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Legislative Memo

Dated: May 13, 2009

Bill No.: A02374: Provides for the use of additional sources of information to be used or the purpose of obtaining names for prospective jurors, for updating of juror lists, for the collection of demographic data for jurors who present for service and for the provision of juror questionnaires.

S02613: An Act to amend the judiciary law, in relation to the selection of jurors, updating sources of name lists on a quarterly basis, requiring the commissioner of jurors to collect demographic data for jurors who present for jury service and the sending of juror notices.

The NYSACDL SUPPORTS passage of this bill in its entirety.

This proposed legislation would address an ongoing problem in our jury system – the lack of minority participation on jury pools. This legislation would implement a number of changes in the judiciary law relating to jury service. The changes include: (1) expanding the source lists from which prospective jurors are chosen; (2) requiring the commissioner of jurors to update source lists quarterly; (3) requiring the commissioner of jurors to obtain and report demographic data on race, religion, ethnicity, age, and sex; and (4) requiring the commission of jurors make additional attempts to serve the jury questionnaire, and the jury summons, upon prospective jurors by mail.

Analysis

A defendant in a criminal trial in New York has a right under the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, Section 2 and Article 6, Section 18 of the New York Constitution to have a jury drawn from a jury pool that is representative of a fair cross section of the community. These important constitutional rights are codified in New York Judiciary Law § 500, which states: "[i]f it is the policy of this state that all litigants in the courts of this state entitled to trial by jury shall have the right to grand and petit juries selected at

random from a fair cross-section of the community in the county or other governmental subdivision wherein the court convenes; and that all eligible citizens shall have the opportunity to serve on grand and petit juries in the courts of this state, and shall have an obligation to serve when summoned for that purpose, unless excused."

Despite the compelling nature of this most basic American principle, there is significant, anecdotal evidence that minorities are under-represented on jury pools throughout New York State. In areas where there are substantial minority populations, the disparity between the minority population and the percentage of minorities on juries (or jury pools) is considerable. (See Citizen Action of New York, Report 2007; The Jury Project Report to the Chief Judge of the State of New York, 1994; Report of the New York State Judicial Commission on Minorities, 1991.) Such disparities indicate that there may be widespread constitutional violations of defendants' rights to a representative jury pool (as well as the individual minority juror's right to participate in the jury process).

According to the 1994 report to the Chief Judge of the State of New York, The Jury Project, "[c]orrecting any constitutional infirmity in a venire [jury pool] that is drawn under a strictly random system should therefore rise to the level of a compelling state interest." (Report at 20 [copy available at: <http://www.courts.state.ny.us/reports/thejuryproject.pdf>].)

The proposed legislation is an important step in eliminating these perceived constitutional deficiencies. By expanding the source lists, and requiring that those lists be updated quarterly, the commissioner of jurors in each county will have access to source lists that accurately reflect the community. Furthermore, by requiring additional attempts to serve the jury questionnaires and summons, a problem previously recognized in the Jury Project Report – the high rate of undeliverable jury questionnaires in minority neighborhoods (see Report, pages 15-20) – will be reduced.

An extremely important aspect of the proposed legislation requires the commissioner of jurors to obtain demographic data from prospective jurors. This will provide data that was previously lacking, and help jurisdictions resolve the issue of whether the perception of under-representation of minorities on their jury pools is accurate, and whether it rises to the level of a constitutional violation. By obtaining demographic data, jury clerks in jurisdictions that determine there is under-representation of minorities on their jury pools will be able to devise solutions to the problem of non-representative jury pools.

Conclusion

The New York State Association of Criminal Defense Lawyers SUPPORTS this proposed legislation for the reasons stated above and urges the New York State legislature to pass it, and the Governor to sign it.