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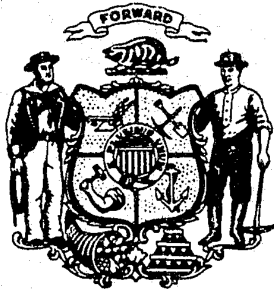

OVERVIEW OF WISCONSIN LAWS AND MODEL ACTS RELATING TO JURY LIST SELECTION AND JURY SERVICE

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STAFF BRIEF 90-3

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Madison, Wisconsin

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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Jury Service — July 24, 1990

STAFF BRIEF 90-3*

OVERVIEW OF WISCONSIN LAWS AND MODEL ACTS RELATING TO JURY LIST SELECTION AND JURY SERVICE

INTRODUCTION

This Staff Brief was prepared for the Legislative Council's Special Committee on Jury Service. The Special Committee was established by a Legislative Council mail ballot on June 28, 1990 and directed to:

> ...review state law and local practice concerning the eligibility and selection of persons for prospective jury service, the extent and frequency of service by persons chosen for jury service and the fees and compensation received for jury service, to determine if revisions in state law are necessary to: (1) broaden and enhance participation in jury service; (2) make more uniform the opportunity for jury service among eligible persons; and (3) provide a more representative pool of persons for prospective jury service.

The purpose of this Staff Brief is to: (1) provide an overview of issues relating to jury list selection and certain aspects of jury service (e.g., compensation of jurors; term of service of jurors); (2) describe the current Wisconsin statutes relating to jury list selection and juror compensation; (3) discuss constitutional challenges which have been made to jury selection statutes and procedures in Wisconsin and other states; and (4) describe relevant provisions in several model laws relating to jury selection and services.

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*This Staff Brief was prepared by Ronald Sklansky and Don Salm, Senior Staff Attorneys, Legislative Council Staff.

Part I of this Staff Brief provides general background information on the significance of the jury selection system and the constitutional and statutory right to trial by jury in Wisconsin.

Part II describes the jury list selection system and other aspects of jury service under current Wisconsin law.

Part III discusses various constitutional challenges which have been made to the jury list selection process in effect in various states.

Part IV provides a background on certain key issues relating to jury list selection and other aspects of the jury system.

Part V sets forth pertinent provisions of the American Bar Association's Standards Relating to Juror Use and Management Selection and the 1970 Uniform Jury Selection and Service Act from the National Conference of Commissioners on Uniform State Laws.

PART I

BACKGROUND

This Part of the Staff Brief sets forth general background information on the significance of the jury selection process in our justice system and the constitutional and statutory right to trial by jury in Wisconsin.

A. SIGNIFICANCE OF TRIAL BY JURY IN JUSTICE SYSTEM

With respect to a criminal trial, the U.S. Supreme Court has stated that the presence of a jury in such a case is fundamental to the American scheme of justice. According to the Court, the citizen jury serves as an important check between the accused and a corrupt or overzealous prosecutor and a compliant, biased or eccentric judge [see Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444 (1968), reh. den. 392 U.S. 947, 88 S. Ct. 2270].

According to the guiding statement to the STANDARDS RELATING TO JUROR USE AND MANAGEMENT [American Bar Association (1983)], p. 1:

> Trial by jury is a fundamental concept of the American system of justice and has been instrumental in the preservation of individual rights while serving the interests of the general public.
>
> The significance of the jury is not limited to its role in the decision-making process; jury service also provides citizens with an opportunity to learn, observe and participate in the judicial process. The jury system affords an opportunity for citizens to develop an active concern for and interest in the administration of justice. Education of the public in the role of the jury in the American legal system, therefore, is essential.

B. CONSTITUTIONAL AND STATUTORY RIGHT TO JURY TRIAL

The 6th Amendment to the U.S. Constitution, which has been applied to the states through the 14th Amendment by Duncan v. Louisiana, cited above, provides, in part, that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury....

Article I, section 5, of the Wisconsin Constitution, preserves the right to a jury trial in civil actions as follows:

> The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law....

This provision has been construed to mean that the right of trial by jury, as known to the law at the time of the adoption of our Constitution, is to be preserved [see State v. Graf, 72 Wis. 2d 179, 240 N.W. 387 (1976)].

In criminal cases, Wis. Const., art. I, s. 7, provides that:

> In all criminal prosecutions, the accused shall enjoy the right...to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed....

The Wisconsin constitutional provisions regarding the right to a jury trial are mirrored in state statutes. For example, s. 805.01 (1), Stats., provides that the right of trial by jury in a civil case, as declared in the Constitution, "shall be preserved to the parties inviolate." Also, in s. 972.02 (1), Stats., it is provided that criminal cases generally shall be tried by a jury of 12, unless the defendant waives a jury.

Perhaps the typical view of a jury is that it is a device used in criminal and civil cases to determine the guilt or negligence of a defendant, respectively. However, in Wisconsin, juries may be used in a wide variety of cases. For example, juries may be employed in the following matters:

1. Either party may demand a jury trial in conservation and natural resource actions under the jurisdiction of the Department of Natural Resources [see ss. 23.50 and 23.77, Stats., as affected by 1989 Wisconsin Acts 79, 284 and 335].

2. In certain condemnation cases, the amount of an award to a property owner must be tried by a jury, unless waived by both the plaintiff and the defendant [see ss. 32.05 (10) and (11) and 32.06 (10), Stats.].

3. When a petition is entered alleging that a child is delinquent, is in violation of civil laws or ordinances or has been abandoned, the child or the child's representative must be advised of the right to a jury trial [see ss. 48.30 (1) and (2) and 48.31 (2), Stats.].

4. An employer charged with contempt for violating a restraining order or an injunction relating to subjects such as hours of labor and family and medical leave enjoys the right to a speedy and public trial by an impartial jury [see s. 103.60, Stats.].

5. In a civil or a criminal action for a traffic violation, a defendant is entitled to a jury trial and the jury may be specially selected from the residents of a municipality in which the court is held unless the defendant demands a countywide jury [see ss. 345.34 and 345.43, Stats.].

6. A jury may be requested to determine issues in a paternity action [see s. 767.50 (1), Stats.].

7. A party in a small claims action may demand a jury [see s. 799.21 (3), Stats.].

8. An inquest must be conducted before a jury unless the district attorney, coroner or medical examiner requests that the inquest be conducted before a judge or court commissioner only [see s. 979.05 (2), Stats.].

PART II

JURY LIST SELECTION SYSTEM AND OTHER ASPECTS OF JURY SERVICE UNDER CURRENT WISCONSIN LAW

This Part of the Staff Brief discusses the jury list selection system and other aspects of jury service under current Wisconsin law. The review of the Wisconsin system focuses primarily on the petit jury, or trial jury. The selection of a grand jury is fundamentally similar to the selection of a trial jury.

A. WISCONSIN STATUTES

1. Jury Commissioners

The Wisconsin statutory process for the selection of a jury begins with the appointment of jury commissioners. Three jury commissioners must be appointed in each county. The commissioners are appointed, for staggered three-year terms, by the joint action of the judges of the circuit court for a county [see s. 756.03 (1), Stats.].

Commissioners are required to meet as their duties require and when any judge directs them to meet. In support of their duty to prepare jury lists, the commissioners may subpoena any person to appear before them for examination as to the person's qualifications for jury service. The commissioners also may investigate jury eligibility by making inquiries at a person's place of business, residence or elsewhere or by other means. Finally, all public officers and employes are required to furnish jury commissioners, upon request, the records and assistance which the commissioners deem proper to perform their duties [see s. 756.03 (4), Stats.].

2. Forming a Jury Panel

a. Jury List

Every year, before the first Monday in April, the jury commissioners must provide to the circuit court in each county, one countywide list of at least 200 names of persons to be drawn from the county to serve as trial jurors. The list must include a verified statement describing the manner in which the list was compiled or modified, including an enumeration of all public or private sources from which the names of the jurors on the list were derived. In preparing the list, the commissioners are required to determine eligibility for jury service by mailing to every prospective juror a juror qualification form. After revising the proposed list by striking from it the names of persons found by the commissioners

to be ineligible for jury service, a certified copy of the list, containing the name, address and occupation of each person named, must be presented to the clerk of the circuit court. Although the list prepared by the commissioners may consist of names of persons known to the commissioners or discovered by personal investigations or reviews of documents such as voter registration lists, the statutes also provide that the selection of jurors may be accomplished by electronic, automated systems, wherever appropriate [see ss. 756.04 (2) (a) to (c) and 756.27, Stats.].

b. Qualifications of Jurors

The qualification form mailed to prospective jurors is used to assist the commissioners in determining the qualifications of individuals to serve as jurors. Individuals are qualified if they are persons who:

(1) Are United States citizens;

(2) Are electors of the state;

(3) Are possessed with their natural faculties;

(4) Are not infirm. A person is not disqualified on the ground of infirmity because of a physical condition unless a judge finds that the person clearly cannot fulfill the responsibilities of a juror;

(5) Are able to read and understand the English language; and

(6) Have not been summoned to attend for prospective service as a trial juror within the previous two years [see s. 756.01, Stats.].

c. Cards for Prospective Jurors; Master Tumbler

In addition to the preparation of the list for the clerk of the circuit court, the commissioners must place the name of each prospective juror on a separate card measuring not more than one by three inches. All cards used must be of similar weight, size and color. The cards are placed in separate opaque envelopes of similar weight, size and color which are only large enough to hold the cards. The commissioners then place the cards in a master tumbler having only one opening. The tumbler must be kept locked at all times except when the jury list is being revised or when the jury panel is being drawn. The tumbler is held by the clerk of the circuit court [see s. 756.04 (2) (c), Stats.].

d. Duties of Clerk of Circuit Court

At this point in the process, the responsibility for ultimately drawing a trial jury transfers to the clerk of the circuit court. At least once each year, or more often if necessary, the clerk, in the

presence of at least two of the jury commissioners, must draw a number of names from the master tumbler for the purpose of forming jury panels. The clerk must rotate the tumbler before each name is drawn. When a card is taken from the tumbler, the commissioners must write the person's name, address and occupation in the order in which it was drawn. This series of names becomes a panel list. In the same manner, the clerk then must draw a sufficient number of names of additional persons to be recorded as a reserve panel list. Persons from the reserve panel list are summoned in the order in which their names appear on that list if the regular panel is inadequate [see s. 756.04 (3), Stats.].

The panel list is used by the clerk of the circuit court to summon persons to appear before the court to serve as trial jurors. The summons is to be issued at least 12 days before the first day on which a jury is required to be present [see s. 756.08, Stats.].

The names of the persons on the panel list who have been summoned by the clerk of the circuit court must be placed in another tumbler. The names are to be written upon separate cards and enclosed in opaque envelopes in the same manner in which the cards were prepared for the initial drawing of the panel list. Unless an automated, random system is used, the clerk must, in the presence and under the direction of the court, openly draw out of this tumbler, one at a time, as many envelopes as are necessary to form a jury. Before drawing each card, the clerk is required to close the tumbler and rotate it [see s. 756.096 (1) and (2), Stats.].

The number of names drawn from the tumbler by the clerk must equal at least the number of jurors needed in the action plus the number of peremptory challenges available to each party. A peremptory challenge is used by parties to strike prospective jurors from a final jury without stating any reason or cause for the strike, with certain constitutional restrictions. Because a jury in a civil or criminal case may include six to 12 persons, and because the number of peremptory challenges differs in civil and criminal cases, the number of prospective jurors called before the court in an individual action will vary [see ss. 756.096 (3), 805.08 (2) and (3), 972.02 (1) and (2), 972.03 and 972.04 (1), Stats.].

3. Reducing the Jury Panel to the Final Jury

a. Voir Dire In General

The requisite number of prospective jurors having been seated in the courtroom, the court and the attorneys representing the parties then subject the jurors to a voir dire examination. The purpose of the examination is to determine the qualifications and impartiality of the jurors and to allow the parties to strike by peremptory challenge those individuals not favored by the parties.

b. Statutory Exemptions and Excuses from Jury Service

Any person may be excluded from the jury panel or excused from service by order of the judge based on a finding that the service would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice. The exclusion or excuse continues for the period deemed necessary by the judge, at the conclusion of which the person must reappear for jury service. Also, a State Legislator or full-time elected official must be excused from service as a juror if the official states to the court that jury service would interfere with the performance of his or her official duties. Finally, at any time in the process, judges and attorneys who claim an exemption automatically are exempt from jury service. No other qualified juror is entirely exempt from service [see s. 756.02, Stats.].

c. Court Examination of Jurors for Bias or Prejudice

In addition to statutory exemptions and excuses from jury service, a court during voir dire will examine each person who is called as a juror to discover whether the juror is related by blood or marriage to any party or to any attorney appearing in the case, has any financial interest in the case, has expressed or formed any opinion or is aware of any bias or prejudice in the case. If a juror is not indifferent or unbiased, the juror must be excused. Any party objecting for cause to a juror may introduce evidence in support of the objection. When the voir dire is completed, the remaining members of the jury panel are ready to perform their duties as a jury in a trial [see s. 805.08 (1), Stats.].

4. Juror Compensation and Length of Service

Generally, a trial juror who is summoned to court by the clerk must receive a fixed sum of money for each day's actual attendance upon the court and a fixed amount for each mile actually traveled each day in going to and returning from the court. The amount received must be fixed by the county board, but may not be less than $16 per day of actual attendance and not less than $.10 per mile traveled. There are two exceptions to this general rule. First, the county board may pay jurors by the 1/2 day, which does not affect the payment for mileage. Second, a county establishing a system in which jurors are summoned to serve for only one day or one trial in any two-year period may determine an amount to be paid jurors for the first day of actual attendance and the amount to be paid jurors for traveling to and from the court for the first day of actual attendance [see s. 756.25, Stats.].

The statutes generally provide that an employer must grant an employe serving as a juror a leave of absence, without loss of time and service, for the period of jury service. For the purpose of determining seniority or pay advancement, the status of the employe is considered uninterrupted

by jury service. Absence due to jury service may not be used as a basis for discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe for his or her jury service may be fined not more than $200 and may be required to make full restitution to the employe, including reinstatement and back pay. Different provisions apply to jury service by an employe of the state. An official or an employe of the state summoned for jury service is entitled to a leave of absence without loss of time and is entitled to his or her regular pay from the state during that absence [see ss. 230.35 (3) (c) and 756.25 (1), Stats.].

Generally, in any two-year period, no person may serve or attend a court for service as a trial juror for a total of more than five days of actual court attendance unless either of the following occur:

a. It is necessary to act for more than five days in order to complete service in a particular case.

b. A majority of the judges of court of record for the county adopt by rule a longer time period not to exceed 10 days.

It also appears that a county may establish a system in which jurors are summoned to serve for only one day or one trial in any two-year period [see ss. 756.01 (1), 756.04 (5m) and 756.25 (3), Stats.].

B. SELECTED WISCONSIN CASE LAW

This section of the Staff Brief reviews selected Wisconsin court opinions relating to the mechanics of the jury selection process. Constitutional issues regarding discrimination, representation of a community on a jury and jury impartiality are reviewed in Part III of the Staff Brief.

Early in this state's history, parties in trials appeared to be very concerned about the physical manner in which names were drawn for juries. For example, in The Territory of Wisconsin v. Doty, 1 Pin. 396 (1844), the Supreme Court for the Territory of Wisconsin heard a complaint by the plaintiff that the names of jurors were not placed on pieces of paper and drawn by lot. The Court held that, although the drawing of names on paper by lot was the correct practice and was the practice generally used at the time, the statute in effect did not require that method of drawing a jury. Consequently, the Court refused the plaintiff's appeal on these grounds.

In Benaway v. Conyne, 3 Pin. 196 (1851), the defendant objected to the clerk drawing a jury by pulling slips of paper held in his hand, rather than drawing a slip at a time from a box or a hat. Since there was no objection at the time of the draw, since the statute was silent on the appropriate process and since the trial judge was satisfied that the names

had been drawn "fortuitously," the Wisconsin Supreme Court held that no error occurred [see, also, Burchard v. Booth, 4 Wis. 67 (1855), in which the Wisconsin Supreme Court held that, although the correct practice required the names of jurors to be drawn from a box, no rights were affected if the names were drawn from a hat or drawn from a table top].

The Court appeared to close the issue of the physical method of selection or draw by holding in Perry v. The State, 9 Wis. 19 (1859), that all the State Constitution requires is that the jury be fair and impartial and that the mode of designating such a jury is not a constitutional matter.

In preparing the countywide lists from which panel lists are made, the Supreme Court has noted that the authority of jury commissioners to revise the list by striking from it the names of persons found to be ineligible for jury service does not include the authority to exclude potential jurors on the basis of infirmity, extreme inconvenience or other grounds listed under ss. 756.01 (2) and 756.02, Stats. In State v. Coble, 100 Wis. 2d 179, 301 N.W. 2d 221 (1981), the Supreme Court reviewed the Milwaukee County system in which the jury commissioners, based on answers to the questionnaire mailed to prospective jurors, excluded individuals on the basis of infirmity and hardship. The Supreme Court held that revisions to the countywide juror list by the jury commissioners on these grounds was without statutory authority. Instead, the responsibility for excluding individuals from jury service for these reasons lies with a judge.

