

CALIFORNIA

Under a bill signed last month by Gov. Gray Davis, gay men and lesbians cannot be rejected for jury service because of their sexual orientation, reports a June 27 story in the *San Francisco Chronicle*.

In addition, potential jurors cannot be excused by attorneys because of a belief that their sexual orientation makes them biased.

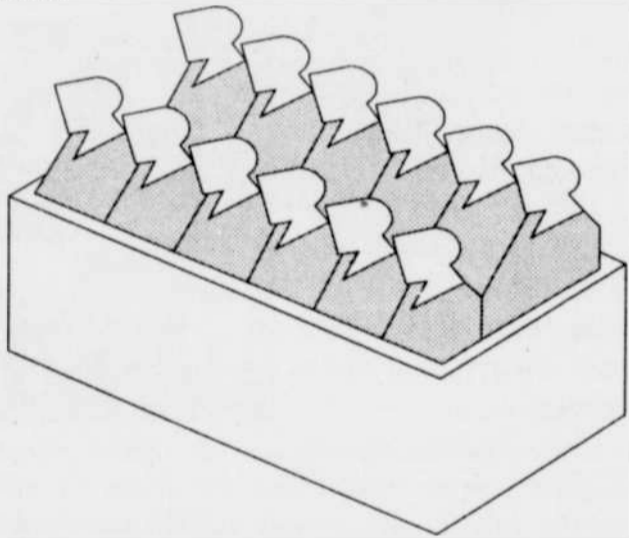
The new law, sponsored by Assemblywoman Carole Migden, D-San Francisco, makes law of federal and state court decisions that a person cannot be prevented from serving on a jury because of sexual orientation or dismissed because of a perceived bias based on sexual orientation.

A number of factors that cannot be used to exclude someone from jury service—job, race, color, religion, sex or nationality—already exist in the law.

Earlier this year, the Fourth District Court of Appeals in Orange County issued a decision that said gay men and lesbians should be added to the list.

According to the court's ruling, gay men and lesbians have a common perspective and, because of that perspective, represent a class of citizens that cannot be excluded from jury service.

The court also said sexual orientation should not be a part of the questioning of potential jurors.



"No one should be 'outed' in order to take part in the civic enterprise which is jury duty," the court wrote. "The whole point is that no one can be excluded because of sexual orientation. That being the case, no one should be allowed to inquire about it."

There was opposition to Migden's bill, which goes into effect Jan. 1.

The Committee on Moral Concerns, writing in opposition to the bill, argued: "Gays, lesbians and bisexuals are a politically charged, activist minority fighting to advance a sexual lifestyle that has never been accepted in American history.... The bill's findings identify them as a group that might have a chip on its shoulder. That is exactly the type of social segment that should be excluded from certain trials."

KANSAS

According to J'Noel Ball Gardiner, her 11-month marriage to Marshall Gardiner was a happy one. The difference in their ages was not a problem. They were in love. After their first date, in 1998 when she was 40 and he was 85, she knew "he was my soul mate." Her life was shattered when he died suddenly of a heart attack.

When Marshall Gardiner died, reports a July 7 *Wall Street Journal* story, he left an estate valued at \$2.5 million and no will. Under Kansas law, the estate would normally be divided evenly between a widow and any children.

Marshall Gardiner's only child, Joe Gardiner, was suspicious of his stepmother. He knew she was young, and he thought the relationship was odd. He hired an attorney who hired a private investigator, and it was the private investigator who discovered what the others did not know: J'Noel Gardiner's Social Security number had been issued to a man; she had had a sex change operation.

Joe Gardiner filed a lawsuit contesting the legality of his father's marriage. In January, a state judge agreed with Joe Gardiner, issuing a ruling that says, essentially, once a man always a man. J'Noel Gardiner is appealing the ruling.

This case could prove to be precedent-setting. The number sex-change operations in the United States is growing about 10 percent annually according to Nancy Cain, executive director of the International Foundation for Gender Education, located in Boston. Approximately 5,000 people in the United States had a sex change last year, Cain says.

The state of Wisconsin, where J'Noel Gardiner was born, reissued her birth certificate to say she is female. Kansas is one of the few states that does not recognize new birth certificates issued to reflect a sex change. This circumstance makes J'Noel Gardiner a woman in Missouri, where she lives, and a man in Kansas, where she got married.

J'Noel Gardiner was very cautious about sharing information about her past as a man. She said Marshall Gardiner was the first person outside her family she trusted enough to tell. According to her, he replied, "I love you to the core." They married a month later.

Joe Gardiner does not believe his father ever knew about J'Noel Gardiner's past. "He was a religious person," he said, and conservative. "He was born in 1912 and concerned about his stature in the community."

J'Noel Gardiner declined a settlement offer



made by Joe Gardiner. She vows to continue with her appeal.

LOUISIANA

Louisiana's 195-year-old sodomy law has been upheld by the state Supreme Court.

