

**"CHAPTER 612
JURORS**

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Law Journals and Reviews

The Prosecutor's Duty to Disclose Exculpatory Evidence to the Grand Jury: Did the Hawaii Supreme Court Retreat from Fundamental Fairness? 2 UH L. Rev. 145 (1979).

Case Notes

Trial court's reassigning from the jury venire to other trials occurring that day potential jurors who admitted having knowledge about the case did not result in a "substantial failure to comply" with the provisions of this chapter and did not prejudice defendant. 98 H. 1, 41 P.3d 157 (2002).

"[PART I. SELECTION AND SERVICE]"

Revision Note

Part heading added pursuant to §23G-15.

[\$612-1] 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 chapter to be considered for jury service in this State and an obligation to serve as jurors when summoned for that purpose. [L 1973, c 191, pt of §1]

Cross References

Right to trial by jury of the "district" conferred by Const. art. I, §14. "District" means the judicial circuit, §806-17.

Law Journals and Reviews

State v. Levinson: Limitations on a Criminal Defendant's Use of Peremptory Challenges. 13 UH L. Rev. 279 (1991).

" **§612-2 Prohibition of discrimination.** A citizen shall not be excluded from jury service in this State on account of race, color, religion, sex, national origin, economic status, or physical disability, except as provided in section 612-4(b)(1). [L 1973, c 191, pt of §1; am L 1976, c 159, §9; am L 2007, c 122, §1]

" **§612-3 Definitions.** As used in this chapter:

"Circuit" refers to a judicial circuit, as specified in section 603-1.

"Clerk" and "clerk of the court" means the chief court administrator for a circuit, any authorized deputy chief court administrator, and any other person designated by the chief court administrator or the court to perform the functions under this chapter.

"Court" means the circuit and district courts of this State, and includes, when the context requires, any judge of the court. When there is an administrative judge, any administrative powers granted by this chapter may be exercised by that judge or the judge's designee, unless otherwise provided.

"Disability" means the state of having a physical or mental impairment that substantially limits one or more of a person's major life activities, having a record of such an impairment, or being regarded as having such an impairment.

"Felony" means a crime as defined in section 701-107(2).

"Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors.

"Name", when used in connection with prospective jurors, includes identifying numbers of the jurors. [L 1973, c 191, pt of §1; am L 1976, c 159, §10; gen ch 1985; am L 1993, c 104, §1; am L 2007, c 122, §2]

" **§612-4 Grounds of qualification and disqualification.** (a) A prospective juror is qualified to serve as a juror if the prospective juror:

- (1) Is a citizen of the United States and of the State;
- (2) Is at least eighteen years old;
- (3) Is a resident of the circuit; and
- (4) Is able to read, speak, and understand the English language.

(b) A prospective juror is disqualified to serve as a juror if the prospective juror:

- (1) Is incapable, by reason of the prospective juror's disability, of rendering satisfactory jury service; but a prospective juror claiming this disqualification may be required to submit a physician's, physician assistant's, or advanced practice registered nurse's certificate as to the disability, and the certifying physician, physician assistant, or advanced practice registered nurse is subject to inquiry by the court at its discretion;

- (2) Has been convicted of a felony in a state or federal court and not pardoned; or
- (3) Fails to meet the qualifications in subsection (a). [L 1973, c 191, pt of §1; gen ch 1985; am L 1996, c 168, §1; am L 2007, c 122, §3; am L 2009, c 151, §22; am L 2014, c 45, §15]

Cross References

Disqualification of judges, see §601-7.

Case Notes

Membership in police force no disqualification. 187 F.2d 719 (1951).

Fact that jury commissioners rejected for service with the grand jury persons convicted of misdemeanors though rejection was not legally required, did not invalidate jury list. 105 F. Supp. 727 (1952).

Jury competence is an individual rather than a group or class matter. 105 F. Supp. 727 (1952).

A juror is not disqualified to sit in a murder trial because juror is a remote connection by marriage of the deceased. 3 H. 381 (1872).

Reference to race permitted under prior laws. 5 H. 501 (1885).

Person holding commission as special constable, unpaid, not disqualified. 8 H. 10 (1890).

Serving in jury not considered holding public office and legislator qualified. 8 H. 434 (1892).

Juror's opinion formed on general talk leaving unconscious tendency one way or another, or find juror has sufficient knowledge of English though unable to define "impartial", etc. 20 H. 7 (1910).