The defendant in the Coble case asked that his criminal conviction be reversed due to the irregularities of the system used by the Milwaukee County jury commissioners. Although some irregularities were found, the Court ultimately concluded that the purpose of ch. 756, Stats., had not been frustrated and that a reversal of the conviction was not required. The jury panel was selected on a random basis and there was no claim or evidence that the jury commissioners applied subjective criteria to exclude persons from the jury list.

The thrust of the cases reviewed in this section regarding the pure mechanics of jury selection may be summarized by the statements of the Wisconsin Supreme Court in Pamanet v. State, 49 Wis. 2d 501, 182 N.W. 2d 459 (1971). Although the Court noted that some technical irregularities occurred in assembling the jury list in question, the Court stated that the statutory mode of drawing a jury is directory, not mandatory, and technical irregularities are not material problems unless a defendant is prejudiced. In other words, unless a defendant in a criminal case has been materially harmed by the drawing of a particular jury, the Supreme Court has been reluctant to overturn any given criminal conviction [see, also, State v. Nutley, 24 Wis. 2d 527, 129 N.W. 2d 155 (1964), cert. den. 380 U.S. 918, 85 S. Ct. 912].

PART III

CONSTITUTIONAL ISSUES

This Part of the Staff Brief discusses various constitutional challenges which have been made to the jury list selection process in effect in various states. These challenges relate to claims that the selection of a jury in particular cases amounts either to a denial of equal protection of the laws or a denial of the right to an impartial jury from a fair cross-section of the community from which the jury is drawn.

A. EQUAL PROTECTION OF THE LAW

The 14th Amendment to the U.S. Constitution provides, in part, that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Not long after the Civil War and the adoption of the 14th Amendment, the U.S. Supreme Court reviewed the application of the 14th Amendment to the laws of West Virginia which only allowed white males to serve on juries. In _Strauder v. West Virginia_, 100 U.S. 303 (1879), the Court concluded that the exclusion of nonwhites from juries denied equal protection to a black defendant. The Court stated that a defendant has a right to a jury selected without discrimination against members of the defendant's race and that the right, if not created by the 14th Amendment, is protected by it.

Immediately after _Strauder_, the Supreme Court rendered another opinion including a holding that has often been repeated in modern courts. The Court held that although no discrimination in the selection of a jury may be permitted, there is no right, under the Equal Protection Clause, to a mixed race jury [see _Virginia v. Rives_, 100 U.S. 313 (1879)].

A case involving discrimination by state statute [i.e., _Strauder_] was relatively easy for the Supreme Court to decide. The next issue faced by the Court is one with which it continues to be confronted. In _Bush v. Commonwealth of Kentucky_, 107 U.S. 110, 1 S. Ct. 625 (1883), a jury was ordered to be selected without regard to race, color or previous condition of servitude. The defendant moved for dismissal of the indictment and the trial jury because both the grand and trial juries were selected only from the white population. The Court stated that all the defendant could rightfully demand was a jury from which his race was not excluded because

of color. Consequently, because the defendant had no legal right to a jury composed in part of his own race and because there was no proof of exclusion of members of his race, his conviction was not reversed.

In the modern era, the U.S. Supreme Court has stated that, with respect to jury selection issues, the burden is on the petitioners to show purposeful discrimination. Once a prima facie case of purposeful discrimination has been made, the burden shifts to the prosecution to disprove purposeful discrimination. The 14th Amendment requires, and related federal legislation provides, that a conviction cannot stand if it is based on an indictment of a grand jury or the verdict of a trial jury from which blacks have been excluded because of their race. An example of the application of these standards can be found in Whitus v. State of Georgia, 385 U.S. 545, 87 S. Ct. 643 (1967). The Supreme Court found that a prima facie case of purposeful discrimination had been made when:

1. The jury lists in the case recognized the race of eligible males.

2. Over 42% of the eligible males were black.

3. Only three blacks were drawn for prospective grand jury service out of a total of 33 and only one black served on the grand jury panel of 19.

4. Only seven blacks were drawn for prospective trial jury service out of a total of 90 and no blacks were accepted for jury service.

The Court stated that testimony adduced by the prosecution that no individual was included or rejected because of race did not overcome the prima facie case made by the defendant. [See, also, Alexander v. Louisiana, 405 U.S. 635, 92 S. Ct. 1221 (1972), holding that a prima facie case of purposeful discrimination is not rebutted by affidavits of good faith where the result of the selection process bespeaks discrimination.]

In Wilson v. State, 59 Wis. 2d 269, 208 N.W. 2d 134 (1973), the Supreme Court of Wisconsin capsulized the antidiscrimination rules in the following manner:

> The following rules can be summarized from these cases:
>
> (1) The party challenging a jury array has the burden of proving a prima facie case of discrimination.
>
> (a) He must do so prior to the impanelling of the jury.

(b) He may meet this burden by showing an intentional and systematic exclusion of some representative class (including age, race, and sex) by

(i) Direct testimony of the jury commissioners, or

(ii) Proof of a disproportionate representation on the array over "a period of time."

(2) Once the challenger establishes a prima facie case, the burden shifts to the state, which must then show that the disproportion was not intentional or systematic [id., 208 N.W. 2d at 142].

Certain groups may not be discriminated against in jury selection. The U.S. Supreme Court has stated that identifiable groups that may not be subject to discrimination in this process include blacks, Mexican-Americans and women. [See Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692 (1975); Castaneda v. Partida, 430 U.S. 482, 97 S. Ct. 1272 (1977); and Lockhart v. McCree, 476 U.S. 162, 106 S. Ct. 1758 (1986).] For state purposes, the Wisconsin Supreme Court in Wilson added an age classification as a possible grouping which may not be the subject of discrimination. Also, the Wisconsin Supreme Court has identified Native Americans as another subject group in State v. Chosa, 108 Wis. 2d 392, 321 N.W. 2d 280 (1982).

The application of the Equal Protection Clause to the use of peremptory challenges also has been examined by the Supreme Courts of the United States and Wisconsin. In Swain v. Alabama, 380 U.S. 202, 85 S. Ct. 824 (1965), the U.S. Supreme Court responded to the claim that the use of peremptory challenges to remove black jurors from a trial jury violated the Equal Protection Clause. In this case, the defendant claimed that systematic exclusion of blacks in the process was proven by the fact that a black had never sat on a civil or criminal jury in a particular Alabama county. The Supreme Court responded by saying that the proof of systematic exclusion in jury selection did not specifically relate to the use of peremptory challenges in a single case. To make a case of denial of equal protection, the Supreme Court stated that the defendant must prove discrimination, over time, on the part of those exercising the peremptory challenges.

This burden of proof was found to be too overwhelming for parties in Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 (1986). In this case, the U.S. Supreme Court held that a state's purposeful or deliberate denial of access to a jury through the use of peremptory challenges violates the Equal Protection Clause. Again repeating that a defendant has no right to

racial representation on an actual trial jury, the Court stated that a defendant has a right to a jury selected under nondiscriminatory criteria. Discriminatory actions in jury selection harm the defendant, harm the group excluded from the jury system and erode public confidence in the judicial system. The Court ruled that a defendant may make a prima facie case of discrimination regarding the selection of a trial jury based on a prosecutor's exercise of a peremptory challenge if the defendant shows that:

1. He or she is a member of a distinct racial group and the prosecution has removed members of the race from the jury panel.

2. The peremptory challenges plus any other evidence raise an inference of discrimination.

The state may rebut the inference with a neutral, nonracial explanation. The state may not rely on a statement of good faith or the fear of partiality of inclusion of the members of a distinct racial group on a jury. If the state is unable to provide the needed explanation, a case of intentional discrimination is proved. [In State v. Walker, 154 Wis. 2d 158, 453 N.W. 2d 127 (1990), the Wisconsin Supreme Court followed the Batson decision and found, after a review of the factual context of the case, that the peremptory challenge of the only black on the jury panel was purposeful discrimination and in violation of the Equal Protection Clause. The conviction of the defendant in that case was reversed. For discussion of who is entitled to raise the constitutional issue of the validity of a peremptory challenge, see Holland v. Illinois, ___ U.S. ___, 110 S. Ct. 803 (1990), reh. den. ___ U.S. ___, 110 S. Ct. 1514.]

B. IMPARTIAL JURY REPRESENTING A FAIR CROSS-SECTION OF THE COMMUNITY

The 6th and 14th Amendments to the U.S. Constitution and Wis. Const., art. I, ss. 5 and 7, require that juries in Wisconsin be impartial and represent a fair cross-section of the community from which the juries are drawn. [The 6th Amendment was made applicable to the states through the 14th Amendment by the U.S. Supreme Court in Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444 (1968), reh. den. 392 U.S. 947, 88 S. Ct. 2270.]

An example of the U.S. Supreme Court's fair cross-section analysis can be found in Taylor v. Louisiana, 419 U.S. 522, 95 S. Ct. 692 (1975). The issue in the case concerned the constitutionality of a Louisiana statute providing that a woman would not be selected for jury service unless she previously filed a written declaration of her desire to be subject to jury eligibility. Although the names of some women were in the master jury wheel, no women were drawn out of the 175 names taken. Consequently, 53% of the population of the district was unrepresented on the jury panel. The Court asked whether the requirement of a fair cross-section of the community is essential to the 6th Amendment notion of

an impartial jury in a criminal prosecution and decided that the American concept of jury service calls for a fair cross-section of the community to be included in jury panels. Again, the Court stated that community participation in the criminal law is critical to public confidence in the fairness of the system. Finally, the Court concluded that the Louisiana law exhibited a systematic exclusion of a group from jury service, thus resulting in a jury panel not representative of a fair cross-section of the community. Women cannot be excluded from jury service.

In another case involving the alleged exclusion of women from jury service [Duren v. Missouri, 439 U.S. 357, 99 S. Ct. 664 (1979)], the U.S. Supreme Court discussed the necessary ingredients of a prima facie violation of the fair cross-section requirements of the 6th Amendment. According to the Court, a showing of a prima facie violation is made if:

1. A distinctive group is excluded from jury service.

2. The number of individuals from the group included on the jury panels is not fair and reasonable.

3. The lack of representation of the group is due to systematic exclusion.

In that case, a prima facie violation of the 6th and 14th Amendments was shown under Missouri law granting automatic jury exemptions to women requesting such exemptions. The Court found that women constitute a distinct group in society and that, where women constitute greater than 50% of the population, it is not fair and reasonable when women constitute less than 15% of the names on jury panels. The statistics in the case revealed systematic exclusion of women for a period of almost one year. To rebut this prima facie case, the state is required to justify its jury scheme beyond a level of rationality and prove that the scheme serves a "significant state interest manifestly and primarily advanced." In Duren, the state was unable to rebut the prima facie case when the Court did not accept the proposed justification that Missouri simply was protecting the domestic responsibilities of women.

As in the case of equal protection analysis, the Supreme Court has held that the fair cross-section requirement of the 6th Amendment does not apply to the final makeup of a trial jury. The requirement's importance is with respect to the method by which juries are finally formed. [See Lockhart v. McCree, 476 U.S. 162, 106 S. Ct. 1758 (1986); and Holland v. Illinois, ___ U.S. ___, 110 S. Ct. 803 (1990), reh. den. ___ U.S. ___, 110 S. Ct. 1514.]

The Wisconsin Supreme Court also has ruled on fair cross-section issues. In State v. Holmstrom, 43 Wis. 2d 465, 168 N.W. 2d 574 (1969), the defendant claimed that the system used in Eau Claire County eliminated the possibility of having poor people, young people or new members of the

community on the jury. The defendant further claimed that only by categorizing persons according to sex, age, race, religion, politics and occupation could a truly representative cross-section of a community be picked. The Court concluded that before reversing a conviction, it must be proven that a cohesive group of the community has been excluded from jury service and there must be a clear showing of intentional and systematic exclusion of that group. Statistics showing disproportionate representation on one jury panel is not a basis for an inference of exclusion. The group excluded must be cohesive and one whose exclusion could defeat the constitutional requirement of a representative jury. According to the Court, a "clear showing" includes evidence of disproportionate representation over a period of time. A "cohesive unit" may include economic, social, religious, racial, political or geographical groups and women. Finally, although the Court could find no authority identifying the systematic exclusion of young persons as prohibited, the Court held that systematic discrimination in regard to age would make a jury as defective as any other type of systematic discrimination.

In State v. Bond, 41 Wis. 2d 219, 163 N.W. 2d 601 (1969), the defendant challenged the representation of jury panels when the names of the panelists were drawn from poll lists in Milwaukee County. The Court found that poll lists did not include a built-in device preventing representativeness and that poll lists are not discriminatory by calculation or choice.

PART IV

BACKGROUND ON CERTAIN KEY ISSUES RELATING TO JURY LIST SELECTION AND OTHER ASPECTS OF THE JURY SYSTEM

Key issues which have been raised relating to juries include representation of a community on a jury, juror compensation and time spent on jury duty. This Part of the Staff Brief provides background information on these issues.

A. REPRESENTATIVENESS: PRODUCTION OF THE JURY LIST AND RANDOM SELECTION OF JURORS

The issues and problems relating to jury list representativeness and random selection of jurors were outlined in a 1986 article by the Director of the National Center for State Courts (NCSC), G. Thomas Munsterman:

> The concept is simple. Take a list that includes everyone in the population who is eligible for jury service, randomly select the number of names needed, and summon those persons to serve as jurors. The desire is to have a representative venire [i.e., jury panel], a group of qualified, prospective jurors that reflects in microcosm the demographic makeup of the population. Unfortunately, the task is more complex than it appears. Each of these three steps--list production, random selection, and summoning--can raise difficult problems....
>
> The search for the most representative list of names of prospective jurors began in the 1960s. With the movement away from total discretion in the hands of jury commissioners to the legally mandated use of a particular source list, or even several lists, courts have tried to comply with the need to provide a venire of prospective jurors reasonably representative of the population.... Although the complete freedom given to the commissioners in the past arguably could have resulted in the most representative cross section of the population, the fact remains that commissioners used easily available lists, whether or not they were inclusive or broadly representative.... The move to the use of the voters list in the late 1960s was an attempt to remove discretion from the hands of a few

individuals and to ensure the use of a broadly based list in the selection of names for jury service.... The list of registered voters in various states includes from 60 to 80 percent of the 18-and-over population. The voters list also has a subtle but important feature in that it requires no financial barrier to the individual for inclusion. As voter registration in the United States declines, as it has since 1964, courts have sought either to use other lists in combination with the voters list or to obtain a more comprehensive single list. The higher the percentage of the total population found on the list, the more likely that a random selection from it should yield prospective jurors representative of the entire population. Some highly inclusive lists--such as federal census, tax or social security records--are not available; but in many states, the combination of the voters and drivers lists is quite inconclusive.

Because even relatively inclusive lists can underrepresent particular groups in the population, some courts have experimented with the technique of stratified sampling. Rather than randomly drawing names from existing lists, this method involves selecting the venire in accordance with preestablished proportions of individuals with specific demographic or geographic characteristics. This type of adjusted drawing can force the venire to resemble the population with respect to the specific characteristics chosen. Although this method has been used to ensure a geographic distribution of prospective jurors for years, the use of this technique to ensure racial and sexual representativeness of the venire is relatively new.

Until 1984, sole reliance on voters lists had withstood challenge in the state courts. Then, in People v. Harris (1984), the California Supreme Court found that voters lists were not, as a general rule, sufficiently representative of the jurisdiction; a prima facie case of discrimination was therefore established by sole reliance on such lists. This shifted the burden to the state to prove that the local jury pool was, in fact, representative. The California legislature has now required that all state courts merge the

voters and drivers lists. In the federal courts, challenges to the sole use of the voters list have not been successful. The use of multiple source lists in either state or federal courts has never been successfully challenged. [See "The Search for Jury Representativeness," The Justice System Journal, Vol. 11, No. 1, pp. 59-78, 59-61 (1986).]

B. REPRESENTATIVENESS: SUMMONING OF JURORS

Some areas experience difficulty in obtaining a jury panel representative of minorities. A reason for this difficulty is the poor response rate to juror screening questionnaires sometimes experienced in areas with large minority populations. [Attached as Appendix A is a copy of an editorial from the Racine Journal, dated November 5, 1984, discussing this problem and suggesting a remedy.]

A 1987 publication of the NCSC also describes some of the general issues relating to summoning of jurors for jury service:

> What to do about persons who do not respond to the qualification questionnaire or the summons is a question faced by many jury system managers. Usually nothing is done because of insufficient staff time or because "such persons wouldn't make good jurors anyway."
>
> Some courts occasionally sentence a recalcitrant juror, arranging for appropriate press coverage to remind the public that steps can be taken against those who fail to answer a summons for jury duty. Courts taking such actions report a marked decrease in the number of "no shows" to the summons.
>
> Another technique is to automatically resummon those who do not respond to the summons with an appropriate statement that this is a second notice. This makes the individual aware that his inaction has not gone unnoticed. Automated systems can usually accomplish this type of action easily.
>
> It is interesting that some courts will carefully follow up all "no shows" to the summons, yet simply drop from the system those who do not respond to the qualification questionnaire. Many statutes specify far less serious punishment for

not responding to the qualification questionnaire than for ignoring the summons. By not acting at the qualification phase, courts risk establishing an inconsistency in enforcement.

The usefulness of any of these techniques is easily determined by measuring the response obtained through the follow-up procedures or enforcement action. If few persons are found, then the lack of response is caused by situations beyond the court's control, such as the difficulty of delivering mail to a transient population [see A Supplement to the Methodology Manual for Jury Systems: Relationships to the Standards Relating to Juror Use and Management, NCSC, pp. 41 and 42 (May 1987)].

