



The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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The Honorable Rob W. Kauffman
Chair, House Judiciary Committee
312 Main Capitol Building
P.O. Box 202089
Harrisburg, PA 17120-2089

March 14, 2022

Re: Support for House Bill (“HB”) 1655, Amending Pennsylvania’s Juror Qualification Statute

Dear Chairman Kauffman,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (the “Commission”), we write to convey our support for HB 1655, while also suggesting one key amendment. HB 1655 aims to amend the current juror qualification statute, 42 Pa.C.S.A. § 4502, by eliminating existing language that prohibits individuals with certain criminal convictions from serving on juries. On June 16, 2021, HB 1655 was referred to the House Judiciary Committee for consideration. However, to date, this bill has not been considered by the Committee. For the reasons that follow, we respectfully urge the Judiciary Committee to consider HB 1655 and take the appropriate measures to move it through Committee, facilitating its passage.

As you may be aware, the Commission was established in 2005 by the three branches of Pennsylvania government to implement the recommendations from a 2003 Pennsylvania Supreme Court study on racial and gender bias in the justice system.¹ That study contained chapters on fourteen topics, including racial and ethnic bias in jury selection.² It found that racial and ethnic bias infect the jury selection process for a variety of reasons, including (1) the failure to use inclusive juror source lists when summoning prospective jurors and (2) improper use of peremptory challenges during *voir dire*, which disproportionately excludes people of color from juries. To redress this problem, the Commission’s Jury Service Committee has worked to implement policy changes that improve jury diversity in the Commonwealth.

Since the Supreme Court study was published, the Commission has learned that the diversity of juries is also frequently hindered by juror qualification statutes, including the Commonwealth’s,

¹ See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

² *Id.* at 51.

which impose lifetime jury service bans on individuals who have past felony and certain misdemeanor convictions.³ Statutes such as Pennsylvania’s operate to bar more than 20 million individuals across the country from performing jury service.⁴ As one of only three states that prohibit individuals from serving on a jury for both felony *and* first- and second-degree misdemeanor convictions, Pennsylvania almost certainly excludes an unduly high percentage of those 20 million individuals.⁵ Moreover, empirical studies have found that “the criminal justice system disproportionately targets Black people and Latino people[;]” thus, our Commonwealth is needlessly driving down diversity on our juries.⁶

Amending 42 Pa.C.S.A. § 4502 in the manner proposed by HB 1655 would reduce the disparate racial impact that Pennsylvania’s current juror qualification statute has on jury diversity. By lifting the lifetime ban imposed on individuals with past first- or second- degree misdemeanor convictions, the bill would permit larger swaths of Pennsylvania’s population, including people of color, to serve as jurors, making juror panels more representative of the communities from which they are selected.

Although HB 1655 would go a long way toward increasing jury diversity, we recommend that it be amended to *also* exclude prior felony convictions as a basis for juror disqualification. A recent study found that “[o]f the approximately 19 million Americans with felony convictions in 2010, an estimated 36% . . . were Black,” even though Black people comprise only 13% of the U.S. population.⁷ Equally as troubling is the fact that, nationwide, “approximately one-third of Black men have a felony conviction,” meaning that in places such as Pennsylvania, many Black males are *automatically* excluded from the potential pool of jurors.⁸ This effectively means that many Black individuals will never have the opportunity to lend their unique perspective to a jury panel charged with delivering justice fairly and impartially. Accordingly, we recommend that the bill be amended to delete § 4502(a)(3) in its entirety. If concerns arise with permitting individuals convicted of certain violent felony offenses to serve on a jury, specific exclusions for those crimes can be added to the legislation. Similarly, waiting periods following release from prison or from supervision can be incorporated into the legislation, as other states have done.⁹

Overall, in its amended form, HB 1655 would increase diversity on Pennsylvania’s juries, better ensuring compliance with the existing constitutional guarantee to an impartial jury selected from a representative cross-section of the community.¹⁰ The bill would also lead to a more thoughtful

³ 42 Pa.C.S.A. § 4502(a)(3).

⁴ Ginger Jackson-Gleich, “Rigging the jury: How each state reduces jury diversity by excluding people with criminal records,” Prison Policy Initiative (Feb. 2021), available at <https://www.prisonpolicy.org/reports/juryexclusion.html>.

⁵ *Id.* at 3.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*


⁹ *Id.* at 2, 4.


¹⁰ *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

disposition of jury trials, given findings that “diverse juries [have] longer deliberations, [discuss] more case facts, [make] fewer inaccurate statements, and [are] more likely to correct inaccurate statements.”¹¹ In short, HB 1655 would better preserve Pennsylvanians’ constitutional rights, while also leading to increased public confidence in the judicial system by more readily securing fair trial outcomes.

Thank you for your consideration. We would welcome the opportunity to provide testimony on HB 1655 should the Judiciary Committee convene a hearing thereon. If you have any questions or comments, we would be happy to discuss them at your convenience.

Respectfully,


Lisette McCormick, Esq.
Executive Director


Lynn A. Marks, Esq.
Chair, Jury Service Committee

cc: Hon. Rick Krajewski, Prime Sponsor, HB 1655
Hon. Tim Briggs, Democratic Chair, House Judiciary Committee
Members of the House Judiciary Committee
Pennsylvania Interbranch Commission Members
Jury Service Committee Members, Interbranch Commission

¹¹ Samuel R. Sommers, “On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations,” 90 J. of Personality and Soc. Psychology 597, 606 (2006), available at <https://www.apa.org/pubs/journals/releases/psp-904597.pdf#page=10>.