Demand for trial by jury in prayer of complaint insufficient. 24 H. 777 (1919).

Action to quiet title, trial by jury. 28 H. 1 (1924), aff'd 7 F.2d 325 (1925).

Examination on voir dire, right to reject not to select. 30 H. 697 (1929).

Right to trial by jury, in partition. 30 H. 860 (1929).

Subdivision (1) does not include sex. In the absence of a showing of improper motive or injury to defendant, the fixing by the jury commission of a ratio between men and women to be included on the jury list, although irregular and not authorized by statute, does not warrant a quashal of an indictment. 45 H. 247, 365 P.2d 460 (1961).

Where prospective jurors were able to speak and understand English, trial court properly refused to excuse jurors for cause. 80 H. 107, 905 P.2d 613 (1995).

" **[§612-5] Disqualification by interest.** No person shall sit as a juror in any case in which the person's relative by affinity or by consanguinity within the third degree is interested, either as a plaintiff or defendant, or in the issue of which the juror has, either directly or through such relative, any pecuniary interest. [L 1973, c 191, pt of §1; gen ch 1985]

" **§612-6 Exempt when.** *[Section effective until February 28, 2017. For section effective March 1, 2017, see below.]* A person may claim exemption from service as a juror if the person is:

- (1) An elected official while the legislature is in session, or a judge of the United States, State, or county;
- (2) An actively practicing physician or dentist;
- (3) A member of the armed forces or militia when on active service and deployed out-of-state;
- (4) An active member of a police or fire department;
- (5) A person who has served as a juror, either in a court of this State or the United States District Court for the District of Hawaii, within one year preceding the time of filling out the juror qualification form;
- (6) An active member of an emergency medical services agency;
- (7) A person living more than seventy miles from the court for which jury service is required; or
- (8) A person eighty years of age or older.

For purposes of this section, "emergency medical services agency" means any government agency, private agency, or company that provides ambulance services, emergency medical services, or disaster medical services. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §3; am L 2006, c 313, §1; am L 2007, c 87, §1]

§612-6 Exempt when. *[Section effective March 1, 2017. For section effective until February 28, 2017, see above.]* A person may claim exemption from service as a juror if the person is:

- (1) An elected official while the legislature is in session, or a judge of the United States, State, or county;
- (2) An actively practicing physician or dentist;
- (3) A member of the armed forces or militia when on active service and deployed out-of-state;
- (4) An active member of a police or fire department;
- (5) A person who has served as a juror, either in a court of this State or the United States District Court for the District of Hawaii, within one year preceding the time of filling out the juror qualification form;
- (6) An active member of an emergency medical services agency;
- (7) A person living more than seventy miles from the court for which jury service is required;
- (8) A person eighty years of age or older; or
- (9) A woman who is breastfeeding a child or expressing breast milk for a period of two years from the birth of the child.

For purposes of this section, "emergency medical services agency" means any government agency, private agency, or company that provides ambulance services, emergency medical services, or disaster medical services. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §3; am L 2006, c 313, §1; am L 2007, c 87, §1; am L 2016, c 46, §2]

" **§612-7 Excused when, for cause.** A prospective juror shall not be excused by a court for slight or trivial cause, but only when it appears that jury duty would entail a serious personal hardship, or that for other good cause the prospective juror should be excused either temporarily or otherwise. [L 1973, c 191, pt of §1; gen ch 1985; am L 2007, c 122, §4]

Case Notes

Order excusing a juror from further duty is in the discretion of the court and cannot be reversed by mandamus. 13 H. 332 (1901); 21 H. 66 (1912).

Where prospective juror was prosecutor currently employed by same office as prosecutor trying the defendant, court shall imply bias as a matter of law and dismiss prospective juror for cause. 86 H. 195, 948 P.2d 1036 (1997).

Blood relationship between juror's and defendant's families was not "slight or trivial cause"; thus, it was within court's discretion to excuse juror for cause. 93 H. 344 (App.), 3 P.3d 510 (2000).

" **§612-8 Pay of jurors; mileage fee; bus fare; parking violations exemption.** (a) Each juror or prospective juror shall be paid \$30 for each day of actual attendance at court. In addition, each juror or prospective juror shall be paid the higher of either:

(1) 33 cents for each mile actually and necessarily traveled in going to and from court; or

(2) The cost of an adult bus fare to and from the court. A person who appears at the time for which that person is summoned to court for jury duty may be allowed the mileage fee or bus fare although the person, upon that person's request, is subsequently excused or exempted from jury service.