C. COMPENSATION OF JURORS

The following excerpt from an editorial in the Appleton Post Crescent (April 18, 1988) sets forth, in the context of an actual trial, some of the issues presented by the current law relating to juror compensation. In the trial referred to, jurors were selected in Racine County and transported to Outagamie County for the trial which lasted several months.

> It is asking a lot for a resident of Wisconsin to leave family, home and job for several months in order to serve on a jury in a remote part of the state. The jurors who were imported from Racine to hear the William Evers case have been receiving a pittance of $16 per day for their labors. Annualized, that would come to about $5,000, far below the poverty level.
>
> It is asking a lot of the jurors' families to do without a head of household or without a major breadwinner for several months.
>
> It is asking a lot for employers to continue to pay the jurors their full salaries, without receiving anything in return save the employees' everlasting gratitude. Some jurors receive full benefits from their employers--with the usual practice being that they then turn over the $16 to the employers. Others receive less than full pay from back home.

* * *

> It also is asking a lot for the taxpayers to pay the lost salaries of the jurors. Isn't jury duty something we all must be available for? Shouldn't we be glad of the opportunity to help make our judicial system work? A sense of duty and patriotism is a fine attribute. But it is not unlimited.
>
> The law provides that employers must allow jurors to return to their previous jobs at the end of jury duty, but it makes no other requirements of employers. Should it? We do not think so. How, for example, can a shop with two employees be expected to absorb the full-time salary of half the work staff for several months? Such a burden would impact on the employers just as severely as the absence of a salary would impact on the employee.

D. AMOUNT OF TIME SPENT ON JURY DUTY; FREQUENCY OF JURY DUTY

Some have argued that the current Wisconsin jury system results in certain persons (1) spending an inordinate amount of time on jury service and (2) being selected for jury service too frequently within relatively short periods of time.

The concern over this issue was expressed in the 1989-90 Legislative Session by the introduction of 1989 Assembly Bill 629 (sponsored by Representative Black and others; cosponsored by Senator Buettner), which would have established generally longer periods between jury service, upon request. As noted in Part II of this Staff Brief, under current law, a person need not serve or attend court for prospective service as a trial juror for more than five days in a two-year period, except when necessary to complete a particular case, or if the judges for the county adopt a longer period. Persons who have been summoned to attend for prospective service as a trial juror may not be drawn as a grand or trial juror within a two-year period after that summons. In addition, current law allows a court to excuse persons from jury service based on a finding that jury service would entail undue hardship, extreme inconvenience or serious obstruction in the administration of justice.

Assembly Bill 629 would have excused from jury service in a county with a population of 325,000 or more any person who had been summoned to serve on a jury within the past six years and who had requested to be excused. In a county with a population of more than 100,000 but less than 325,000, a person could have been excused upon request if he or she had been summoned to serve on a jury within the past four years. In a county with a population of 100,000 or less, a person could have been excused

from jury service upon request if he or she had been summoned to serve on a jury within the past two years.

The Bill received a public hearing before the Assembly Committee on Judiciary, but no further action was taken. At the public hearing, a draft of a possible amendment to the Bill was suggested by Representative Black which would have allowed a clerk of court to suspend this new provision if the county's jury list was becoming too small. Under this amendment, the new provision would not have applied during any period for which the clerk of court determines that continued operation under the new provision would result in an insufficient number of jurors. The operation of the new provision would have resumed when the clerk of court determined that its operation would not result in an insufficient number of jurors.

PART V

AMERICAN BAR ASSOCIATION STANDARDS ON JURIES AND UNIFORM JURY SELECTION ACT

This Part of the Staff Brief sets forth pertinent portions of (a) the 1983 American Bar Association (ABA) Standards Relating to Juror Use and Management and (b) the 1970 Uniform Jury Selection and Service Act developed by the National Commissioners on Uniform State Laws.

A. AMERICAN BAR ASSOCIATION STANDARDS RELATING TO JUROR USE AND MANAGEMENT

The ABA Standards Relating to Juror Use and Management were developed by a Task Force formed by the NCSC and funded by a grant from the Law Enforcement Assistance Administration (LEAA). The Task Force, which included representatives from various national trial judge and trial court administrator organizations, was assisted by a special ABA committee appointed to work in conjunction with the Task Force. The ABA's House of Delegates approved the standards developed by the Task Force in February 1983.

Among the standards of particular interest to the Special Committee are the following found in Parts A and C of the Standards:

> PART A. STANDARDS RELATING TO SELECTION OF PROSPECTIVE JURORS
>
> Standard 1: Opportunity for Jury Service
>
> The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a cognizable group in the jurisdiction.
>
> Standard 2: Jury Source List
>
> a. The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.
>
> b. The jury source list should be representative and should be as inclusive of the

adult population in the jurisdiction as is feasible.

c. The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction.

d. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken.

Standard 3: Random Selection Procedures

a. Random selection procedures should be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.

b. Random selection procedures should be employed in: (1) selecting persons to be summoned for jury service; (2) assigning prospective jurors to panels; and (3) calling prospective jurors for voir dire.

c. Departures from the principle of random selection are appropriate: (1) to exclude persons ineligible for service in accordance with standard 4; (2) to excuse or defer prospective jurors in accordance with standard 6; (3) to remove prospective jurors for cause or if challenged peremptorily in accordance with standards 8 and 9; and (4) to provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with standard 13. [NOTE: Standards 8 and 9 are not set forth in this Staff Brief, but are available from staff upon request.]

Standard 4: Eligibility for Jury Service

All persons should be eligible for jury service except those who meet any of the following:

a. Are less than eighteen years of age.

b. Are not citizens of the United States.

c. Are not residents of the jurisdiction in which they have been summoned to serve.

d. Are not able to communicate in the English language.

e. Have been convicted of a felony and have not had their civil rights restored.

Standard 5: Term of and Availability for Jury Service

The time that persons are called upon to perform jury service and to be available therefor, should be the shortest period consistent with the needs of justice.

a. A term of service of one day or the completion of one trial, whichever is longer, is recommended. However, a term of one week or the completion of one trial, whichever is longer, is acceptable.

b. Persons should not be required to maintain a status of availability for jury service for longer than two weeks except in areas with few jury trials when it may be appropriate for persons to be available for service over a longer period of time.

Standard 6: Exemption, Excuse and Deferral

a. All automatic excuses or exemptions from jury service should be eliminated.

b. Eligible persons who are summoned may be excused from jury service only if: (1) their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a judge; or (2) they request to be excused because their service would be a continuing hardship to them or to members of the public, or they have been called for jury service during the two years preceding their summons, and they are excused by a judge or duly authorized court official.

c. Deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official.

d. Requests for excuses and deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

PART C: STANDARDS RELATING TO EFFICIENT JURY MANAGEMENT

Standard 11: Notification and Summoning Procedures

a. The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person should be: (1) combined in a single document; (2) phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and (3) delivered by first class mail.

b. A summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.

c. The questionnaire should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for: (1) determining whether a person meets the criteria for eligibility; (2) providing basic background information ordinarily sought during voir dire examination; and (3) efficiently managing the jury system.

d. Policies and procedures should be established for enforcing a summons to report for jury service and for monitoring failures to respond to a summons.

Standard 12: Monitoring the Jury System

Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

a. The representativeness and inclusiveness of the jury source list;

b. The effectiveness of qualification and summoning procedures;

c. The responsiveness of individual citizens to jury duty summonses;

d. The efficient use of jurors; and

e. The cost effectiveness of the jury system.

Standard 13: Juror Use

a. Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.

b. Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.

c. Courts should ensure that each prospective juror who has reported to the courthouse is assigned to a courtroom for voir dire before any prospective juror is assigned a second time.

d. Courts should coordinate jury management and calendar management to make effective use of jurors.

Attached as Appendix B are the Comments to the Standards adopted by the ABA. For sake of brevity, the footnotes to the text of the Comments are deleted, but they are available to Special Committee members upon request.

B. UNIFORM JURY SELECTION AND SERVICE ACT

The National Commissioners on Uniform State Laws adopted the Uniform Jury Selection and Service Act in 1970. A copy of the Act along with comments is attached to this Staff Brief as Appendix C. To date, the Uniform Act has been adopted, with some variations, in the states of:

1. Hawaii (H.R.S ss. 612-1 to 612-27) (effective in 1973).
2. Idaho (I.C. ss. 2-201 to 2-221) (effective in 1971).
3. Indiana (ss. 33-4-5.5-1 to 33-4-5.5-22) (effective in 1974).
4. Maine (14 M.R.S.A. s. 1211, *et seq.*) (effective in 1971).
5. Minnesota (M.S.A. ss. 593.31 to 593.50) (effective in 1977).
6. Mississippi (Miss. Code ss. 13-5-2, *et seq.*) (effective in 1975).
7. North Dakota (NDCC 27-09.1-01 to 27-09.1-22) (effective in 1971).

Note that, in the Act, variations, if any, from the official Uniform Law text in states adopting the Act are set forth after the text of each section in the "Action in Adopting Jurisdictions" provision.

RS:DLS:ksm:kja:las;kja

APPENDIX A

EDITORIAL FROM RACINE JOURNAL (NOVEMBER 5, 1984)

EDITORIAL FROM RACINE JOURNAL (NOVEMBER 5, 1984)

Tough approach needed

Once again, Racine's circuit courts are seeking a solution to the long-standing problem of securing a jury panel that includes members of minority groups and which bear some resemblance to their numbers in the population.

This time around, circuit court judges apparently will try a "get tougher" approach. The circuit court clerk's office will, as several judges put it, "chase after" residents who fail to return the screening questionnaires that will be sent out late this year for 1985 jury panels.

Clerk of Courts Lawrence Flynn said follow-up letters will be sent and that residents who still don't respond may find sheriff's deputies at the door with a summons to appear before a court commission and orders to complete the form or face prosecution for contempt of court.

Previous attempts to bolster minority membership on the panel have included use of both voter registration and driver's license lists in selecting potential jurors, and sending disproportionately high numbers of screening questionnaires to areas with high minority populations.

Traditionally, the response rate in districts with heavy minority populations has been low, making it difficult to achieve a jury pool reflecting the countywide population, which is about 14 percent black, said Flynn. Last year, he said, his office sent out 14,000 questionnaires, of which 11,000 went to the six districts with the highest minority concentrations. Flynn said the first mailing produced an 11 percent return rate in the six districts, compared with 71 percent countywide. Later, he said, two more mailings went to just those six districts.

This would indicate a bad showing on the part of both minority and majority segments of the population. The screening questionnaire is not an "invitation" — an RSVP is mandated by law. Failure to respond can result in a fine of up to $200 and a jail sentence. Face it: It is a "command performance" and now it sounds as if the courts are ready to enforce mandatory attendance.

Racine NAACP President Julian Thomas, who has pushed for at least four years for greater efforts to increase black representation on juries here, has reacted angrily to the get-tough proposal, charging that the plan appears to be a ploy by Flynn to make Thomas look like he is working against the best interest of blacks.

"It's a very cheap, low-down attempt to make me eat my words," said Thomas. "I become the big, bad wolf — the first time someone gets fined it will be the Thomas fine."

Thomas apparently feels that continual "flooding" of minority districts with questionnaires until a representative response level is reached is the answer. "They were heading on the right road," he commented.

Judges and officers of the court, however, have indicated that the new answer-or-else policy will be in effect countywide, not just in minority areas. Statistics indicate that significant numbers of both the minority and majority populations are ignoring their potential responsibilities as jurors.

Making it very clear that response to receipt of a jury screening questionnaire is REQUIRED BY LAW OF ALL recipients — and that there are legal consequences for failure to respond — really seems to be a reasonable way to proceed. It would seem a matter of justice, as well, to those who do answer the summons to jury duty, often at personal sacrifice and sometimes involving financial hardship.

There is no way that defendants — of any skin color, any collar color, any political stripe or coloration of religious or political belief — can be tried in the American tradition by a jury of peers if their peers decline to make themselves available to sit in the jury box and take the responsibility of making judgements on the facts presented.

In the end, of course, it is the lawyers who decide who will and who will not sit on a jury. But without a pool of potential jurors representative of our multifaceted society, this striving for balance doesn't have a chance to succeed. Circuit court judges have a similar responsibility to get representative juries in the box — and they apparently are taking that responsibility seriously — as they should.

APPENDIX B

SELECTED COMMENTS FROM AMERICAN BAR ASSOCIATION STANDARDS RELATING TO JUROR USE AMD MANAGEMENT--PART A: STANDARDS RELATING TO SELECTION OF PROSPECTIVE JURORS (1983)

PART A: STANDARDS RELATING TO SELECTION OF PROSPECTIVE JURORS

Introduction

In Taylor v. Louisiana, the United States Supreme Court stated that:

> We accept the fair-cross-section requirement as funda- mental to the jury trial guaranteed by the Sixth Amendment and are convinced that the requirement has solid foundation. ... Community participation in the administration of the criminal law... is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system. Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial. 'Trial by jury presupposes a jury drawn from a pool broadly representative of the community as well as impartial in a specific case.... [T]he broad representative character of the jury should be maintained, partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.' Thiel v. Southern Pacific Co., 328 U.S. 217, 227 (1946) (Frankfurter, J., dissenting).[1]

The primary objectives of the standards in this section are to ensure that the pool of prospective jurors reflects the fair-cross section of the community called for by the Court in Thiel, Taylor, and other jury discrimination cases,[2] and that jury service is spread across as broad a proportion of the eligible population as feasible. The standards, commentaries, and suggested implementation actions seek to identify means of accomplishing these objectives in a cost-efficient manner. They are arranged in roughly the same sequence as the jury selection process itself.

In keeping with these objectives, Standard 1 delineates the duty of the court, commission or individual responsible for managing the jury selection process, to avoid practices and procedures that curtail the opportunity of any legally cognizable group in the community to serve on the jury. The subsequent standard reinforces this principle by specifying that the source list--i.e., the compilation of lists from which are drawn the names of persons subject to being called for jury service -- should be representative of the cognizable groups in the community and as inclusive as is practicable. It urges the courts to review the source list periodically to make certain that it is current and that any deficiencies in coverage are corrected.

Standard 3 recommends that random selection procedures be used at each appropriate point in the jury selection process so as to ensure that the representativeness provided by a broadly based source list is not inadvertently diminished or consciously altered. Standard 4 addresses the qualifications required for jury service. It limits eligibility restrictions to those that are essential to maintaining the integrity of the judicial process and defines the requirements so that they are easily determinable on an objective basis.

Standard 5 addresses the term of service. It recognizes that reducing the length of jury service can help to minimize the hardship and inconvenience imposed by jury duty, to permit elimination of exemptions from jury service and the enforcement of a strict excuse policy, and thereby, to increase substantially the representativeness and inclusiveness of the jury pool. Accordingly, the standard strongly encourages adoption of a one day/one trial system and recommends that persons not actually serving on a trial jury should be required to remain available for jury service for no more than two weeks. Finally, Standard 6 tackles the question of exemptions, excuses and deferrals. It proposes that all automatic excuses and exemptions be eliminated, that the grounds for granting an excuse be limited, and that the needs of individual prospective jurors be accommodated by deferring jury service to a more convenient specific future date.

As is evident from the above summary, this set of interlocking standards covers a range of difficult and controversial issues. The recommendations attempt to combine the constitutional prerequisites with the best of current practice so as to present a practical and reasonable guide to state and local jurisdictions for improving their jury systems.

STANDARD 1: OPPORTUNITY FOR SERVICE

COMMENTARY

The standard stresses that each group and individual should have the opportunity for jury service, and that none should be excluded. By ensuring that everyone has the opportunity to serve, a court not only increases the number of individuals serving as jurors, but also increases representativeness. The Supreme Court has recently held that a prima facie violation of the fair cross-section requirement is shown when

> a distinctive group in the community is not represented in the venires from which juries are selected in a fair and reasonable relationship to the number of such persons in the community; and the underrepresentation is due to the systematic exclusion of the group in the jury selection process.[1]

Over the years, the courts have been asked to decide whether particular juror selection procedures have violated the fair cross-section requirement and interfered with the right to be considered for jury service by improperly curtailing the opportunity of certain cognizable groups to serve on a jury.[2] Among the segments of the population that have been identified as a "cognizable group"[3] are Blacks,[4] Hispanic-Americans,[5] native Americans,[6] women,[7] persons who work for a daily wage,[8] common laborers,[9] non-theists,[10] students and professors,[11] young people,[12] and persons who object in principle to the death penalty.[13]

The standard seeks to protect against discrimination based on race, national origin, age, sex, religious belief, and economic status. As noted, however, in Hernandez v. Texas

> [C]ommunity prejudices are not static and from time to time other differences from the community norm may define other groups which need the same protection.[14]

Accordingly, as other factors are identified by the courts or legislature which have operated to discriminate against cognizable groups in the

community (e.g., the emerging law regarding discrimination against persons whose mobility is impaired[15]), appropriate measures should be taken to ensure that those factors are not employed to curtail the opportunity for jury service.

