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AB-1541 Examination of prospective jurors. (2017-2018)

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Assembly Bill No. 1541

CHAPTER 302

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

[Approved by Governor September 26, 2017. Filed with Secretary of State September 26, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1541, Kalra. Examination of prospective jurors.

Existing law requires the court, in a criminal case, to conduct an initial examination of prospective jurors. Upon completion of this initial examination, existing law grants counsel for each party the right to examine any of the prospective jurors, as specified. Existing law authorizes the court to limit the oral and direct questioning of prospective jurors, as specified.

This bill would require a trial judge to permit counsel for each party to conduct a jury examination that is calculated to discover bias or prejudice with regard to the circumstances of a particular case or the parties before the court. The bill would require the scope of the examination conducted by counsel to be within reasonable limits prescribed by the trial judge in the judge's sound discretion, as specified. The bill would also require the trial judge to permit supplemental time for questioning based on 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. The bill would require the trial judge to, in his or her sound discretion, consider the use of reasonable written questionnaires for jury examination when requested by counsel. The bill would also require the trial judge, at the earliest practical time, to provide the parties with the list of prospective jurors in the order in which they will be called to help facilitate the jury selection process.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 223 of the Code of Civil Procedure is repealed.

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

223. (a) To select a fair and impartial jury in a criminal jury trial, the trial judge shall conduct an initial examination of prospective jurors. At the first practical opportunity prior to voir dire, the trial judge shall consider the form and subject matter of voir dire questions. Before voir dire by the trial judge, the parties may submit questions to the trial judge. The trial judge may include additional questions requested by the parties as the trial judge deems proper.

(b) (1) Upon completion of the trial judge's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors. The scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the judge's sound discretion subject to the provisions of this chapter. During any examination

conducted by counsel for the parties, the trial judge shall permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case or the parties before the court. The fact that a topic has been included in the trial judge's examination shall not preclude appropriate followup questioning in the same area by counsel. The trial judge should permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel engages in improper questioning.

(2) The trial judge shall not impose specific unreasonable or arbitrary time limits or establish an inflexible time limit policy for voir dire. As voir dire proceeds, the trial judge shall permit supplemental time for questioning based on 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.

(3) 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 or indoctrinate the jury.

(c) In exercising the judge's sound discretion, the trial judge shall consider all of the following:

(1) The amount of time requested by trial counsel.

(2) Any unique or complex legal or factual elements in the case.

(3) The length of the trial.

(4) The number of parties.

(5) The number of witnesses.

(d) Voir dire of any prospective jurors shall, where practicable, take place 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.

(e) The trial judge shall, in his or her sound discretion, consider reasonable written questionnaires when requested by counsel. If a questionnaire is utilized, the parties shall be given reasonable time to evaluate the responses to the questionnaires before oral questioning commences.

(f) To help facilitate the jury selection process, at the earliest practical time, the trial judge in a criminal trial shall provide the parties with the list of prospective jurors in the order in which they will be called.

(g) The trial judge's exercise of discretion in the manner in which voir dire is conducted, including any limitation on the time that 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, is not cause for a conviction to be reversed, unless the exercise of that discretion results in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.