

BILL ANALYSIS

H.B. 4946
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The U.S. Constitution establishes access to a trial by an impartial jury and the liberty to serve on a jury as foundational rights. However, there is seemingly no prohibition on discrimination in jury selection in state law, aside from the prohibition of peremptory challenges based on race for criminal trials. While federal statute prohibits certain types of discrimination in jury selection, this law applies only to federal courts and excludes discrimination based on one's actual or perceived sexual orientation, gender identity, or disability status. With the gaps left by federal and state law, there is no protection against discrimination in jury selection for some Texans. H.B. 4946 seeks to eliminate discriminatory use of peremptory challenges and discriminatory jury selection practices based on a potential juror's actual or perceived race, ethnicity, sex, gender identity, sexual orientation, disability status, national origin, economic status, or religious affiliation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4946 amends the Government Code to prohibit the disqualification of a person from serving as a juror based on the person's actual or perceived race, ethnicity, sex, gender identity, sexual orientation, disability status, national origin, economic status, or religious affiliation.

H.B. 4946 amends the Civil Practice and Remedies Code to authorize either party to a case, after jury lists are delivered to the court clerk and before the court impanels the jury, to request the court to dismiss the array of jurors and call a new array in the case. The bill requires the court to grant the motion of a complaining party for the dismissal of the array of jurors if the court finds:

- the attorney representing the opposing party exercised peremptory challenges for the purpose of excluding prospective jurors from the jury based on their actual or perceived race, ethnicity, sex, gender identity, sexual orientation, disability status, national origin, economic status, or religious affiliation; and
- the complaining party has offered evidence of relevant facts that tend to show the attorney representing the opposing party made such peremptory challenges.

The bill establishes that if the complaining party establishes a prima facie case for dismissal of the array of jurors, the burden shifts to the attorney representing the opposing party to provide

an explanation for the peremptory challenges that is neutral to the jurors' actual or perceived class.

H.B. 4946 requires a court to call a new array of jurors in the case if the court finds that either attorney challenged prospective jurors for the purpose of excluding prospective jurors from the jury based on their actual or perceived class.

H.B. 4946 amends the Code of Criminal Procedure to replace the authorization for a defendant to request a court to dismiss an array and call a new array after jury lists have been delivered to the court clerk and before the court impanels the jury with an authorization for either party to the case to make such a request. The bill expands the duty of the court to grant a motion of the defendant for dismissal of the array on certain determinations and to call a new array on a determination that the state's attorney challenged prospective jurors for the purpose of excluding certain classes to include a motion made by the state's attorney and a determination that the defendant's attorney challenged prospective jurors for the purpose of excluding certain classes from the jury. The bill revises the determinations on which the court must grant a motion for the dismissal of the array as follows:

- by removing as a determination that the defendant is a member of an identified racial group; and
- by replacing the determination that the state's attorney exercised peremptory challenges for the purpose of excluding persons from the jury on the basis of race with a determination that the attorney representing the opposing party exercised peremptory challenges for the purpose of excluding persons from the jury based on actual or perceived race, sex, gender identity, sexual orientation, disability status, national origin, economic status, and religious affiliation.

The bill clarifies that if the complaining party establishes a prima facie case for dismissal of the array, the burden shifts to the attorney representing the opposing party to give an explanation for the challenges that is neutral to the jurors' actual or perceived class.

EFFECTIVE DATE

September 1, 2023.