The standard places on the court, the commission, or the individual responsible for managing the jury selection process, the duty to avoid any practices or procedures that are discriminatory in purpose or effect. It urges the entity or individual responsible for the jury operation to remain alert and sensitive to measures that may limit the opportunity of segments of the community to serve on a jury. The duty to avoid discriminatory practices applies at all stages of the jury selection process, including, but not limited to the selection of names from the source list and the master list; the granting of excuses and deferrals; and the exercise of peremptory challenges. Of course, there still must be some criteria for determining eligibility for jury service. But as indicated in Standard 4, these should be limited to those qualifications essential for maintaining the integrity of the judicial process.[16]

SUGGESTED STEPS FOR IMPLEMENTATION

1. Compare the source list being used for the names of potential jurors with population data of the jurisdiction.

2. Take corrective action(s) such as supplementing the source list with additional lists.

3. Examine court policies on granting excuses.

4. Take corrective action(s) such as establishing written and uniform procedures for granting excuses.

5. Examine court practices with respect to peremptory challenges during the voir dire process.

6. Take corrective action if the voir dire process discriminates against any cognizable group in the jurisdiction.

STANDARD 2: JURY SOURCE LIST

COMMENTARY

Paragraph (a) Organized Source Lists

The role of the jury is to determine fairly and impartially the facts of a case from the evidence presented and thereafter to apply the law to these facts in individual cases. Hence, the selection of a jury from "a fair cross-section of the community is considered to be fundamental to the American system of justice."[1] As the Supreme Court has observed

> When any large identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable. It is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that their exclusion deprives the jury of a perspective on human events that may be of unsuspected importance in any case that may be presented.[2]

Because no practical way exists to pick prospective jurors from the population at large, organized source lists must be used. The representativeness of the jury is, therefore, initially dependent on the quality of the source list. The closeness of this relationship was succinctly stated by the Supreme Court of California in People v. Wheeler. "Obviously, if that [the source] list is not representative of a cross-section of the community, the process is defective ab initio."[3]

The standard encompasses three elements. The first is the importance of a representative cross-section of the community on the source list from which prospective jurors are selected. The second is an affirmative duty to examine the source(s) of names from which prospective jurors are selected in order to ensure that the list is representative, with an emphasis on the responsibility to update the source list periodically. And third is the responsibility, once a source list is determined deficient in coverage, to examine other lists to correct the deficiency.

Paragraph (b) Inclusiveness and Representativeness

Representativeness and inclusiveness are conceptually distinct and may even be antagonistic in practice. Inclusiveness has to do with the percent of the entire adult population in a jurisdiction which is included in the source list. A source list can be representative, yet not very inclusive. For example, in a county of 1,000 eligible people of whom 25 percent are black, a source list of 100 people, 25 of whom are black, would be fully representative of blacks but only 10 percent inclusive, because 90 percent of the eligible population is excluded. On the other hand, a quite inclusive source can significantly underrepresent cognizable groups that constitute a small percent of the adult population. For example, consider a county in which the source list includes 900 of the 1,000 eligible adults in the population. Further, suppose that the list was constructed in such a way that only 50 of the 100 blacks in the population were included in the source list. Even though this hypothetical source list is 90 percent inclusive, it is nonetheless extremely underrepresentative with respect to race. (For a complete discussion of source list representativeness and inclusiveness see the "Appendix" to this document.)

There can be absolute certainty that a source list is both representative and inclusive only when it contains 100 percent of the eligible population. Practical constraints, however, will always render it impossible to establish empirically that a source list is representative with respect to all "qualities of human nature and varieties of human experience" which may affect a juror's reaction to a case and performance as a juror. Whenever the source list is less than fully inclusive, the jury may be deprived "of a perspective on human events that may be of unsuspected importance in any case that may be presented." Since "the people on...a source list may well have considerably different values, attitudes and experience from the rest of the eligible population," and since it is unlikely that such values, attitudes and experience would ever be measured, the degree to which a source is truly representative with respect to relevant juror characteristics will always be questionable as long as the source is not 100 percent inclusive.[4]

The standard does not specify a minimum inclusiveness criterion. Much of the literature and recent practice in local courts, however, indicates that a jury source list that covers 85 percent of the adult population in a jurisdiction is a reasonable goal. In order to include 85 percent, most jurisdictions would require the use of sources in addition to the voter registration list. Convenient and inexpensive methods exist to produce combined source lists that are 95 percent inclusive in many districts. Officials responsible for preparing the

source list are strongly encouraged to make it as inclusive as possible given financial and statutory limitations. It must be understood, however, that increasing inclusiveness can sometimes render a list less representative. For example, if the list of property owners underrepresents the same cognizable groups as the voter list, adding the list of property owners to the source, composed of voter lists, will produce a combined source list that has greater comparative disparity than the original. Officials, therefore, should make the source as inclusive as possible subject to the condition that it be representative.

Paragraphs (c) and (d) Periodic Review and Corrective Action

The standard recommends periodic examination of the source list being used by a jurisdiction for summoning prospective jurors in order to ensure that the list is both representative and inclusive of the adult population in that jurisdiction. If the list is found deficient in any way, the standard places the responsibility for taking appropriate steps to correct the deficiency with the court. This may involve coordination with those agencies supplying the list in order to update it more frequently.[5]

In order to meet the goals of representativeness and inclusiveness, many jurisdictions will have to go beyond the roll of registered voters for the names of potential jurors. Nationally, only 71 percent of the voting-age population was registered to vote in 1978.[6] In some states the level of registration is well below 60 percent.[7] In addition, because of differential voting rates, voter registration lists have been shown to underrepresent significantly certain portions of the population. For example, surveys conducted by the U.S. Census Bureau found that non-whites, the poor, and the young register to vote at substantially lower rates than other population groups.[8]

Many lists, if they are reasonably current, can be used as a supplement to, or substitute for, the roll of registered voters. These include lists of licensed drivers, persons counted in a local census, utility customers, newly naturalized citizens, persons with telephones, parents of children enrolled in public schools, property owners, or motor vehicle owners. In many instances, the list of licensed drivers will be the most suitable and convenient substitute for, or supplement to, the voter registration list. In most jurisdictions, more individuals are licensed to drive than are registered to vote. Moreover,

> The driver list appears to offer the best
> opportunity to draw in those groups typically

> left out by the voter list. A 1976 study of the San Diego County Superior Court found that the driver list included 83 percent of the county's over-eighteen population, in contrast to the voter list's 56 percent coverage. Although the driver list did not identify drivers by race, the much higher rate of inclusiveness would, by itself, tend to increase the representation of blacks and other minorities on the jury list. The San Diego driver list percentage is typical of the nation, for approximately 84 percent of the United States' driving-age population is licensed to drive while in seventeen states the percentage exceeds 90 percent.[9]

Another good substitute or supplement is a local census list. Unless a jurisdiction is already conducting such a census, however, the cost of a door-to-door count probably precludes the use of this technique solely for juror selection purposes.

The other lists noted above are suitable only as supplements to the voter registration, licensed driver, or local census lists. Although they are usually more current than the lists of voters and drivers, each has serious gaps in coverage as well as other limitations. For example, women and young people are usually underrepresented in city directories, telephone directories, and utility customer lists. These same groups are also disproportionately absent from state real estate, personal property, and income tax lists.[10] In addition, use of these lists is complicated by their inclusion of business as well as individual entries, and it is often difficult to ascertain geographical jurisdiction from the information that they contain. Thus, they will usually be of limited incremental value.

In the selection of lists to be used to form a jury source list, the frequency with which names are added to and deleted from those lists and the corrections made for addresses and other information should be carefully considered. Using lists that are seldom culled of the names of persons who, for example, have failed to renew their registration or driving license, or lists that are not otherwise kept current is likely to increase the number of summonses that must be issued, and the cost of the jury selection process, and is also likely to hamper efforts to provide a representative panel. Accordingly, when a list that would increase the inclusiveness of the juror source list is updated infrequently, discussions should be held with the agency or organization compiling that list in order to seek ways of keeping it more current and to identify systemic elements, such as restricting legislation, that impede updating of the list. Similar discussions should be initiated when a potentially useful list is not in a format that would permit its

use for jury selection purposes or does not contain critical bits of information--e.g., the list omits addresses or classifies persons within geographical boundaries that differ from those defining the court's jurisdiction.

An argument that has often been voiced against the use of multiple lists has been the difficulty and cost of combining the lists and ensuring that individuals are not entered on the combined list more than once. Techniques have been recently developed, however, to accomplish these tasks, either manually or by computer, at relatively little cost. These techniques have been tested in the juror source list context and have been found to be effective. A description of the methods employed and further references are provided in the Methodology Manual for Jury Systems prepared by the Center for Jury Studies.[11]

SUGGESTED STEPS FOR IMPLEMENTATION

1. Periodically examine the list(s) used by the jurisdiction for summoning prospective jurors for the degree of representativeness and for coverage of the adult population in the jurisdiction.

2. Examine each list to determine
   (i) whether it omits or underrepresents any age, race, or sex within the community;
   (ii) whether it provides the requisite information for determining juror eligibility, including name, address, and whether living within the geographic boundaries of the court's jurisdiction; and
   (iii) how frequently and in what manner the list is kept current and accurate.

3. Determine the representativeness and inclusiveness of each list by comparing it against the latest available local, state, or federal census estimate or a more recent, reliable population projection.

4. If the list(s) presently being used are not inclusive of or representative of the adult population, take steps to identify new lists that would alleviate the problem.

   o Identify additional lists that are available--e.g., lists of registered voters, licensed drivers, persons counted in a local census, utility customers, newly naturalized citizens, persons with telephones, parents of children enrolled in public schools, property owners, motor vehicle owners, and persons with hunting, trapping, and/or fishing licenses.
   o Rank the lists in order of their representativeness and inclusiveness of the adult population.
   o Determine the list or combination of lists that will provide a jury source list meeting the standards.[12]

5. Establish procedures for regular review of the list(s) for the degree of representativeness and inclusiveness of the adult population. (For a detailed discussion of this topic, see the Appendix to this document).

6. Establish procedures for correcting or changing the list(s) if it is found to be underrepresentative or non-inclusive of the adult population.

STANDARD 3: RANDOM SELECTION PROCEDURES

COMMENTARY

Paragraph (a) General Principle

In order to ensure that the representativeness provided by a broadly based jury source list is not inadvertently diminished or consciously altered, this standard calls for the use of random selection procedures at all appropriate stages of the juror selection process.[1] The standard makes clear that in order for selection procedures to be truly random, each name must have "the same chance as every other name of being chosen."[2] This may be accomplished through a number of techniques, such as the use of a random number table or computer program,[3] a manual or automated "random start/fixed interval" procedure,[4] or blindly picking slips of paper or capsules containing a name or number from a box or drum. In developing the selection process, care should be taken to avoid a system that may be "nominally random and at the same time open to manipulation or unintentional but systematic bias."[5]

> Consider the jurisdiction where voter registration name cards are drawn at random by hand from filing cabinets. The jury commissioner cannot see the name or any other identifying information on the card, so he or she does not know whom he or she is drawing, and theoretically he or she cannot discriminate. However, the filing cabinets are organized by voter precincts and various ethnic groups tend to be concentrated in certain precincts. Omission of a file cabinet from the selection process therefore may exclude a substantial number of minority residents.[6]

Paragraph (b) Applicable Stages

Random selection procedures are particularly appropriate at three points in the jury selection process: the identification of names of the persons to be summoned for jury duty; assignment of those persons to panels; and the determination of the order in which prospective jurors are considered for empanelment during voir dire. Randomization procedures may be repeated at each of these stages. For example, the individuals who have been randomly selected to be summoned could be assigned to panels in the order in which their names are drawn from a drum on the first day of their term of service.[7] An equally effective

method for maintaining randomness is to keep the names of those to be summoned in the order in which they were picked from the source list or master list until a jury has been selected from each panel.[8] The clerk or jury commissioner can simply begin at the top of the list of summoned jurors and assign the first set of names to panel one, the next set to panel two and so on until the necessary number of panels have been formed. Under either method, the prospective jurors should be advised during the initial orientation that they have been selected for jury service and assigned to panels in a manner designed to maximize representativeness and that it is essential that they sit in the assigned order when they are called to a courtroom.

Paragraph (c) Exceptions

The standard lists four instances in which random selection procedures are not appropriate. The first three are when an individual's eligibility, availability for service, or impartiality in a particular case is at issue. Clearly, a rational non-random decision must be made in each of these areas to ensure the integrity, quality, and efficient operation of the jury system. It has been suggested that permitting deferral of jury service interferes with the random character of the jury pool.[9] However, if the number of persons who may be deferred to a particular date is limited to a small percent of the total number of prospective jurors reporting, both the representativeness of the jury pool and the goodwill generated by permitting postponement of service can be maintained.[10]

The fourth instance listed in the standard addresses a possible side effect of a completely random selection. Unless there is an opportunity for all persons on a list to be selected before a name can be drawn a second time, some individuals will be called upon to serve several times while others will not be called at all. To overcome this problem, a "randomization without replacement" system can be used. Under such a system, the entire jury source list (or master list in those jurisdictions which draw a master list from the jury source list) is exhausted before a name can be drawn a second time. Similarly, every person in the juror pool would be sent to a courtroom for voir dire before an individual returned to the pool after jury selection can be sent a second time.[11]

Using the procedures outlined above, in conjunction with other practices recommended elsewhere in this volume, should ensure that all cognizable groups are represented in the pools from which juries are selected, in a fair and reasonable relationship to the number of such persons in the community,[12] and that the experience of serving on a jury is shared by as high a proportion of the eligible population as is possible.

SUGGESTED STEPS FOR IMPLEMENTATION

1. Determine whether current selection procedures are consistent with the standard.

2. If they are not, review relevant statutes and court rules to determine whether they permit implementation of the recommended procedures.

3. Initiate appropriate legislation or rule changes if those provisions do not permit use of the recommended procedures.

STANDARD 4: ELIGIBILITY FOR JURY SERVICE

COMMENTARY

Generally

This standard is designed to extend the privilege and responsibilities of jury service to as broad a segment of the population as is possible. The imposition of myriad eligibility requirements not only adversely affects the inclusiveness of the jury selection process, but may also increase the cost of administering the jury system. Hence, the qualifications for jury service listed in the standard are limited to those five that are essential to maintaining the integrity of the judicial process.

This standard recognizes further, that vague or discriminatory eligibility criteria for jury service can substantially diminish the representativeness achieved through the use of a broadly based juror source list and random jury selection procedures. In the past, subjective criteria such as being "of sound mind and good moral character,"[1] have been justified by the need to ensure that potential jurors are competent to decide the factual questions presented to them.[2] The chairperson of the federal judiciary's Committee on the Operation of the Jury System, Judge Irving R. Kaufman, refuted this justification on the basis that

> long experience with subjective requirements such as 'intelligence' and 'common sense' has demonstrated beyond any doubt that these vague terms provide a fertile ground for discrimination and arbitrariness, even when the jury officials act in good faith....They have nothing to do with 'intelligence,' 'common sense,' or what is more important, ability to understand the issues in a trial. And they are discriminatory--usually against the poor.

> The end result of subjective tests is not to secure more intelligent jurors, but more homogeneous jurors....[3]

Accordingly, the limitations on eligibility included in the standard are easily determinable on an objective basis.[4]

Paragraph (a) Age Requirement

The first limitation on eligibility is that only persons age 18 and over should be permitted to serve on a jury.[5] Although any demarcation on the basis of age is arbitrary, age 18 appears to be the most logical starting point for eligibility for jury service because it is the age at which individuals become eligible to vote in federal elections[6] and is the age of majority in most states.[7] Currently 44 states require citizens to be at least 18 years of age in order to be eligible for jury service; the remaining 6 states set higher age requirements.[8] Although 21 states prohibit or automatically excuse persons beyond a certain age (generally 65 or 70) from jury service,[9] such a blanket exclusion unnecessarily precludes many older Americans able and willing to participate in the jury process from doing so. Consequently, no maximum age limit is recommended.

Paragraph (b) Citizenship Requirement

The second limitation is that a person must be a citizen of the United States in order to serve as a juror.[10] This requirement is already imposed by most states either by law or in fact through reliance upon the voter list as the primary source for names of potential jurors.[11] Jury service, together with voting and holding elective office, are nearly the only privileges/responsibilities that may be exercised exclusively by citizens. Although non-citizens may serve as attorneys,[12] hold government jobs,[13] and undertake other important tasks and positions of trust in our society, jury service, voting, and holding elective office have been considered key decision-making duties that should be reserved for those with the commitment to the American political and judicial systems represented by citizenship. The restriction of jury service to citizens may affect the degree to which the pool of prospective jurors fairly reflects a cross section of the community in jurisdictions with a large resident alien population. Not to impose this restriction, however, would substantially diminish the significance of citizenship. Indeed, the desire to participate in the fundamental judgments made through the election and jury processes may serve as one of the primary incentives for attaining citizenship.

