

SUBJECT: Exclusion of blind persons from juries

COMMITTEE: Judiciary: favorable, with amendment

VOTE: 6 ayes--Bush, Khoury, Kemp, R. Martinez, Toomey, Wilson
0 nays
3 absent--M. Garcia, Armbrister, Cavazos

WITNESSES: For--Bill Booth, Mexia
Against--None

BACKGROUND: Under current law, persons who are legally blind can serve on juries in civil or criminal cases but are subject to challenge because of their blindness. They cannot serve unless the judge, all parties to the trial, and they themselves agree that blindness does not render them unfit to be jurors.

Such challenges "for cause" are unlimited in number. The judge decides whether the cause asserted, such as legal blindness, actually exists. If it does, the juror is excluded. Both sides in a civil or criminal case may also make a limited number of peremptory challenges, for which no reason need be given.

DIGEST: HB 176 would give judges sole discretion to determine if a blind person is fit to act as a juror in a civil case. The committee amendment would extend the provision to criminal cases.

SUPPORTERS SAY: For blind persons to be excluded from a jury solely because of their physical affliction is unjustifiable discrimination. The definition of blindness in this law is quite broad and this means that qualified persons with some sight can be automatically excluded by any party to the case. The law now permits arbitrary exclusion regardless of whether sight is necessary to determine the facts in the case.

Under current practice, if a party challenges prospective jurors on the ground of blindness, judges must exclude them upon determining that they are legally blind. HB 176 would merely let the judges decide whether in a particular trial the juror's blindness would matter. Most judges are likely to err on the side of exclusion, but at least in cases in which sight is not necessary a juror could not be excluded merely for being sightless.

DIGEST: judge. HB 378 would specify that a judge shall
(continued) "examine" the affidavit to see if it conforms
to the terms of the law and may approve it at
his or her discretion.

SUPPORTERS The statute governing collection of small estates
SAY: upon affidavit is a trade-off. It streamlines
the process of administering estates when the
estate is small and there isn't much to quibble
over. But it also opens the door to improper
distribution of an estate.

A person can file an affidavit saying he or she
is the sole heir to an estate, when there may
be others who are also entitled to a portion.
The statute says that distributees need wait only
30 days from the death of the decedent before
filing the affidavit; so by the time far-flung
relatives learn of their rights and interests
in the estate, they may be too late to do anything
but file a civil suit.

Each time the dollar amount defining a small estate
is raised, the incentive to cheat increases. The
current level of \$50,000 is high enough to warrant
some additional safeguards. By requiring two
disinterested witnesses to swear to an affidavit,
this bill would make it harder for dishonest people
to acquire property they are not entitled to.

The other changes HB 378 proposes merely reinforce
or clarify the intent of existing law.

OPPONENTS
SAY: No apparent opposition

NOTES: One committee amendment would make it explicit
that collection of a small estate under sec. 137
does not accomplish a transfer of title to real
property.

As introduced, the bill would have changed the
definition of a small estate to one with a maximum
value of \$50,000 including homestead and other
exempt property. Committee Amendment No. 1 would
restore the existing definition, correcting what
the bill's sponsor says was an unintended change
in the definition.

Exempt property refers to property exempted by
law from forced sale for payment of debt (VACS
art. 3836.) It includes such property as home
furnishings, personal vehicles, tools used in
a trade, and farm and ranch equipment.

A companion bill, SB 526 by Washington, has been
referred to Senate subcommittee.

SUPPORTERS
SAY:
(continued)

If any parties to the case disagree with the judge's decision to let a blind person serve, they still have some recourse: They can appeal the judge's ruling, if they lose the case; they also can use a peremptory challenge to exclude a blind juror, since no reason is required for such challenges.

The law already permits deaf persons to serve as jurors in civil cases without being subject to challenge because of their deafness. It is irrational to permit automatic exclusion of the blind but not the deaf, because the arguments about the ability to consider the evidence and evaluate the demeanor of witnesses apply to both.

OPPONENTS
SAY:

Some cases obviously require that jurors be able to see clearly: to view videotapes in a drunken driving case, to compare handwriting samples, to examine photographs, or the like. Almost all cases depend to some degree on the jury's evaluation of the truthfulness of witnesses, as shown by their demeanor on the witness stand. And in some cases, litigants who want to rely on the visual perceptions of jurors might prefer not to reveal this trial tactic during jury selection by using a peremptory challenge to exclude a blind juror or objecting to inclusion of a blind juror. The parties involved in a jury trial, especially in a criminal case in which a person's life or liberty may be at stake, should therefore retain the right to exclude a person who is blind.

NOTES:

The committee amendment would apply the same rules for disqualification of blind jurors in criminal cases as in civil cases.

Apart from its specific references to blindness, existing law permits challenges for cause in criminal cases on the ground that a prospective juror has "such defect in the organs of feeling or hearing or such bodily or mental defect or disease as to render him unfit for jury service...."