

**SUBJECT:** Questioning peremptory challenges based on gender and by defense

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton  
0 nays  
3 absent — Denny, Dunnam, P. Moreno

**WITNESSES:** None

**BACKGROUND:** Code of Criminal Procedure, art. 35.261 allows a defendant to ask a court to dismiss a group of potential jurors, called an array, and to call a new group to be considered under certain circumstances. A court must grant the request for a new array of jurors if it determines that the defendant is a member of an identifiable racial group, that the prosecutor exercised peremptory (without cause) challenges to exclude people from the jury because of their race, and that the defendant has presented evidence of relevant facts that tend to show that the prosecutor's challenges were based on race. If the defendant makes a showing in the case, the burden shifts to the prosecutor to give a racially neutral explanation for the challenges. The burden of persuasion remains with the defendant to establish purposeful discrimination. The court must call a new array of jurors if it determines that the prosecutor challenged prospective jurors based on race.

**DIGEST:** CSHB 2796 would extend to prosecutors the authority now given to the defense in a criminal case to ask that a court dismiss an array of jurors. It would expand current law so that peremptory challenges based on gender also would be grounds for dismissing an array of jurors.

A court would have to grant the request to dismiss an array of jurors if it determined that the prosecution or defense had used peremptory challenges to exclude people from the jury based on their race or gender and that the attorney requesting the dismissal had offered evidence that tended to show that the challenges made by the opposing attorney were based on race or gender.

The burdens of proof in current law would remain the same, with the attorney requesting the dismissal of jurors having to make a showing first and then the burden shifting to the opposing attorney to give a racial- or gender-neutral explanation for the challenges. The burden of proof would remain with the attorney who requested the dismissal to establish purposeful discrimination. The court would have to call a new array of jurors if it determined that prospective jurors were challenged on the basis of race or gender.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 2796 would bring Texas statutes in line with U.S. Supreme Court jurisprudence on peremptory jury challenges. It is necessary to codify these high court decisions because not all judges may be aware of them, or some judges may not implement them without seeing them in Texas statutes.

Current law was enacted to codify a 1987 U.S. Supreme Court decision that prohibited peremptory challenges by prosecutors based solely on race. Since then, the court has extended this prohibition to cover peremptory challenges based solely on gender. CSHB 2796 would codify this decision.

The bill also would codify U.S. Supreme Court decisions by extending the ability to challenge peremptory strikes allegedly based on race and gender to prosecutors. This would ensure that all sides in a case were held to the same standards and required to act fairly. Since prosecutors have no right to appeal judge's decisions about these peremptory challenges, it is especially important to place these Supreme Court rulings into state law.

CSHB 2796 is concerned solely with codifying U.S. Supreme Court jurisprudence, so it would be inappropriate to include other types of peremptory challenges in the bill.

**OPPONENTS  
SAY:**

CSHB 2796 would not go far enough. The bill also should make peremptory challenges based on religious reasons grounds for dismissing an array of jurors, because such reasons also are discriminatory.

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**NOTES:** The committee substitute changed the filed version of HB 2796 to conform with the Texas Legislative Council format.