

JAN 20 2010

A BILL FOR AN ACT

RELATING TO JURY SELECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Presently, Hawaii state law mandates that
2 juries be selected using the strike and replace method. Efforts
3 by Hawaii state judges to use a different method of jury
4 selection have been successfully challenged. In *State v.*
5 *Echineque*, the Hawaii supreme court overturned a conviction
6 because the trial judge used the struck jury method of jury
7 selection. The court stated, "[t]he judge . . . in his remarks
8 and the prosecution in its brief urge that the 'struck jury'
9 method of impanelment is superior to the 'strike and replace
10 jury' method of impanelment. . . . Such arguments should be
11 addressed to the legislature and not to the courts. Trial
12 judges are not free to disregard the statute and institute their
13 own methods of impaneling juries, no matter how superior they
14 may think their chosen method is." 73 Haw. 100 (1992).
15 The struck jury method, preferred by numerous authorities
16 and used in federal courts in Hawaii, has the following
17 advantages:



- 1 (1) It increases juror participation, since all members of
2 the panel respond to voir dire;
- 3 (2) It is capable of producing less bias in a jury than
4 the alternative;
- 5 (3) Challenges for cause and use of peremptories occur
6 outside the jurors' presence, eliminating the
7 embarrassment to a juror when excused in front of the
8 other panel members;
- 9 (4) The struck jury method avoids having to call upon
10 replacement jurors to give answers to questions that
11 might have been asked much earlier in the process and
12 expecting them to remember all the questions and their
13 answers;
- 14 (5) There is no reason to hold back on use of
15 peremptories, given full knowledge of counsel of who
16 will remain on the panel;
- 17 (6) Remedying a *Batson* violation is easier, since court
18 and counsel can view all the strikes and a ruling can
19 be made before any juror is excused; under the strike
20 and replace system voir dire must begin anew if a
21 *Batson* violation is found; and



1 (7) Overall, it takes no more time than the strike and
2 replace method.

3 The purpose of this Act is to remove the requirement that
4 the strike and replace method be used for jury selection in
5 Hawaii state courts, and permit judges and attorneys the
6 flexibility to choose a method of jury impanelment.

7 SECTION 2. Section 635-26, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§635-26 Impaneling.** [~~(a) At the trial of any cause~~
10 ~~requiring a jury in any circuit or district court, the clerk of~~
11 ~~the court shall draw a jury by lot, to the number of twelve,~~
12 ~~from the box containing the names of persons who have been duly~~
13 ~~summoned to attend as trial jurors and who are not excused from~~
14 ~~attendance. If any of the twelve are challenged and set aside,~~
15 ~~the clerk shall continue to draw by lot from the box until~~
16 ~~twelve impartial jurors are obtained, who then shall be sworn as~~
17 ~~the jurors for the trial of the cause. If so directed by the~~
18 ~~court, additional jurors shall be drawn and impaneled to sit as~~
19 ~~alternate jurors.~~
20 ~~—(b)] Upon the stipulation of the parties, the jury may~~
21 consist of a number less than twelve."

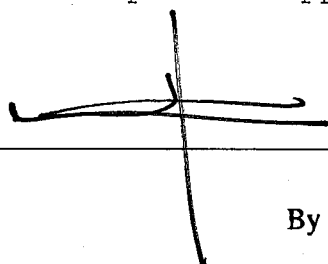


1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:



By Request



Report Title:
Jury Selection

Description:
Removes the requirement that juries be selected using the strike and replace method.