(b) In the discretion of the court, any juror who incurs expenses for transportation, board, and lodging as a result of the distance the juror resides from the location of the court, may be reimbursed for actual expenses.

(c) All jurors or prospective jurors shall be exempt from any prosecution, penalty, or fine as a result of a parking violation committed in connection with the juror or prospective juror appearing at court for jury duty; provided that the juror or prospective juror shall present any parking citation received during this time to the court clerk of the circuit court or district court or the jury pool clerk, as appropriate, who shall verify that the juror or prospective juror was serving on jury duty or appearing in court in response to a summons for jury duty at the time the citation was received. The clerk of the circuit court or district court or the jury pool clerk, as appropriate, shall keep an attendance roll in which shall be entered each juror's or prospective juror's name, each date the juror or prospective juror was summoned and appeared for jury duty, and the date the juror or prospective juror was discharged from service. The supreme court shall adopt rules necessary to effect this section. [L 1973, c 191, pt of §1; am L 1974, c 147, §1; am L 1985, c 261, §1; am L 1986, c 251, §1; am L 1988, c 189, §1 and c 281, §1; am L 1993, c 104, §2; am L 2007, c 122, §5; am L 2015, c 17, §1]

" **§612-9 Certificate for jury pay.** At least once each month, the clerk shall certify the number of days each juror or prospective juror has attended court and the amount due to the juror or prospective juror. [L 1973, c 191, pt of §1; gen ch 1985; am L 2007, c 122, §6]

" **§612-10 REPEALED.** L 1987, c 366, §16.

" **§612-11 Master list.** (a) Each year the clerk for each circuit shall compile a master list. The master list shall consist of all voter registration lists for the circuit, which shall be supplemented with other lists of persons residing in the circuit, such as lists of taxpayers and licensed drivers. Notwithstanding any other law to the contrary, including section 235-116, the lists used to compile the master list shall contain available identifying information of the persons on the list, such as last name, first name, middle initial, date of birth, gender, address, and social security number. Each person's name shall appear only once on the master list.

(b) Whoever has custody, possession, or control of any of the lists used in compiling the master list, shall make the list available to the clerk for inspection, reproduction, and copying at all reasonable times. [L 1973, c 191, pt of §1; am L 1987, c 366, §4; am L 2002, c 92, §2; am L 2007, c 122, §7]

Case Notes

The mere fact that the trial jurors drawn from the jury list did not contain percentages of persons of nativity of the citizenry in the court's jurisdiction did not show that the list itself violated the jury statute. Violation occurs if there is systematic or arbitrary exclusion of or discrimination between persons of a particular race. 118 F.2d 667 (1941).

Evidence disclosing that the employer entrepreneur group comprised but about 3.6% of the population of the county but comprised 42% of the grand jury list and that male laborers comprised approximately 79% of male population of county but 12% of grand jury list established that an erroneous method had been employed in selecting the grand jury list. 82 F. Supp. 65, 117 (1948), reversed on other grounds. 187 F.2d 860 (1951).

Proportional representation. 103 F. Supp. 1 (1952); 105 F. Supp. 727 (1952).

Selection of jurors under earlier amendments. 17 H. 23 (1905); 18 H. 46 (1906); 22 H. 618 (1915).

Grand jury not incompetent through omission to apportion list of persons from different precincts. 29 H. 7 (1926).

Denial of plea in bar and motion to dismiss indictment upon ground selection was not made without reference to race, place of nativity, or sex was not erroneous. 45 H. 247, 365 P.2d 460 (1961).

" **§612-12 Master jury wheel.** Each year the clerk for each circuit, by random selection, shall place in the master jury wheel the names of prospective jurors taken from the master list, in such number as the clerk determines should be processed in order to provide the number of jurors required for the ensuing year. From time to time an additional number may be determined by the clerk or ordered by the court to be placed in the master jury wheel. [L 1973, c 191, pt of §1; am L 1987, c 366, §5]

" **§612-13 Juror qualification form.** (a) The clerk shall prepare an alphabetical list of the names in the master jury wheel, which shall not be disclosed to any person other than pursuant to this chapter or specific order of the court. The clerk shall mail to every name on the list a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The form shall be subject to approval by the court and shall elicit the name, address, and age of the prospective juror, other information pertinent to disqualification or exemption from jury service, and any other matters as may be ordered by the court. The form also shall contain the prospective juror's declaration that the prospective juror's responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgment 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 thirty 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 the prospective juror and shall indicate that the person has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form completed by a prospective juror, the clerk may return the form with instructions to the prospective juror to make such additions or corrections as may be necessary and to return the form to the clerk within ten days after its receipt. Upon the failure or refusal of any person duly receiving the juror qualification form to complete and return it as required or instructed, the court, after first summoning the person to appear before the clerk to complete or correct the form, may punish the person for contempt.