Paragraph (c) Residency Requirement

The third restriction is that all prospective jurors must be residents of the jurisdiction in which they have been called to serve. In accordance with the statutes of most states, the standard recommends no minimum period of residence.[14] The imposition of minimum periods of residence in a jurisdiction have been premised, in part, on the desire to ensure "some substantial nexus between a juror and the community whose sense of justice the jury as a whole is expected to reflect."[15] In view of the highly mobile nature of our society and the corresponding reduction in regional differences, however, this rationale no longer appears supportable, especially in the face of its adverse impact on the inclusiveness of the jury selection process.[16] Moreover, unnecessarily lengthy periods of residency have been ruled unconstitutional as prerequisites for voting,[17] and receiving public assistance,[18] and as one commentator has suggested

> [although] no court has yet struck down a [period of] residency requirement for jury service, [n]o persuasive reasoning has been offered to justify a continuing residence for jury service when it is unconstitutional for virtually all other governmental functions....Persons new to a community are just as much a part of it as long-time residents and have a valid point of view on its activities.[19]

Accordingly, the term resident is intended to refer to all persons living in the jurisdiction. It includes in addition to domiciliaries of the jurisdiction, students attending local universities and military personnel and their dependents living in the community, even though they may be domiciled elsewhere. In many areas, such persons constitute a significant segment of the population that should not be excluded from the jury box.[20]

Paragraph (d) Communication Requirement

Fourth is the requirement that potential jurors be able to communicate in the English language.[21] Because of the history of misuse that accompanied literacy prerequisites for voting,[22] any provision regarding knowledge of the English language must be carefully framed. Therefore, to minimize the opportunities for bias and discrimination in the jury selection process, the standard does not use the words "to write"[23] or "to understand" English.[24] In addition, it is phrased so as neither to proscribe nor to require eligibility for blind individuals able to read Braille or deaf persons able to communicate through signing. The law and practice in this area are in a state of change. It is not yet possible to specify a generally applicable rule or procedure that safeguards the rights of blind or deaf individuals and accommodates their special needs, but does not disturb the trial and deliberation process. Standard 8 makes clear, however, that a prospective juror who cannot read, or see, or hear, may be removed

for cause in a particular case when that ability is essential for the fair determination of the case at issue.

Paragraph (e) Conviction of a Felony/Restoration of Civil Rights

The final restriction excludes individuals convicted of a felony who have not had their civil rights restored.[25] Most states currently exclude felons from serving on a jury.[26] Many felons "might well harbor a continuing resentment against 'the system' that punished [them] ... and an equally unthinking bias in favor of the defendant on trial."[27] Moreover, the presence on a jury of convicted felons who have not had their civil rights restored through the applicable state procedure tends to weaken respect for the judicial system.

This limitation on eligibility, does not extend to a person accused of committing a crime. Although arguments similar to those outlined above have been made in favor of such an exclusion,[28] automatic disqualification of individuals subject to a pending prosecution impinges on the presumption of innocence upon which the system of criminal justice is built.

SUGGESTED STEPS FOR IMPLEMENTATION

1. Review the provisions governing eligibility for jury service.

2. Initiate appropriate legislative or administrative changes if those provisions are inconsistent with the standard.

3. Interpret any subjective criteria in a manner consistent with the objective requirements of the standard--for example, a statutory requirement of "good moral character" may be interpreted to mean no felony conviction or the restoration of civil rights following such a conviction.

STANDARD 5: TERM OF AND AVAILABILITY FOR JURY SERVICE

COMMENTARY

Paragraph (a) Term of Jury Service

This standard recommends that jurisdictions reduce to the shortest extent possible both the amount of time during which persons are required to remain available for jury duty and the time spent at the courthouse. The standard specifically encourages the adoption of a one-day or one-trial jury term. Under the one-day or one-trial term, an individual's term of service is completed upon serving either for the duration of one trial or for one day if he or she is not selected to serve as a juror. Those individuals who either are challenged at voir dire or are not selected for a voir dire panel are dismissed at the end of their first day. When the voir dire process for a particular trial cannot be completed in one day, the members of the panel who have not been removed for cause may be required to return on succeeding days until the jury has been selected. Although a few courts excuse prospective jurors after one voir dire, most courts bring them back to the jury pool and reuse them on other panels for the remainder of the day. At least thirty-nine jurisdictions have adopted a one-day or one-trial term. In jurisdictions where one day or one trial is not feasible, the standard indicates that reducing the term of actual service to one week is acceptable. It is intended that under a one week term, jurors would complete the last trial assigned even if the trial continues past the one-week term.

The length of the jury term has a substantial impact on several aspects of jury management. Most important is the direct correlation between the length of term and the representativeness and inclusiveness of the jury panel. The standard recognizes that reducing the term of jury service is essential to achieving a representative and inclusive jury. Long terms of service disrupt domestic schedules, personal plans, and business activities thereby discouraging many prospective jurors from wanting to serve. The economic hardship and extreme inconvenience created by lengthy terms lead to an increase in the number of requests to be excused from jury duty. Imposition of a strict excuse policy is impractical under such circumstances, and the resulting high excusal rate reduces the potential yield of jurors and diminishes the representativeness and inclusiveness of the jury panel.

A shortened term would minimize or practically eliminate the inconvenience and hardship presented by jury duty and thus would justify the application of a strict excuse policy.[1] Restricting excuses to only those cases in which a continuing hardship can be demonstrated has the effect of increasing the number of citizens available for jury service.[2] As a result of this increase, the jury panel becomes more representative and inclusive of the community from which it is drawn. A one-day or one-trial term would further increase inclusiveness and representativeness because it requires a substantially greater number of citizens to serve as jurors.[3]

In addition to diminishing representativeness and inclusiveness, lengthy terms of jury service when combined with inefficient use of prospective jurors, lead to frustration on the part of jurors and dissatisfaction with the jury system in particular and with the judicial system in general. A shortened jury term encourages more efficient use of jurors, which in turn reduces the amount of time they spend waiting to be used. This recognizes that citizens are making an important contribution and that their time is valuable. As a result, juror dissatisfaction is minimized and the willingness of individuals to serve when summoned is increased. Furthermore, improving individuals' attitudes toward jury service and the judicial system has the corollary effect of reducing requests for excuse from service and thereby increasing representativeness and inclusiveness of jury panels.

It should be emphasized that a reduction in the term of service can increase jury costs because of the additional number of individuals who must be summoned. By adopting efficient management techniques, however, these additional costs can be limited and overall jury system costs may actually be reduced.[4] Specifically, courts are urged to use computerized selection of names and preparation of summonses and to combine their qualifying and summoning process, and to use first class mail in order to offset the cost of summoning more individuals.[5] Also, because summoning an excessive number of prospective jurors can result in a waste of jurors' time and the courts' money, courts should establish an accurate assessment of the pattern of demand for jury trials in order to predict accurately the number of jurors needed for court each day.[6] Courts are encouraged to institute telephone call-in systems to inform jurors whether they are needed, and if so, when they should report to the courthouse. This procedure results in substantial savings to the court in juror fees, assists in ensuring that the court has an adequate number of jurors on hand, and utilizes the prospective jurors' time more efficiently by permitting them to continue their routine schedules when their presence is not required for jury service.[7] Finally, courts are urged to reuse challenged jurors in successive voir dires in order to achieve an efficient jury pool,[8] and to limit the compensation which

persons reporting to the courthouse receive for the first day of jury service to a nominal amount in recognition of their out-of-pocket expenses (a reasonable fee should be paid for each succeeding day they report).[9] Any added costs that remain after these steps have been taken are more than balanced by the increase in the representativeness of the jury pool and the significant decrease of the burden imposed on individuals called for jury service.

Paragraph (b) Availability for Service

It is recognized that a jury term requiring an individual to remain available for service for several weeks or months may cause considerable hardship and inconvenience even though the time actually served may be fairly short. Having to remain available for a protracted period of time creates uncertainty and disrupts business and personal affairs. The standard attempts to alleviate such problems by specifically recommending that jurisdictions set a maximum of two weeks on the time persons may be required to remain available for jury service. It acknowledges, however, that an exception to this maximum may be necessary in rural areas with few jury trials. Even when this exception applies, it is intended that actual service should nevertheless be limited to, at most, a term of one week or the completion of the last trial assigned during that week.

SUGGESTED STEPS FOR IMPLEMENTATION

1. Review existing statutes and/or court rules regarding the term of jury service.

2. Initiate appropriate statutory and administrative changes if those provisions are inconsistent with the standard.

3. Implement appropriate management techniques to accompany a reduced term of service such as but not limited to the following:

   (i) Computerize selection of names from source list.
   (ii) Combine qualification and summoning process.
   (iii) Computerize preparation of the summons.
   (iv) Use first class mail.
   (v) Establish monitoring procedures in order to accurately predict juror demand.
   (vi) Install telephone call-in systems.
   (vii) Establish procedures to monitor juror use.

4. Provide a clear explanation of the term of service and period of availability in the initial notice sent to prospective jurors and in the orientation presentation.

STANDARD 6: EXEMPTION, EXCUSE AND DEFERRAL

COMMENTARY

Generally

The United States Supreme Court has held that a jury drawn from a representative cross-section of a community is an essential component of the sixth amendment guaranty of trial by an impartial jury.[1] The exclusion of a substantial portion of the community from jury service through excuses or exemptions seriously alters the representativeness and inclusiveness of a jury panel.[2] Representative juries will be attained only if the source list is representative and if as many people as possible on that list actually appear on jury panels and are chosen to sit as jurors. This standard acknowledges that a drastic reduction in the number of individuals relieved from jury duty through excuses and exemptions is mandatory if the goal of representativeness and inclusiveness is to be achieved.

It should be noted that the standard is intended to address excuses from and deferrals of jury service at the jury pool stage only. Requests to be excused from a particular jury because of the possibility of a lengthy trial should be treated as challenges for cause.

Paragraph (a) Exemptions

Many states exempt individuals who fall into certain occupational categories or, upon request, automatically excuse other classes of individuals, such as the elderly or mothers caring for young children. In many areas, this practice has resulted in the absence of a significant portion of the community from the pool of prospective jurors. The absence of such individuals is especially noteworthy in those states that automatically eliminate from jury lists the names of those persons who fall into exempt or excused categories despite the fact that exemptions and excuses generally are considered to be voluntary in nature.[3] Even when names are not systematically eliminated, the mere availability of an exemption or automatic excuse contributes substantially to diminishing representativeness because of the likelihood that many people will take advantage of avoiding jury service if given the opportunity.[4]

The difficulty of securing a representative cross section of the community is further increased where certain persons, such as physicians, attorneys, government service workers, accountants, and clergymen, are exempted from jury service.[5] These broad categorical exceptions not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt. Recognizing these effects, the United States Supreme Court has struck down jury selection practices that have the consequence of systematically excluding "cognizable groups."[6]

Relying upon the principle that jury service is an obligation and privilege of citizenship from which no eligible citizen should be exempt, the standard recommends that automatic excuses or statutory group exemptions be eliminated.[7] Deferral of jury service accommodates the public-necessity rationale upon which most exemptions and automatic excuses were originally premised, while enabling a broader spectrum of the community to serve as jurors. Considerable support exists for this recommendation. A total of twenty states and a few localities have eliminated all group exemptions from jury duty. Several other states provide for only a few exemptions, such as for members of the legal profession or the armed services.[8]

Paragraph (b) Excuses

It is contemplated that adoption of a strict excuse policy will reduce the number of unnecessary excuses granted and thus prevent the representativeness and inclusiveness of the jury from being diminished at the excuse stage of the jury selection process. Consequently, the standard recommends that individuals be permitted to be excused in only two instances. The first is when an individual is so mentally ill or mentally retarded that he or she is unable to receive and assess the evidence and arguments and participate in the deliberation with other jury members. The grounds for the excuse are phrased in functional terms rather than relying on broad diagnostic labels, since it is the effect of the disability rather than its cause which is significant.[9] The court may release an individual from jury duty under paragraph (b)(i) on its own motion. To require the mentally disabled individual to request an excuse makes little sense. Because of the discretion and sensitivity required and to prevent abuse, the decision to grant or deny an excuse on this basis should be made by a judge rather than administrative personnel.

The second instance in which an excuse may be granted is when an individual requests to be released from jury service and demonstrates that he or she served as a member of a venire within the past 24 months, or that jury service would cause genuine personal hardship either to the individual requesting the excuse or to members of the public whom that individual serves. The prior-service provision is to spread jury service more equitably over the population of eligible persons. The provision for hardship excuses is intended to provide

courts with the necessary flexibility to accommodate the exceptional cases in which a person is unable to serve for the limited term specified in Standard 5 because of severe, chronic physical illness or incapacity, or essential military or other public duties. The experience of jurisdictions that have reduced their term of service and adopted a stringent excuse policy indicates that most current requests for a hardship excuse can be handled by scheduling the individual's jury service to a more convenient date and by fairly compensating citizens serving on jury duty.[10] Economic hardship is not included as a ground for excuse because of the shortened term of service and the liberal deferral policy recommended by these standards. However, members of jury panels may be removed for cause when the anticipated length of a trial would create such an economic hardship that they would be unable to participate fully in the proceedings.[11]

Paragraph (c) Deferral

As indicated, the standard recommends that all requests for an excuse that do not meet the above criteria should be accommodated by deferring an individual's jury service. In such instances, jury service should be rescheduled immediately for a specific date when the individual will be able to serve. Many courts do not permit any deferral of jury service. Prospective jurors are given a choice between serving or being excused altogether. Such rigidity may create additional hardship and resentment for those citizens wishing to serve, and results in diminished representativeness when citizens choose not to serve. Permitting jury service to be deferred and rescheduled at a later date increases the overall representativeness and inclusiveness of the jury pool while decreasing the hardship of jury service.

In order to facilitate the attainment of these goals, procedures for obtaining a deferment should be relatively simple and informal. Care must be taken, however, to ensure that the standard's purpose of increasing representativeness and inclusiveness is not defeated through abuse of the deferment policy.

Paragraph (d) Procedural Safeguards

To avert charges of arbitrary or capricious action, the standard specifies that requests for an excuse should be made either in writing or, if made orally, reduced to writing for the court's records. Such records are essential for operating a fair and efficient deferral program and for monitoring the effect of the excuse and deferral process.[12] Requests should be considered on a case-by-case basis by a judge or duly authorized court official to ensure that sufficient justification for excuse exists. Recognizing the need for consistency, the standard requires the creation and adoption of a specific and uniform written policy detailing what constitutes

hardship, specifying the manner in which the hardship is to be demonstrated, and imposing limitations on the number of deferments allowed per individual. Few courts have uniform guidelines with specific criteria to govern the granting of excuses. As a result, many permit excuses on an ad hoc basis. The uniform application of a strict, written policy will preclude the granting of arbitrary and inequitable excuses from jury service. It will also provide a safeguard against the granting of excessive excuses, thereby protecting the representative character of the jury pool. To further enhance consistency, one individual should have the responsibility for administering such a policy.

SUGGESTED STEPS FOR IMPLEMENTATION

1. Review existing statutes and policies regarding exemptions, excuses, and deferments.

2. Initiate appropriate legislative or administrative changes if those provisions are inconsistent with the standard.

3. Establish a written excuse policy with guidelines enumerating the specific criteria for granting excuses and deferments, the type of proof required and the number of deferments allowed per individual.

4. Require that requests for excusals and deferments be made in writing, or reduced to writing promptly if handled by telephone.

5. Review current compensation policy and initiate appropriate changes if inconsistent with Standard 15.

6. Take appropriate steps to reduce the term of jury service to the shortest possible length of time. (See Standard 4.)

7. Handle requests for deferral prior to the reporting date in order to reduce administrative workload during juror enrollment and to know the approximate number of jurors expected to report.

8. Reschedule jury service for a specific date and send reminders to those individuals whose service has been postponed for more than a month.

9. Monitor the excuse and deferral procedures to make certain that they are conducted fairly and efficiently.

APPENDIX C

UNIFORM JURY SELECTION AND SERVICE ACT
1970 ACT

UNIFORM JURY SELECTION AND SERVICE ACT

1970 ACT

Section
1. [Declaration of Policy].
2. [Prohibition of Discrimination].
3. [Definitions].
4. [Jury Commission].
5. [Master List].
6. [Master Jury Wheel].
7. [Drawings from Master Jury Wheel; Juror Qualification Form].
8. [Disqualifications from Jury Service].
9. [Qualified Jury Wheel; Selection and Summoning Jury Panels].
10. [No exemptions].
11. [Excuses from Jury Service].
12. [Challenging Compliance with Selection Procedures].
13. [Preservation of Records].
14. [Mileage and Compensation of Jurors].
15. [Length of Service by Jurors].
16. [Penalties for Failure to Perform Jury Service].
17. [Protection of Jurors' Employment].
18. [Court Rules].
19. [Severability].
20. [Short Title].
21. [Application and Construction].
22. [Repeal].

Be it enacted . . . .

§ 1. [Declaration of Policy]

It is the policy of this state that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this Act to be considered for jury service in this state and an obligation to serve as jurors when summoned for that purpose.

COMMENT

This section is derived from the comparable section of the Federal Jury Selection and Service Act of 1968 (hereinafter called the "Federal Act"), 28 U.S.C.A. § 1861. See also Section 1 of 1969 Maryland Jury Act.

Law Review Commentaries

Jury selection and service act. W.P. Gewin. 20 Mercer L.Rev. 349 (Summer 1969).

Uniform jury selection and service act. V.L. McKusick and D.E. Boxer. 8 Harv.J. Legis. 280 (Jan.1971).

Library References

Statutes ⚖184.
C.J.S. Statutes § 323.

Notes of Decisions

Burden of proof 3
Cross section of population 1
Random selection 2

1. Cross section of population

Jury selection plan for the District of North Dakota under the Jury Selection and Service Act of 1968 provides the required "fair cross section of the community." U.S. v. Turcotte, C.A.N.D.1977, 558 F.2d 893.

