



AB 87 – Jury Selection Equal Protection

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In Brief

Assembly Bill 87 updates current law prohibiting discriminatory peremptory challenges during the jury selection process by clarifying that challenges based on gender identity, gender expression, ethnic group identification, genetic information and disability are not allowed.

The Issues

Currently, the law prohibits peremptory challenges when the challenge is made on the assumption of a bias existing due to a person's race, color, religion, sex, national origin, or sexual orientation.

However, the law does not specify protection on the basis of gender identity, gender expression, ethnicity, age, genetic information, and disability. If prospective jurors can be rejected based on an assumption of bias because of these innate characteristics, the rights of the defendants and victims to a fair trial by a jury of their peers is put at risk. Further, prospective jurors could be denied the right to participate in the justice system and complete their civic duty.

The need for fair trials is especially important to the transgender and gender non-conforming community. Historical and present day discrimination has caused a disproportionate amount of transgender and gender non-conforming individuals to be in contact with the criminal justice system. At least 16% of transgender individuals have been incarcerated at some point in their lives, with the percentage of transgender women higher at 21%. They are more likely to be homeless, in poverty, face employment discrimination, and be harassed by peers or figures of authority, making their need for a fair civil and criminal justice system especially urgent.

The Solution

AB 87 will update the Code of Civil Procedure to align with other discrimination laws in California. This update will ensure that gender identity, gender expression, ethnic group identification, genetic information, age, and disability are not used in peremptory challenges.

Background

The jury system provides the foundation for California's justice system. It is designed to yield just and fair results for defendants and victims alike. A defendant is allowed a trial by an impartial jury, one that, by law, should reflect a cross section of the population in a community. Jury selection must remain unbiased and non-discriminatory in order to provide assurance in the fairness of the outcome of a trial.

The jury process includes peremptory challenges, which are the removals of prospective jurors from serving on the jury panel without providing a reason. During a trial, the prosecution and defense are allowed a certain number of peremptory challenges. The number of challenges depends on whether a trial is criminal or civil, the severity of the crime, and the number of defendants being jointly tried.

California has led the country in ensuring that transgender people are protected from discrimination and treated equally under California law. It is important for California to align its non-discrimination code with its jury code to ensure that transgender individuals are afforded the same rights and responsibilities as other Californians.

For More Information

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Support

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