last name.

(d) Upon completion of the court's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any or all of the prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct questioning of prospective jurors by counsel. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which can then be allocated among the prospective jurors by counsel.

(e) Voir dire of prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including

death penalty cases. Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

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

(g) This section does not limit public access to juror information, as provided for under Section 237.

(h) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

SEC. 3. Section 223 is added to the Code of Civil Procedure, to read:

223. (a) In a criminal case, the court shall conduct an initial examination of prospective jurors. The court may submit to the prospective jurors additional questions requested by the parties as it deems proper. Upon completion of the court's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any or all of the prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct questioning of prospective jurors by counsel. The court may specify the maximum amount of time that counsel for each party may question an individual juror, or may specify an aggregate amount of time for each party, which can then be allocated among the prospective jurors by counsel. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases. Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

(b) The trial court's exercise of its discretion in the manner in which voir dire is conducted, including any limitation on the time which will be allowed for direct questioning of prospective jurors by counsel and any determination that a question is not in aid of the exercise of challenges for cause, shall not cause any conviction to be reversed unless the exercise of that discretion has resulted

in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.

(c) This section is operative on and after January 1, 2022.



Approved \_\_\_\_\_, 2016

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*Governor*