Record failed to sustain claim that jury in condemnation proceeding did not contain a representative cross section of the county population. Board of County Com'rs of Weld County v. Loyd Hodge & Sons, Inc., Colo.App.1975, 534 P.2d 638.

2. Random selection

Jurors are "selected at random" as required by statute so long as formation of jury pool is nondiscriminatory. U.S. v. Davis, C.A.Colo.1975, 518 F.2d 81, certiorari denied 96 S.Ct. 425, 423 U.S. 997, 46 L.Ed.2d 371.

Fact that only two veniremen remained in courtroom pool from which twelfth juror was selected did not mean that that juror was not "selected at random" as required by statute. U.S. v. Davis, C.A.Colo.1975, 518 F.2d 81, certiorari denied 96 S.Ct. 425, 423 U.S. 997, 46 L.Ed.2d 371.

A defendant is not entitled to have specific juror on the panel or to have particular individuals serve on the jury. State v. Olson, N.D.1980, 290 N.W.2d 664.

Fact that defendant is entitled to trial by fair and impartial jury does not mean that he is entitled to any particular juror. People v. Evans, Colo.App. 1983, 674 P.2d 975.

3. Burden of proof

Party claiming that jury did not contain representative cross section of county population has burden of proof. Board of County Com'rs of Weld County v. Loyd Hodge & Sons, Inc., Colo.App.1975, 534 P.2d 638.

§ 2. [Prohibition of Discrimination]

A citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status.

COMMENT

Derived from the Federal Act, 23 U.S.C.A. § 1862, and Section 2 of 1969 Maryland Jury Act.

Action in Adopting Jurisdictions

Variations from Official Text:

North Dakota. Inserts "physical disability" following "national origin".

Library References

Civil Rights ⚖10.
Jury ⚖38 et seq.
C.J.S. Civil Rights § 18.
C.J.S. Juries § 134 et seq.

Notes of Decisions

Generally 1
Burden of proof 4
Economic status 3
Race, color or national origin 2

1. Generally

The right to an impartial jury precludes systematic and intentional exclusion of any particular class of persons, but does not require that any particular class be represented. Holt v. State, 1977, 365 N.E.2d 1209, 266 Ind. 586.

2. Race, color or national origin

Defendant's assertion that only one black was called to serve as juror and statement of trial counsel in pretrial motion to suppress the jury that his observation of prospective jurors of another trial revealed only two jurors out of the 50 were black failed to sustain burden cast on defendant to show a purposeful exclusion of blacks from jury. Tewell v. State, 1976, 339 N.E.2d 792, 264 Ind. 88.

Where there was no evidence of purposeful discrimination but to the contrary efforts had been made specifically to increase proportion of Spanish-surnamed persons on jury list, there had been no showing of significant discrimination over period of time, and difference consisted of only 5%, or 31% comparative disparity, between proportion of Spanish-surnamed persons in community and in jury pool, requirement of Uniform Jury Selection and Service Act that jury be selected at random from fair cross-section of population was adequately met through use of voter registration and driver and chauffeur's license lists. People v. Sepeda, 1978, 581 P.2d 723, 196 Colo. 13.

Where black defendant failed to establish a history of discrimination in composition of juries in his motion to quash the special venire, which resulted in 15 white and four black prospective jurors, and where defendant had access to the regular panel of jurors called for that week, defendant failed to establish prima facie case of discrimination and trial court therefore properly denied motion to quash venire. Craft v. State, Miss.1980, 380 So.2d 251.

Notwithstanding fact that there was only one black person on jury panel presented to parties, defendant did not sustain his burden of establishing that officials of county engaged in discriminatory practices by systematically excluding blacks from jury. Page v. State, Miss.1979, 369 So.2d 757.

Evidence did not demonstrate any consistent or systematic exclusion of Negroes from the jury. Watts v. State, Miss.1975, 317 So.2d 715.

3. Economic status

Record failed to establish that jury selection process whereby trial court excused those prospective jurors who sought to be relieved of service because of hardship, including economic hardship, illness in family or some infirmity which would not permit individual to serve, improperly resulted in exclusion of a certain class of persons financially unable to serve and the inclusion of those who were overly willing to serve. Holt v. State, 1977, 365 N.E.2d 1209, 266 Ind. 586.

4. Burden of proof

Although a jury must be selected from a fair cross section of the community, jurors need not be mathematically proportioned to the character of the community, and burden of demonstrating prejudicial discrimination is on defendant. Holt v. State, 1977, 365 N.E.2d 1209, 266 Ind. 586.

Defendant carries initial burden of demonstrating that a purposeful discrimination of particular class of persons from jury existed. Tewell v. State, 1976, 339 N.E.2d 792, 264 Ind. 88.

Party who contends purposeful discrimination occurred in selection of jury panel bears burden of proving that contention. State v. Ruybal, App.1982, 643 P.2d 835, 102 Idaho 885.

When evidence submitted by defendant shows purposeful racial discrimination by state in composition of jury, burden is upon state to prove that absence or underrepresentation of blacks resulted from something other than intentional discrimination. Craft v. State, Miss.1980, 380 So.2d 251.

Party claiming there was systematic exclusion of blacks from jury has burden of establishing that practice. Page v. State, Miss.1979, 369 So.2d 757.

§ 3. [Definitions]

As used in this Act:

(1) "court" means the [__________] court[s] of this state, and includes, when the context requires, any [judge] [justice] of the court;

(2) "clerk" and "clerk of the court" include any deputy clerk;

(3) "master list" means the [voter registration lists] [lists of actual voters] for the [county] [district] which shall be supplemented with names from other sources prescribed pursuant to this Act (Section 5) in order to foster the policy and protect the rights secured by this Act (Sections 1 and 2);

[Alternative A]

[(4) "voter registration lists" means the official records of persons [registered] [qualified] to vote in the most recent general election;]

[Alternative B]

[(4) "lists of actual voters" means the official records of persons actually voting in the most recent general election;]

(5) "jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors;

(6) "master jury wheel" means the jury wheel in which are placed names or identifying numbers of prospective jurors taken from the master list (Section 6);

(7) "qualified jury wheel" means the jury wheel in which are placed the names or identifying numbers of prospective jurors whose names are drawn at random from the master jury wheel (Section 7) and who are not disqualified (Section 8).

COMMENT

It is the purpose of the Uniform Act to provide for the selection of jurors from as broadly inclusive list of citizens as possible. The term "master list" (Section 3(3)) is used to designate that broadly inclusive source of names from which the names to be placed in the master jury wheel will be first selected by a random process. Voting lists are used as the starting point for compilation of the master list, but they must be supplemented to carry out the policy of the Act. Section 5 spells out the way in which the supplementation is to be carried out. The voter lists used will be the registration lists, except in those states where the only available lists are those of actual voters.

The random selection of names can be efficiently carried out through electronic or mechanical devices and the definition of "jury wheel" in (5) permits their use. See also Section 6(b).

Activities of the court hereunder, as, for example, in drawing or directing the drawing of names from the master jury wheel under Section 7(a) or in determining disqualifications or excuses under Sections 8 and 11, will ordinarily be conducted by the particular judge holding the jury trial term or

otherwise assigned to supervising jury selection.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (2), adds "or the jury commissioner".

In subsec. (3), provides for "voter registration lists".

In subsec. (4), adopts alternative A and omits "qualified" therein.

Idaho. Subsec. (2) defines "clerk" and "clerk of the court" as the duly elected and acting county auditors and ex-officio clerks of the district court and their duly appointed deputies.

In subsec. (3), omits "lists of actual voters".

In subsec. (4), alternative A reads: " 'Voter registration lists' means the most current official records, maintained by the county clerk, of persons registered to vote in any national, state, county, or municipal election;".

North Dakota. In subsec. (3), omits "voter registration lists".

In subsec. (4), adopts alternative B.

Library References

Statutes ⇐179.
C.J.S. Statutes § 315.

§ 4. [Jury Commission]

A jury commission is established in each [county] [district] to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of the clerk of the court and a jury commissioner appointed for a term of [4] years by the [court] [chief justice of the Supreme Court] [chief administrative officer or board of the [county] [district]]. The jury commissioner must be a citizen of the United States and a resident in the [county] [district] in which he serves. [The jury commissioner shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of his duties and shall receive compensation at a per diem rate fixed by the [chief justice of the Supreme Court] or as provided by [law].]

COMMENT

The Uniform Act prescribes the minimum standards for the jury selection process and avoids what appears as unduly cumbersome in permitting diverse jury selection plans within a single state. Some degree of flexibility is, however, permitted by the provision for court-made rules, see Section 18, and by special court orders as, for example, for adding names to the master jury wheel (see Section 6(a)).

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads:

"(1) In any county having less than fifty thousand population, as determined by the latest federal census, the clerk of the district court shall also serve as the jury commissioner for such county, and shall have the powers and perform the duties prescribed in this article for jury commissions and jury commissioners.

"(2) In any county having a population of fifty thousand or more, as determined by

the latest federal census, there shall be a jury commission composed of the clerk of the district court for that county and a jury commissioner. The jury commissioner shall be appointed pursuant to section 37-11-7, C.R.S.1963, by the chief judge of the district court of the judicial district including such county, and shall be a citizen of the United States and a resident of such county.

"(3) The jury commissioner appointed under subsection (2) of this section shall be compensated as determined by the supreme court pursuant to section 37-11-7, C.R.S. 1963, but no clerk of the district court, or any other court employee, whether serving as jury commissioner or as a member of a jury commission, shall receive any compensation in addition to his regular salary. Each jury commissioner and district court clerk serving as jury commissioner or member of a jury commission shall be reimbursed for his actual and necessary expenses incurred in the performance of his duties under this article."

Idaho. Section reads: "A jury commission is established in each county to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of the clerk of the court and a jury commissioner appointed for a term of two (2) years by the administrative judge. The jury commissioner must be a citizen of the United States and a resident of the county in which he serves. The jury commissioner may be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of his duties and may receive compensation at a per diem rate fixed by the administrative judge and payable from the county general fund, if he is not otherwise a county employee."

North Dakota. Omits "district" and references to "chief justice", wherever appearing.

Library References

Jury ⚷59.
C.J.S. Juries § 156.

Notes of Decisions

1. Delegation of duties

Uniform Jury Service and Selection Act does not preclude jury commissioners from delegating such ministerial duties as may be performed by computer service. State v. Lopez, App.1984, 692 P.2d 370, 107 Idaho 726.

§ 5. [Master List]

(a) The jury commission for each [county] [district] shall compile and maintain a master list consisting of all [voter registration lists] [lists of actual voters] for the [county] [district] supplemented with names from other lists of persons resident therein, such as lists of utility customers, property [and income] taxpayers, motor vehicle registrations, and drivers' licenses, which the [Supreme Court] [Attorney General] from time to time designates. The [Supreme Court] [Attorney General] shall initially designate the other lists within [90] days following the effective date of this Act and exercise the authority to designate from time to time in order to foster the policy and protect the rights secured by this Act (Sections 1 and 2). In compiling the master list the jury commission shall avoid duplication of names.

(b) Whoever has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection (a) by the [Supreme Court] [Attorney General] as supplementary sources of names, shall make the list available to the jury

commission for inspection, reproduction, and copying at all reasonable times.

(c) The master list shall be open to the public for examination.

COMMENT

The Federal Act, 28 U.S.C.A. § 1863(b)(2), uses the voter registration lists as the most inclusive list of names of potential jurors, providing, alternatively in those situations where registration lists are not maintained, that lists of actual voters will be used. The Federal Act leaves it up to the plan adopted in each federal district to "prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured" by that Act. The Uniform Act leaves such responsibility for supplementing the voter lists to either the Supreme Court or the Attorney General, and it makes such supplementation mandatory.

Exclusive use of voter lists as the basis for selecting citizens to be called for jury service may have a chilling effect upon exercise of the franchise, particularly by wage-earners for whom jury service may be a particular economic hardship. Principally for that reason the Report of the President's Commission on Registration and Voting Participation (November, 1963) recommended that voter registration lists be used only for electoral purposes. Furthermore, voter lists typically constitute far from complete lists of the citizens qualified for jury service. Considerable filling out of the master list to be more inclusive than the voter lists is necessary to carry out the declaration of Section 1 that "all qualified citizens shall have the opportunity ... to be considered for jury service." Despite these disadvantages of use of voter lists in jury selection, the Federal Act and a great many states now use voter lists for that purpose—undoubtedly because it is the most conveniently available public list.

In most instances the high court of the State should be the agency to prescribe the supplementary sources of names for the master list. Such would be consistent with the rulemaking power also granted to that court by Section 18. In some states, however, the legislature may conclude that the office of the Attorney General is better fitted to determine the availability and practicality of supplementary lists. Whichever agency is given the responsibility must act within 90 days of the effective date of the Act and must maintain a continuing watch over the matter to assure the adequacy of the supplementation. In particular the supplementary sources should be reviewed shortly before December each even-numbered year since pursuant to Section 6(a) the master jury wheel is refilled in that month by random selection from the master list.

It is frequently the case that no single voter registration list or list of actual voters is maintained for the county or judicial district but rather a separate list is kept for each voting precinct or municipality. In such case the starting point for the master list would be the aggregation of all the voter registration lists or lists of actual voters of the several political subdivisions. There is no need for the several lists to be put together into a single alphabetical list. It would, for example, be satisfactory for the lists simply to be put in alphabetical order by municipality. The exact method of putting together the several lists into the master list is left to the jury commission or may be prescribed by rule.

The sources of names for the master list may be public, such as voter lists and motor vehicle registration lists, or may be private, as lists of telephone subscribers or electric company customers. Section 5(b) requires such lists to be made available to the jury

commission. If any expense beyond merely making the list available at reasonable times becomes involved, as for example the expense of producing a computer print-out, the owner of the private list can reasonably expect reimbursement of the actual cost thereof.

The master list is open to the public. In general other lists and papers used or produced in connection with the jury selection process, with the exception of the names of jurors drawn for jury service and the contents of their juror qualification forms (Section 9), are kept confidential, but even they can be opened up for examination by parties preparing, presenting or defending against motions for relief on the ground of a substantial failure to comply with this Act.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Subsec. (a) reads: "The jury commission for each county shall compile and maintain a master list consisting of all voter registration lists for the county supplemented with names from other lists of persons resident in the county, such as lists of utility customers, property taxpayers, persons filing income tax returns, motor vehicle registrations, city directories and telephone directories, and drivers' licenses, which the supreme court shall from time to time designate. The supreme court shall initially designate such other lists within ninety days following January 1, 1972, and shall exercise the authority so to designate from time to time in such manner as to foster the policy and protect the rights secured by this article. In compiling the master list the jury commission shall avoid duplication of names."

In subsec. (b), substitutes "furnish a copy of the list to the state court administrator or to the jury commissioner or make it available at all reasonable times for inspection, reproduction, or copying" for "make the list available to the jury commission for inspection, reproduction, and copying at all reasonable times".

In subsec. (c), adds "as a public record" at the end thereof.

Adds a subsection as follows: "When a copy of a list maintained by a public official is furnished only the actual cost of the copy may be charged to the judicial department. When a copy of a list not maintained by a public official is furnished, the cost charged to the judicial department shall not exceed the amount charged any other governmental agency."

Idaho. In subsec. (a), omits bracketed material relating to "district", "lists of actual voters", "income", and "Attorney General".

North Dakota. In subsec. (a), omits bracketed material relating to "district", "voter registration lists", "income" and "Attorney General".

In subsec. (b), omits reference to the Attorney General.

Library References

Jury ⚡61 et seq.
C.J.S. Juries § 155 et seq.

Notes of Decisions

Generally 1
Discrimination 6
Inspection and examination 4
Persons compiling list 5
Taxpayer lists 3
Voter registration lists 2

1. Generally

Statute requiring municipal courts to select juries from a jury list as is provided for courts of record refers not to the Uniform Jury Selection and Service Act but to other statutes and rules relating to jury selection in municipal courts. City of Aurora By and on Behalf of People v. Rhodes, Colo.1984, 689 P.2d 603.

2. Voter registration lists

The use of voter registration lists as the sole source of names for jury duty is constitutionally permissible, unless such a procedure results in the systematic exclusion of a cognizable group or class of qualified citi-

zens. Craig v. Wyse, D.C.Colo.1974, 373 F.Supp. 1008.

Although federal census figures might offer more complete data base for selection of jury venires, jury commissioner's method, in developing selection lists by voter districts, substantially complied with requirements of statute and was likely to result in properly proportioned selection. Tawney v. State, Ind. 1982, 439 N.E.2d 582.

Selection of juror panel from list of registered voters was permissible, even if there existed in county a large number of residents of particular religion who did not vote and were thus excluded from jury service. Lamar v. State, 1977, 366 N.E.2d 652, 266 Ind. 689.

3. Taxpayer lists

Use of list of property taxpayers which represent reasonable cross section of county does not violate rights of accused in absence of showing that use of list was deliberate attempt to exclude certain groups from jury selection. Morris v. State, 1977, 364 N.E.2d 132, 266 Ind. 473, certiorari denied 98 S.Ct. 526, 434 U.S. 972, 54 L.Ed.2d 462.

4. Inspection and examination

Board of supervisors' minutes, on which were recorded the names placed in jury "wheel" or "pool," were public records, open to the inspection of any interested persons, especially litigants and their attorneys. Watkins v. Green, C.A.Miss.1977, 548 F.2d 1143, rehearing denied 550 F.2d 1285.