Violation of the law could be punished with up to five years in prison for engaging in oral or anal sex, reports a July 7 Associated Press story.

Writing for the majority in the 5-2 decision, Justice Chet Taylor said, "Simply put, commission of what the Legislature determines as an immoral act, even if consensual and private, is an injury against society itself."

The two dissenting justices, Chief Justice Pascal Calogero Jr. and Justice Harry Lemmon, said the law represents an intrusion of government into citizens' homes.

"The only apparent purpose of the prohibition is to dictate the type of sex that is acceptable to legislators," wrote Lemmon.

"Two married persons should be able to choose how they conduct their non-public, voluntary sexual relations in the security of their own home; a law that takes that choice away from them is an intrusion by the legislative branch that is constitutionally intolerable."

The Fourth Circuit Court of Appeal had reversed the conviction of a man who had oral sex with a woman, saying the law violated privacy rights. The man's conviction for a crime against nature and his suspended three-year jail sentence were reinstated by the Supreme Court.

A civil rights lawsuit filed by gay activists is not affected by the ruling. It challenges the sodomy law on different issues.

NEW YORK

The state of New York has a new hate crimes law, signed by Gov. George Pataki earlier this month, reports a July 10 Associated Press story.

In the past, Senate Republicans had blocked the bill. They argued that it is unfair to single out some crimes for higher penalties.

Times change. Pressure grew over the years. When the bill came to the floor last month, it passed with Republican support.

"The people of New York are saying at last that all of us—black and white, gay

and straight, Christian, Jew and Muslim—we will fight this battle together," said Matt Foreman, executive director of Empire State Pride Agenda.

The law increases penalties for many crimes if they are motivated by bias against someone's race, religion, sex, sexual orientation, disability or age.

WEST VIRGINIA

Arthur Warren Jr., 26, was a slender, quiet man who walked everywhere in Grant Town. An African American gay man, he had spoken often of being harassed because of his sexuality.

"He said he was attacked by some high school boys in Grant Town before. People would throw things at him as he walked down the street, call him 'queer' and other names," said Angela Dunlap of the gay and lesbian support group at nearby Fairmont State College.

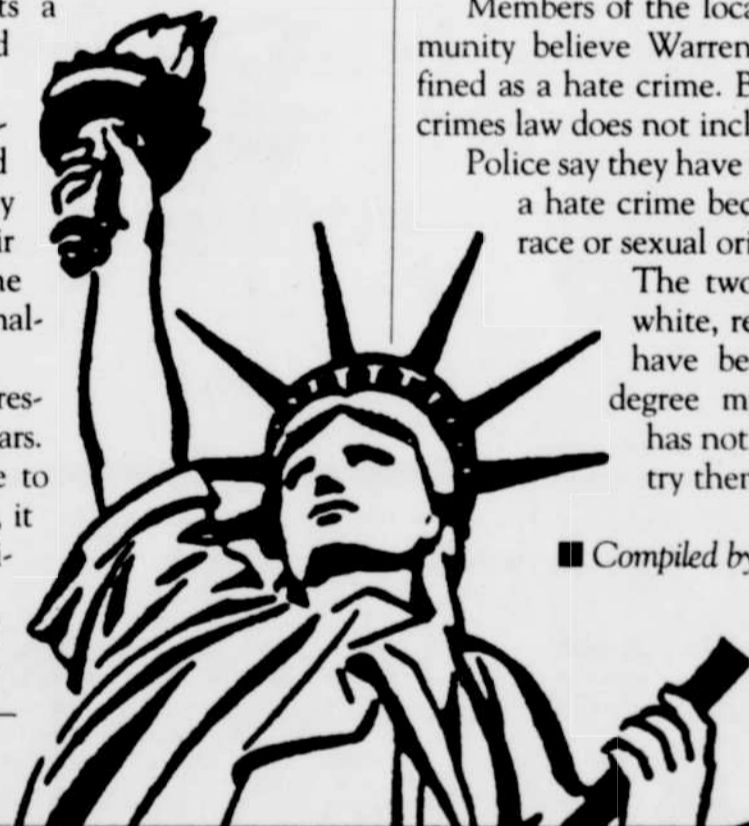
According to various media sources, Warren apparently was beaten to death and then repeatedly run over by two teen-agers in early July. His body was found by a newspaper carrier the morning after the attack.

A break in the investigation came when a 16-year-old boy told his mother, and then law enforcement deputies, that he had witnessed the two 17-year-old boys beat Warren. He also confessed to having helped them clean up the murder scene.

Members of the local gay and lesbian community believe Warren's death should be defined as a hate crime. But West Virginia's hate crimes law does not include sexual orientation.

Police say they have no evidence pointing to a hate crime because of either Warren's race or sexual orientation.

The two 17-year-olds, who are white, reportedly confessed and have been charged with first-degree murder. The prosecutor has not yet decided whether to try them as adults.



Compiled by KRISTINE CHATWOOD, a Portland-based free-lance writer and longtime Just Out contributor.

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