

SUBSTITUTE RESOLUTION 09-09-06

DIGEST

Elimination of Bias, Sympathy, Prejudice, and Public Opinion in All Courtrooms

Amends California Jury Instructions to allow request of an instruction specifically defining impermissible bias to include bias against the any person based upon disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual orientation. Specifically allows voir dire by counsel concerning impermissible bias.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of the California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 223 and to add Section 1127h to the Penal Code to read as follows:

- 1 SECTION 1. This act shall be known and may be cited as the Gwen Araujo Justice for
- 2 Victims Act.
- 3 SEC. 2. The Legislature hereby finds and declares all of the following:
- 4 (a) California law defines a hate crime as a criminal act committed, in whole or in part,
- 5 because of the actual or perceived disability, gender, nationality, race or ethnicity, religion,
- 6 or sexual orientation of the victim, or his or her association with a person or group with one
- 7 or more of these actual or perceived characteristics.
- 8 (b) It is the right of every person regardless of actual or perceived disability, gender,
- 9 nationality, race or ethnicity, religion, or sexual orientation, or association with a person or
- 10 group with these actual or perceived characteristics, to be secure and protected from fear,
- 11 intimidation, and physical harm caused by the actions of violent groups and individuals.
- 12 (c) "Bias" includes bias based upon the victim's actual or perceived disability, gender,
- 13 nationality, race or ethnicity, religion, or sexual orientation, or the victim's association with a
- 14 person or group with one or more of these characteristics.
- 15 (d) It is against public policy for juries to render decisions tainted by bias based upon the
- 16 victim's actual or perceived disability, gender, nationality, race or ethnicity, religion, or
- 17 sexual orientation, or his or her association with a person or group with one or more of these
- 18 characteristics.
- 19 (e) "Panic strategies" are those strategies that try to explain a defendant's actions or
- 20 emotional reactions based upon the knowledge or discovery of the fact that the victim
- 21 possesses one or more of the characteristics listed above or associates with a person or group
- 22 with one or more of the those characteristics.
- 23 (f) The Legislature is concerned about the use of societal bias in criminal proceedings and
- 24 the susceptibility of juries to such bias. The use of so-called "panic strategies" by defendants
- 25 in criminal trials opens the door for bias against victims based on one or more
- 26 of the characteristics listed above or an association with a person or group with one or more
- 27 of those characteristics.

28 (g) It is against public policy for a defendant to be acquitted of a charged offense or
29 convicted of a lesser included offense based upon an appeal to the societal bias that may be
30 possessed by members of a jury.

31 SEC. 3. Section 1127h is added to the Penal Code, to read:

32 In any criminal trial or proceeding, upon the request of a party, the court shall instruct the
33 jury substantially as follows:

34 "Do not let bias, sympathy, prejudice, or public opinion influence your decision. Bias
35 includes bias against the victim or victims , witnesses, or defendant based upon his or her
36 disability, gender, nationality, race or ethnicity, religion, gender identity, or sexual
37 orientation."

38
39 CCP Section 223

40 In a criminal case, the court shall conduct an initial examination of prospective jurors.
41 The court may submit to the prospective jurors additional questions requested by the parties
42 as it deems proper. Upon completion of the court's initial examination, counsel for each
43 party shall have the right to examine, by oral and direct questioning, any or all of the
44 prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct
45 questioning of prospective jurors by counsel. The court may specify the maximum amount
46 of time that counsel for each party may question an individual juror, or may specify an
47 aggregate amount of time for each party, which can then be allocated among the prospective
48 jurors by counsel. Voir dire of any prospective jurors shall, where practicable, occur in the
49 presence of the other jurors in all criminal cases, including death penalty cases. Examination
50 of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.
51 The court shall allow counsel great latitude in examining, by oral and direct questioning, the
52 prospective jurors as to their attitudes regarding bias prohibited by Penal Code section
53 1127h.

(Proposed new language underlined; language to be deleted striken

PROPONENT: Bay Area Lawyers for Individual Freedom (BALIF)

IMPACT STATEMENT

This law does not affect any other law, statute, or rule.

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