5. Persons compiling list

Absent showing that use of computer service to prepare master jury list, "jury wheel" and quarterly list in any way adversely affected random nature or objectivity of jury selection process, no purported error by jury commissioners in contracting with computer service to prepare such lists would afford basis to disturb convictions. State v. Lopez, App.1984, 692 P.2d 370, 107 Idaho 726.

Although it might have been preferable had there been actual participation of both members of jury commission, compilation of jury lists by one member unaided by the other, was valid absent showing of prejudice and there was no violation of Uniform Jury Selection and Service Act. State v. Silcox, 1982, 650 P.2d 625, 103 Idaho 483.

6. Discrimination

Where there was no evidence of purposeful discrimination but to the contrary efforts had been made specifically to increase proportion of Spanish-surnamed persons on jury list, there had been no showing of significant discrimination over period of time, and difference consisted of only 5%, or 31% comparative disparity, between proportion of Spanish-surnamed persons in community and in jury pool, requirement of Uniform Jury Selection and Service Act that jury be selected at random from fair cross-section of population was adequately met through use of voter registration and driver and chauffeur's license lists. People v. Sepeda, 1978, 581 P.2d 723, 196 Colo. 13.

§ 6. [Master Jury Wheel]

(a) The jury commission for each [county] [district] shall maintain a master jury wheel, into which the commission shall place the names or identifying numbers of prospective jurors taken from the master list. If the total number of prospective jurors on the master list is 1,000 or less, the names or identifying numbers of all of them shall be placed in the master jury wheel. In all other cases, the number of prospective jurors to be placed in the master jury wheel shall be 1,000 plus not less than [one] percent of the total number of names on the master list. From time to time a larger or additional number may be determined by the jury commission or ordered by the court to be placed in the master jury wheel. In December of each even-numbered year the wheel shall be emptied and refilled as prescribed in this Act.

(b) Unless all the names on the master list are to be placed in the master jury wheel pursuant to subsection (a), the names or identifying

numbers of prospective jurors to be placed in the master jury wheel shall be selected by the jury commission at random from the master list in the following manner: The total number of names on the master list shall be divided by the number of names to be placed in the master jury wheel and the whole number next greater than the quotient shall be the "key number," except that the key number shall never be less than 2. A "starting number" for making the selection shall then be determined by a random method from the numbers from 1 to the key number, both inclusive. The required number of the names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, or if additional names are subsequently to be selected for the master jury wheel, names previously selected from the master list shall be disregarded in selecting the additional names. The jury commission may use an electronic or mechanical system or device in carrying out its duties.

COMMENT

[Subsec. (a)] The Federal Act, 28 U.S.C.A. § 1863(b)(1), specifies that the minimum number of names to be placed initially in the master jury wheel shall be "one-half of 1 per centum of the total number of persons on the lists used as the source of names for the district or division . . . but in no event less than one thousand." Section 4(b)(iii) of the Maryland Jury Act, modeled on the Federal Act, changes the irreducible minimum from 1000 to 200. The number of 1000 (plus 1% of the total number of names on the master list) is suggested in the Uniform Act to be necessary to provide jurors for a 2-year period in even a county with only a few jury terms each year. In counties with more juries the number placed in the master jury wheel should be greater. The jury commission is authorized to fix a greater number depending upon the particular circumstances.

Within a single state wide variations commonly exist between the populations of different counties or judicial districts. The Uniform Act recognizes the existence of such population differences and accommodates jury selection to the circumstances of each county or district. If the county or district has such a small population that the master list has fewer than 1000 names, all of those names will be put into the master jury wheel and the random selection process prescribed in Section 6 is not necessary. On the other hand, in a larger county the minimum number of names to be placed in the master jury wheel is 1000 plus a fixed percentage of the total number of names on the master list.

[Subsec. (b)] The process of selecting names for the master jury wheel from the master list may be illustrated by the following two examples:

A. The master list contains 1400 names. The minimum number of names for the master jury wheel is therefore 1000 plus 1% of 1400, or a total of 1014. The quotient, obtained by dividing 1400 by 1014, is 1.4. However, to provide an equal opportunity of selection for every name on the list, the Act requires that the "key number" be no less than 2, so that will become the "key number." To obtain

a "starting number" a random choice is made between 1 and 2, perhaps by tossing a coin. Assuming 1 is selected, the first name on the master list is the first name picked, the third name is next picked, and so on at intervals of 2. The first time through the master list will produce only 700 names and therefore it is necessary to start again at the head of the list, but this time the names already picked must be ignored. Accordingly, in this instance, the second name on the original list will be first this time, and so on until a total of 1014 names have been picked.

B. The master list contains 360,000 names. The minimum number of names for the master jury wheel is therefore 1000 plus 1% of 360,000, or a total of 4,600. The jury commission or the court determines, however, that it would be desirable to have 4800 names in the master jury wheel. The quotient of 360,000 divided by 4800 is 75, and, therefore, the "key number" is 75. The "starting number" is determined by a random method from the numbers from 1 to 75, inclusive. If the number so determined is 4, for example, the fourth name on the master list is the first selected, and then every seventy-fifth name thereafter is picked until a total of 4800 have been selected. In this example, it is to be noted that the number of names desired to be put into the master jury wheel (4800) divides evenly into the total number of names on the master list (360,000). In such circumstances, the full 4800 names can be selected without recommencing at the start of the list.

In those districts where electronic data processing equipment is available, the Act specifically permits its use to perform the required random selection by appropriate programming.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (a), substitutes "one thousand plus not less than two percent" for "1,000 plus not less than one percent" and provides for the wheel to be emptied and refilled in March of each year.

Idaho. In subsec. (a), substitutes "odd numbered year" for "even numbered year" in last sentence.

North Dakota. Adds a subsection as follows: "As an alternative procedure to the provisions of subsection 1 of section 27-09.-1-05, the jury commission for each county may randomly select names which represent a fair cross section of the population of the county for the master jury wheel directly from the source lists used to compile the master jury list (section 27-09.1-05). In compiling the master jury wheel, the jury commission shall avoid duplication of names."

Library References

Jury ⇔65.
C.J.S. Juries § 161.

Notes of Decisions

1. Persons preparing jury wheel

Absent showing that use of computer service to prepare master jury list, "jury wheel" and quarterly list in any way adversely affected random nature or objectivity of jury selection process, no purported error by jury commissioners in contracting with computer service to prepare such lists would afford basis to disturb convictions. State v. Lopez, App.1984, 692 P.2d 370, 107 Idaho 726.

§ 7. [Drawings from Master Jury Wheel; Juror Qualification Form]

(a) From time to time and in a manner prescribed by the court, the jury commission publicly shall draw at random from the master jury wheel the names or identifying numbers of as many prospective jurors as the court by order requires. The clerk shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this Act or specific order of the court. The clerk shall mail to every prospective juror whose name is drawn from the master jury wheel a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within 10 days after its receipt. The juror qualification form shall be subject to approval by the court as to matters of form and shall elicit the name, address of residence, and age of the prospective juror and whether he (1) is a citizen of the United States and a resident of the [county] [district], (2) is able to read, speak and understand the English language, (3) has any physical or mental disability impairing his capacity to render satisfactory jury service, and (4) has lost the right to vote because of a criminal conviction. The juror qualification form shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgement that a wilful misrepresentation of a material fact may be punished by a fine of not more than [$500] or imprisonment for not more than [30] days, or both. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for him and shall indicate that he has done so and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission within 10 days after its second receipt.

(b) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission to appear forthwith before the clerk to fill out the juror qualification form. At the time of his appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.

(c) A prospective juror who fails to appear as directed by the commission pursuant to subsection (a) shall be ordered by the court to appear

and show cause for his failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for his failure to appear as directed by the jury commission, he is guilty of criminal contempt and upon conviction may be fined not more than [$100] or imprisoned not more than [3] days, or both.

(d) Any person who wilfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a misdemeanor and upon conviction may be fined not more than [$500] or imprisoned not more than [30] days, or both.

COMMENT

Derived from the Federal Act, 28 U.S.C.A. § 1864, and Section 5 of the Maryland Jury Act.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (d), provides that upon conviction a person shall be punished by a fine of not more than five hundred dollars or by imprisonment for thirty days, or both.

Idaho. In subsecs. (a) and (d), substitutes "three hundred dollars" for "500" and "sixty days" for "30 days".

North Dakota. In subsec. (a), clause (2) in fifth sentence reads: "is able with reasonable accommodation to communicate and understand the English language".

In subsec. (a), clause (4) of fifth sentence, substitutes "imprisonment resulting from conviction of a felony (section 27–09.1–08)" for "a criminal conviction".

In subsec. (a), sixth sentence, inserts "in the county jail" following "imprisonment".

In subsecs. (c) and (d), inserts "in the county jail" following "imprisoned".

Library References

Jury ⚿38 et seq., 65, 66.
C.J.S. Juries §§ 134 et seq., 161, 164.

Notes of Decisions

Generally 1
Juror qualification form 2

1. Generally

Although constitutional challenge to jury selection process must focus upon systematic under representation of identifiable group, no such requirement applies to statutory challenge. State v. Lopez, App.1984, 692 P.2d 370, 107 Idaho 726.

Jurors summoned for jury duty in municipal court did not have to be selected from a master list and then drawn from a master jury wheel, maintained by jury commissioner of county, in accordance with the Uniform Jury Selection and Service Act. City of Aurora By and on Behalf of People v. Rhodes, Colo.1984, 689 P.2d 603.

2. Juror qualification form

There was nothing wrong with jury selection process whereby questionnaire was included with each of the approximately 1,000 summonses issued to begin the selection process, notwithstanding that a person was automatically excluded if reasons for not serving were stated and that in such fashion the original 1,000 persons summoned was reduced to approximately 250 prospective jurors, who were divided into groups of about 30 that were rotated for service at trial; selection process was not objectionable on ground that it failed to avoid the evils arising from an overwillingness to

serve. Brown v. State, 1977, 360 N.E.2d 830, 266 Ind. 82.

§ 8. [Disqualifications from Jury Service]

(a) The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel.

(b) A prospective juror is disqualified to serve on a jury if he:

(1) is not a citizen of the United States, [21] years old, and a resident of the [district] [county];

(2) is unable to read, speak, and understand the English language;

(3) is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion; or

(4) has lost the right to vote because of a criminal conviction.

COMMENT

Derived largely from the Federal Acts, 28 U.S.C.A. § 1865.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (b)(1), substitutes "eighteen years" for "21 years" and adds the following at end thereof: "however, no person shall be deemed to be incapable of jury service solely because of impaired vision or hearing in any degree, although the existence of a defect in the visual or auditory functions may be grounds for challenge for cause if the court is satisfied that the challenged person is incapable of performing the duties of a juror in a particular action without prejudice to the substantial rights of the challenging party; or".

In subsec. (b)(3), inserts "or authorized Christian Science practitioner's" preceding "certificate" and "or practitioner" preceding "is subject to inquiry".

Idaho. In subsec. (b)(1), substitutes "eighteen (18) years" for "21 years".

In subsec. (b), adds a fifth disqualification which reads: "[I]s seventy (70) years of age or older and submits in writing a statement requesting that he be excused."

North Dakota. Subsec. (b) reads:

"1. The court, upon request of the jury commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel.

"2. A prospective juror is disqualified to serve on a jury if the prospective juror:

"a. Is not a citizen of the United States and a resident of the state and county;

"b. Is not at least eighteen years old;

"c. Is unable with reasonable accommodation to communicate and understand the English language;

"d. Is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion; or

"e. Has lost the right to vote because of imprisonment in the penitentiary (section 12.1-33-01) or conviction of a criminal offense which by special provision of law disqualified him for such service."

Library References

Jury ⇐38 et seq., 109.
C.J.S. Juries §§ 134 et seq., 249.

Notes of Decisions

Generally 1
Hearing difficulties 3
Residence 2
Voters, freeholders and householders 4

1. Generally

Statutory disqualifications for jury service are to be applied to trials in municipal courts of record. City of Aurora By and on Behalf of People v. Rhodes, Colo.1984, 689 P.2d 603.

2. Residence

For trials of violations of state law conducted in district and county courts, term "resident of the county," as used in juror disqualification statute, means a resident of the county in which the offense is alleged to have been committed. City of Aurora By and on Behalf of People v. Rhodes, Colo. 1984, 689 P.2d 603.

A prospective juror summoned to municipal court for jury duty in trial of municipal ordinance violation qualified as a "resident of the county" as long as he or she resided in that part of the county located within the territorial limits of the municipality. City of Aurora By and on Behalf of People v. Rhodes, Colo.1984, 689 P.2d 603.

3. Hearing difficulties

Excusing juror because of his hearing difficulty was within trial court's discretion. Bell v. O'Connor Transport Limited, 1971, 489 P.2d 439, 94 Idaho 406.

4. Voters, freeholders and householders

There was no inconsistency between statute providing that jury commissioners shall not select name of any person who is not a voter of county, or who is not either a freeholder or householder, and fact that clerk's certificate showed that jury was selected from among those persons who were freeholders or householders and resident voters; statute did not require that all three groups be represented on list from which jury was chosen, but, rather, simply stated that a prospective juror could not be chosen to be a juror unless prospective juror was a freeholder or householder or resident voter. Clark v. State, App. 1 Dist. 1979, 389 N.E.2d 712, 180 Ind.App. 472.

§ 9. [Qualified Jury Wheel; Selection and Summoning of Jury Panels]

(a) The jury commission shall maintain a qualified jury wheel and shall place therein the names or identifying numbers of all prospective jurors drawn from the master jury wheel who are not disqualified (Section 8).

(b) [A judge] [The court administrator] or any court or any other state or [county] [district] official having authority to conduct a trial or hearing with a jury within the [county] [district] may direct the jury

commission to draw and assign to that court or official the number of qualified jurors he deems necessary for one or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random from the qualified jury wheel the number of qualified jurors specified. The qualified jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

(c) If a grand, petit, or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons either personally or by registered or certified mail, return receipt requested, addressed to him at his usual residence, business, or post office address, requiring him to report for jury service at a specified time and place.

(d) If there is an unanticipated shortage of available petit jurors drawn from a qualified jury wheel, the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk from the qualified jury wheel in a manner prescribed by the court.

(e) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors shall be made available to the public unless the court determines in any instance that this information in the interest of justice should be kept confidential or its use limited in whole or in part.

COMMENT

The first four subsections are derived from the Federal Act, 28 U.S. C.A. § 1866(a), (b), and (f). Subsection (e) is derived from Section 4(b)(iv) of the 1969 Maryland Jury Act.

The Uniform Act contemplates that the jury commission in each county or district will carry out the selection of jurors for all juries within that territory. Any court or public official having authority to conduct a trial or hearing with a jury can, pursuant to Section 9(b), requisition the requisite number of jurors. Under subsection (c) the clerk member of the jury commission is charged with the job of summoning all jurors, including those for specialized tribunals. For the purpose of granting excuses from service on the juries used by such specialized tribunals, the presiding officer would exercise the powers of the "court" under Section 11(b).

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (c), omits reference to service by registered or certified mail and return receipt.

Subsec. (d) reads: "Whenever there is an unanticipated shortage of available petit jurors drawn from a qualified jury wheel, the court may require the sheriff or jury commissioner to summon a sufficient number of petit jurors from bystanders, but either party may show cause why bystanders should not be used, in which case additional jurors may be selected at random by the clerk from the qualified jury wheel or in any other manner prescribed by the court."

Subsec. (e) reads: "The names of qualified jurors drawn from the qualified jury

5. **Burden of proof**

When an attack is made on the whole jury panel, burden of proof that panel was in fact in law illegally constituted and that prejudice resulted is on party making the attack. State v. Franzen, Me.1983, 461 A.2d 1068.

§ 10. [No Exemptions]

No qualified prospective juror is exempt from jury service.

COMMENT

The Federal Act, 28 U.S.C.A. § 1863(b)(6), permits the plan in each district to "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt" provided that "the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent" with the policies declared in the first and second sections of the Act. The Federal Act goes on to require that exemption be provided for the following:

"(i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any state, district, territory, possession or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties." (*Ibid.*)

Many states also have a long list of exempt classes of persons. For example, Maine exempts all officers of the United States, officers of colleges, and cashiers of incorporated banks, as well as ministers, teachers, physicians, dentists, nurses and attorneys. 14 M.R.S.A. § 1201.

Exemption of particular classes by statute is believed inadvisable. The public policy declared in Section 1 is better achieved by individual excuses pursuant to Section 11 upon a showing in the individual case of undue hardship, extreme inconvenience, or public necessity. Moreover, since petit jury service is, except in the unusual case, limited by Section 15 of the Uniform Act to a specified number of court days in any two year period, the burden of jury service upon the individual is minimized. The individual should not be given an automatic exemption merely because he comes within a particular class, but rather should be required to make out a case of hardship to the court.

Library References

Jury ⇐55.
C.J.S. Juries § 153.

§ 11. [Excuses from Jury Service]

(a) The court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The clerk shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service (Section 8) may be excused from jury service by the court only upon a showing of undue

hardship, extreme inconvenience, or public necessity, for a period the court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.

COMMENT

The Federal Act permits the plan in each district to specify groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service and also to fix the distance either in miles or travel time beyond which prospective jurors would not be required to travel to court. 28 U.S.C.A. § 1863(b)(5) and (7). Many plans adopted under the Federal Act give automatic excuse upon request to a long list of classes of groups, as, for example, the following list quoted from the plan for the District of Maine:

"(1) all persons over seventy years of age;

"(2) all ministers of the gospel and members of religious orders, actively so engaged;

"(3) all attorneys, physicians, surgeons, dentists, veterinarians, pharmacists, nurses, and funeral directors, actively so engaged;

"(4) all persons who have served as a grand or petit juror in a State or Federal court within the preceding two years;

"(5) all school teachers in public, parochial or private schools, actively so engaged;

"(6) all persons who do not have adequate means of transportation to the place of holding court;

"(7) all women who are caring for a child or children under the age of sixteen years;

"(8) all sole operators of businesses."

Other district plans have strictly limited the automatic excuses, as, for example, that for the Western District of North Carolina, which grants automatic excuse upon individual request only to the following:

"(1) persons over seventy-five years of age;

"(2) women who have legal custody of a child or children under the age of ten years;

"(3) any person who resides more than one hundred (100) miles from place of holding court."

Section 11 of the Uniform Act is based upon the same principle as Section 10, namely, that there should be no automatic exemptions or excuses from jury service, but rather that excuse should be only upon a showing of actual need or public reason therefor. The Uniform Act proceeds on the principle that jurors should be selected by random methods from the widest possible list of citizens. The corollary is that actual service on the jury should be shared as widely as possible and in particular that professional and business groups should be excused only in cases of demonstrated need. The so-called "blue ribbon jury" is outlawed by the Uniform Act. At the same time, business and professional groups within the community should not be permitted to avoid jury service. It is also believed that citizens in general will be more willing to perform jury service if it is known throughout the community that jury service is universal, barring only particular hardship in specific cases.

The Uniform Act does not refer to those other ways in which pursuant to other provisions of law prospective jurors may be excluded from service, namely, (i) exclusion upon peremptory challenge, (ii) exclusion for good cause; and (iii) exclusion because the requisite number of jurors, including alternate jurors, have already been impaneled in a particular case. Those other occasions for the exclusion of qualified jurors are well defined in the law. Oth-

erwise than by exclusion under those circumstances, if a qualified juror is drawn from the qualified wheel and he is not excused upon a showing of undue hardship, extreme inconvenience, or public necessity, he has the obligation to serve and is guaranteed the opportunity to serve. See Section 1.

Action in Adopting Jurisdictions

Variations from Official Text:

Idaho. In subsec. (b), inserts "or a duly authorized court official appointed by the administrative district judge" following "by the court".

North Dakota. In subsec. (b), omits "only" preceding "upon a showing".

Library References

Jury ⟹75.
C.J.S. Juries §§ 201, 205.

Notes of Decisions

Court's own motion 2
Criminal charges pending against juror 4
Discretion of court 1
Relationship to party 3

1. Discretion of court

Trial courts have discretionary authority to excuse prospective jurors, but such discretion must not be exercised illogically or arbitrarily, and a reasonable exercise of discretion will not be interfered with on appeal. Holt v. State, 1977, 365 N.E.2d 1209, 266 Ind. 586.

2. Court's own motion

Neither statute providing that court, on motion of either party in an action, may examine any person called as a juror, and if it appears from his answers or from any competent evidence that he does not stand indifferent in cause, may call another juror and place him in that juror's stead, nor statute which provides exclusive means by which person accused of crime, state or party in a civil case may challenge jury on ground that jury was not selected in conformity with statute, can be viewed to deprive court of its own right to set aside or excuse a juror once it has been ascertained that the juror was not or could not be expected to be impartial. State v. Franzen, Me.1983, 461 A.2d 1068.

3. Relationship to party

No legal error was committed when court excused as juror wife of defendant on court's own initiative; court properly exercised its judicial discretion. State v. Franzen, Me.1983, 461 A.2d 1068.

4. Criminal charges pending against juror

Trial court did not abuse its discretion in excusing a prospective juror prior to voir dire examination, in view of fact that deputy prosecutor and a deputy sheriff submitted statements that the juror stood charged with an unrelated crime and that he was, in fact, appearing in another courtroom that day. Morgan v. State, 1981, 419 N.E.2d 964, 275 Ind. 666.

§ 12. [Challenging Compliance with Selection Procedures]

(a) Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this Act in selecting the grand or petit jury.

(b) Upon motion filed under subsection (a) containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this Act, the moving party is entitled to present in support of the motion the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with this Act, the court shall stay the proceedings pending the selection of the jury in conformity with this Act, quash an indictment, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the State, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this Act.

(d) The contents of any records or papers used by the jury commissioner or the clerk in connection with the selection process and not made public under this Act (Section 5(c) and 9(e)) shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (a), until after the master jury wheel has been emptied and refilled (Section 6) and all persons selected to serve as jurors before the master jury wheel was emptied have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (a).

COMMENT

This section establishes the exclusive means for challenging a jury on the grounds that its selection was otherwise than in conformity with the provisions of this Act. The challenge must be made before the trial jury is sworn or within 7 days after discovery or constructive discovery of the grounds of the challenge, whichever occurs earlier. A defendant may not complain about the make-up of the panel; his objection can go only to the manner of selection. See *Pinkney v. United States*, 380 F.2d 882 (5th Cir.1957).

This section is derived from the Federal Act, 28 U.S.C.A. § 1867. The Senate Committee Report on the bill which became the Federal Act had the following to say in regard to the exclusivity provision (Subsection (c) in the Uniform Act), which in the Federal Act is Section 1867(e):

"Subsection (e) makes clear that the procedures prescribed in this section are the exclusive means for challenging compliance with the statute. Challenge procedures existing under other laws are left intact for purposes of asserting rights created by other laws and for enforcing constitutional rights, but such other procedures may not be used to challenge compliance with this statute. Your committee feels constrained to recognize that these alternatives for raising rights created by other statutes and for raising constitutional challenges are not affected by the Act. This recognition is particularly apt in light of recent Supreme Court decisions indicating that the manner in which constitutional rights may be raised cannot be narrowly prescribed. See, e.g., *Henry v. Mississippi*, 379 U.S. 443, 447 (1965); *Douglas v. Alabama*, 380 U.S. 415, 422 (1965)."

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsecs. (a) and (b), inserts "information, or complaint" following "indictment".

North Dakota. In subsecs. (a) and (b), inserts "or information" following "indictment", wherever appearing.

Library References

Jury ⚬=82, 114 et seq.
C.J.S. Juries §§ 163, 260 et seq.

Notes of Decisions

Generally 1
Courts' own motion 6
Duty of court to provide information concerning juror 4
Exclusiveness of remedy 2
Inspection of records, papers and lists 3
Time for challenge 5
Waiver 7

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1. Generally

Challenge under Uniform Jury Service and Selection Act may be based broadly upon showing that statutory violation has substantially affected random nature and objectivity of jury selection process. State v. Lopez, App.1984, 692 P.2d 370, 107 Idaho 726.

Whether a juror reveals any enmity or bias toward the defendant or the state is a factor to be considered in determining a challenge for cause. People v. Abbott, Colo.1984, 690 P.2d 1263.

Historically, challenges to the jury array have been allowed only on a showing of material departures from the requirements of the law governing the selection of veniremen. Payne v. Russ Vento Chevrolet, Inc., Colo.App.1974, 528 P.2d 935.

Civil rule providing that any party may challenge the array of jurors by motion setting forth particularly the cause of challenge merely establishes the method for a challenge to array to be invoked and does not extend the allowable causes of challenge beyond those defined in the Uniform Jury Selection Service Act. Payne v. Russ Vento Chevrolet, Inc., Colo.App.1974, 582 P.2d 935.

2. Exclusiveness of remedy

Statutory procedures for challenging compliance with jury selection procedures constitute exclusive means for such a challenge. People v. Chavez, Colo.App.1975, 545 P.2d 716.

3. Inspection of records, papers and lists

An unqualified right to inspection of jury lists, in connection with preparation and presentation of a motion challenging jury selection procedures, was required not only by the plain text of the Jury Selection and Service Act but also by the statute's overall purpose of insuring "grand and petit juries selected at random from a fair cross section of the community." Test v. U.S., Colo.1975, 95 S.Ct. 749, 420 U.S. 28, 42 L.Ed.2d 786.

Board of supervisors' minutes, on which were recorded the names placed in jury "wheel" or "pool," were public records, open to the inspection of any interested persons, especially litigants and their attorneys. Watkins v. Green, C.A.Miss.1977, 548 F.2d 1143.

4. Duty of court to provide information concerning juror

Trial court does not have duty to provide defendant with information concerning prospective jurors sufficiently in advance to allow defendant to discover "adequate grounds of substantial failure to comply" with Uniform Jury Selection and Service Act. State v. Ruybal, App.1982, 643 P.2d 835, 102 Idaho 885.

5. Time for challenge

Defendant's challenge to the array, based on noncompliance with statutory requirements respecting selection for, or exemption from, service on jury panel, was timely made before trial. State v. Franzen, Me. 1983, 461 A.2d 1068.

It was untimely for defendant to challenge jury selection process on appeal where defendant did not use reasonable diligence in asserting his rights at trial court. State v. Ruybal, App.1982, 643 P.2d 835, 102 Idaho 885.

6. Court's own motion

Neither statute providing that court, on motion of either party in an action, may examine any person called as a juror, and if it appears from his answers or from any competent evidence that he does not stand indifferent in cause, may call another juror and place him in that juror's stead, nor statute which provides exclusive means by which person accused of crime, state or party in a civil case may challenge jury on ground that jury was not selected in conformity with statute, can be viewed to deprive court of its own right to set aside or excuse a juror once it has been ascertained that the juror was not or could not be expected to be impartial. State v. Franzen, Me.1983, 461 A.2d 1068.

7. Waiver

Where defendant specifically accepted jury as sworn prior to moving for mistrial, he waived issue that prospective juror's comment that she would have trouble affording defendant a presumption of innocence because she knew him too well was error. Hise v. State, Ind. 1983, 452 N.E.2d 913.

§ 13. [Preservation of Records]

All records and papers compiled and maintained by the jury commissioner or the clerk in connection with selection and service of jurors shall be preserved by the clerk for 4 years after the master jury wheel used in their selection is emptied and refilled (Section 6) and for any longer period ordered by the court.

COMMENT

Derived from the Federal Act, 28 U.S.C.A. § 1868.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads: "After the master jury wheel is emptied and refilled and all persons selected to serve as jurors have been discharged, all records and papers compiled and maintained by the jury commissioner or the clerk shall be preserved by the clerk for such period as shall be prescribed by rule of the supreme court."

Idaho. Substitutes "two (2) years" for "4 years".

North Dakota. Omits "for 4 years" and substitutes "as ordered by the supreme court" for "and for any longer period ordered by the court".

Library References

Jury ⚬=69.
Records ⚬=13, 21, 22.

C.J.S. Juries § 169.
C.J.S. Records §§ 34, 40, 73 to 76.

§ 14. [Mileage and Compensation of Jurors]

A juror shall be paid mileage at the rate of [10] cents per mile for his travel expenses from his residence to the place of holding court and return and shall be compensated at the rate of [$20.00] for each day of required attendance at sessions of the court.

COMMENT

Compensation more adequate than has commonly been provided and also reimbursement for at least travel expenses should accompany the expanded obligation for jury service. Also, more adequate compensation will tend to reduce the occasions for excusing prospective jurors under Section 11 because of financial hardship.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads: "A juror shall be paid fees and mileage as prescribed in article 6 of chapter 56, C.R.S.1963."

Idaho. Section reads: "A juror shall be paid mileage for his travel expenses from his residence to the place of holding court and return at the same rate per mile as established by resolution of the county commissioners for county employees in the county where the juror resides, and shall be compensated at the following rate, to be paid from the county treasury:".

"(1) five dollars ($5.00) for each one-half (½) day, or portion thereof, unless the juror travels more than thirty (30) miles from his residence in which event he shall receive ten ($10.00) for each one-half (½) day or portion thereof;

"(2) Ten dollars ($10.00) for each day's required attendance at court of more than one-half (½) day."

North Dakota. Section reads: "A juror shall be paid mileage at the rate provided for state employees in section 54–06–09. A juror shall be compensated at the rate of twenty-five dollars for each day of required attendance at sessions of the district or county court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors shall be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall be paid by the county."

Library References

Jury ⚿77(1).
C.J.S. Juries § 207.

§ 15. [Length of Service by Jurors]

In any [2] year period a person shall not be required:

(1) to serve or attend court for prospective service as a petit juror more than [10] court days, except if necessary to complete service in a particular case;

(2) to serve on more than one grand jury; or

(3) to serve as both a grand and petit juror.

COMMENT

This section is derived from the Federal Act, 28 U.S.C.A. § 1866(e), although a maximum of 10 days service on a petit jury is suggested as against the thirty-day limitation of the Federal Act. The purpose of the section is stated in the Senate Committee Report on the bill which became the Federal Act:

"This provision is designed to distribute the 'burden' of jury service and to enhance the representative quality of juries. Moreover, since jury service involves direct participation in the democratic process, as many citizens as possible ought to have the chance to serve."

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads: "In any three-year period, a person shall not be required to serve or attend court for prospective service as a petit juror more than ten court days, except when necessary to complete service in a particular case; or to serve on more than one grand jury; or to serve as both a grand and petit juror or as may otherwise be provided by supreme court rule."

Idaho. Section reads:

"In any two (2) year period a person shall not be required:

"(1) To serve or attend court for prospective service as a petit juror more than ten (10) court days, except if necessary to complete service in a particular case:[;]

"(2) To be available for jury service for a period to exceed six (6) months; provided however, that the administrative district judge for the judicial district in which a county is located may by order specify a shorter term of required availability for jury service;

"(3) To serve on more than one (1) grand jury; or

"(4) To serve as both a grand and petit juror.

"Appearance for jury service, whether or not the roll is called, shall be credited toward required jury service."

Library References

Jury ⇐76.
C.J.S. Juries § 206.

§ 16. [Penalties for Failure to Perform Jury Service]

A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for noncompliance with the summons, he is guilty of criminal contempt and upon conviction may be fined not more than [$100] or imprisoned not more than [3] days, or both.

COMMENT

Derived from the Federal Act, 28 U.S.C.A. § 1866(g).

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. Section reads: "A person summoned for jury service who fails to appear or to complete jury service as directed may be served with a summons, by registered or certified mail, return receipt requested, requiring him to appear or to complete jury service as directed. Should such person not appear in response thereto, he may be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. If he fails to show good cause for noncompliance with the summons, he is guilty of criminal contempt and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than three days, or by both such fine and imprisonment."

North Dakota. Substitutes "punished as provided in subsection 2 of section 12.1-10-01." for "fined not more than [$100] or imprisoned not more than [3] days, or both."

Library References

Jury ⟹73, 74.
C.J.S. Juries §§ 203, 204.

§ 17. [Protection of Jurors' Employment]

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of criminal contempt and upon conviction may be fined not more than [$500] or imprisoned not more than [6] months, or both.

(c) If an employer discharges an employee in violation of subsection (a) the employee within [ ] days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

COMMENT

In substance derived from Section 13 of the 1969 Maryland Jury Act and Michigan C.L.A. § 600.1348. The civil remedy provided in subsection (c) parallels that provided in Section 5.202(6) of the Uniform Consumer Credit Code (relating to wrongful discharge for garnishment), with the addition of the allowance of a reasonable attorney's fee to the prevailing plaintiff.

Action in Adopting Jurisdictions

Variations from Official Text:

Colorado. In subsec. (c), the time period (brackets in Official Text) is thirty days.

Idaho. In subsec. (b), substitutes "three hundred dollars" for "$500".

In subsec. (c), the time period (brackets in Official Text) is 60 days.

North Dakota. Subsec. (b) reads: "Any employer who violates subsection 1 [subsec. (a) of uniform act] is guilty of a class B misdemeanor."

In subsec. (c), the time period (brackets in Official Text) is ninety days.

Library References

Master and Servant ⟹30(1), 34 et seq., 68, 73(1).
C.J.S. Master and Servant §§ 42, 47 et seq., 81 et seq., 92, 102 et seq.

§ 18. [Court Rules]

The [Supreme Court] may make and amend rules, not inconsistent with this Act, regulating the selection and service of jurors.

COMMENT

This section does not appear in either the Federal or Maryland Act [although those Acts do provide for local "plans" which are in effect rules]. It is added in order to enable the state's highest court to flesh out the provisions of the Act and to assure to the extent desirable that the same detailed methods of jury selection and administration of the Act are followed throughout the state or at least that any variations from uniformity are the result of conscious choice. In some respects the rules made by the state's highest court will serve the same function as the jury selection plan under the Federal Act. See also Section 5(a) authorizing the Supreme Court (or alternatively the Attorney General) to prescribe supplementary sources of names for the master list.

Mich.C.L.A. § 600.1353 gives rule-making power in regard to jury selection to the judges of each circuit court.

Library References

Courts ⇐78 et seq.
C.J.S. Courts § 170.

§ 19. [Severability]

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Library References

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

§ 20. [Short Title]

This Act may be cited as the Uniform Jury Selection and Service Act.

Library References

Statutes ⇐211.
C.J.S. Statutes § 350.

§ 21. [Application and Construction]

This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

Library References

Statutes ⇐226.
C.J.S. Statutes § 371 et seq.

§ 22. [Repeal]

The following acts and parts of acts are repealed:

(1)

(2)

(3)