(b) At the time of the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, any prospective juror may be required or permitted 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 the prospective juror's responses to questions contained on the form and grounds for the prospective juror's exemption, excuse, or disqualification. Any information thus acquired by the court or clerk shall be noted.

(c) 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 petty misdemeanor.

(d) Juror qualification forms shall not be deemed a public record, nor shall they become part of the court record unless the court so orders and places the forms under the seal of the court; provided that the contents of the completed juror qualification forms, redacted to exclude a juror's social security number, driver's license number, home and business telephone numbers, street address, and other personal information and identifiers, may be disclosed:

- (1) To the litigants; or
- (2) When permitted in accordance with section 612-23. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §6; am L 2002, c 92, §3; am L 2007, c 122, §8]

" **§612-14 Qualified jury wheel.** (a) Upon return of the juror qualification forms, the clerk, after careful investigation in each case, shall select for prospective jury service all those persons whom the clerk believes are qualified and not exempt; provided that any person who is exempt may be selected if the person waives the person's exemption.

(b) The names of the persons so selected shall be placed in the qualified jury wheel, to be used in compiling lists of prospective jurors subject to service during the ensuing year; provided that the clerk, with the approval of the court, may excuse a prospective juror for any cause set forth under section 612-7, in which case the name of the excused person shall not be placed in the qualified jury wheel.

(c) The clerk may place in the qualified jury wheel for further service the name of any person who, in the previous jury year, wilfully or without reasonable excuse failed to appear as summoned. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §7; am L 1996, c 136, §1; am L 2007, c 122, §9]

" **§612-15 Certified jury lists.** (a) Every year, the clerk of each circuit shall make and file, not later than January 5, one or more certified lists of the names and addresses of such number of persons as the court may order, subject to serve as grand jurors during the ensuing year from and after January 15.

Every year, the clerk of each circuit shall likewise make and file, not later than December 20, a separate certified list of the names and addresses of citizens subject to serve as trial jurors during the ensuing year, from and after January 1, the number for each circuit, which shall be as the clerk considers necessary. The certified lists of prospective grand jurors and trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. Upon the order of the court, from time to time, additional lists of persons subject to serve as grand jurors shall be compiled and filed, and additional names shall be added to a grand or trial jury list; provided that all additions shall be made by drawing from the qualified jury wheel for the appropriate year. When more than one grand jury list has been compiled, the sequence in which the lists are to be used shall be designated by the clerk according to the sequence of drawing. The names on the certified lists shall be open to public inspection, after redaction of addresses and other personal information and identifiers, subject to orders of the court.

(b) In the second, third, and fifth circuits, any circuit judge, and in the first circuit, a majority of the circuit judges, at any time, for reasons appearing sufficient to the judge or them, may order the dissolution of any certified list of prospective grand or trial jurors and order the clerk to make and file a new list, which may include any of the persons so discharged, to serve for the remainder of the year. The new list shall be compiled in the manner prescribed by the court. Until the new list is filed, grand or trial jurors may be drawn from a list thereof compiled and filed by the judge or judges making the order or one or more of them designated by the remainder, which list shall expire not later than thirty days after the filing thereof unless the period is extended, except that trial jurors may sit beyond the end of the period prescribed in this subsection and after the filing of a new list by the clerk, for the trial of any case in which the selection of the jury has already commenced. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §8; am L 1993, c 159, §1; am L 2002, c 92, §4; am L 2007, c 122, §10]

" **§612-16 Grand jury.** (a) The court shall order one or more grand juries to be impaneled at such times as the public interest requires; provided that there shall be an annual initial impaneling not later than January 15.

(b) For the impaneling of a grand jury, the prospective jurors on a certified list of grand jurors shall be summoned and the names of those who are present, and not disqualified,

exempted, or excused, shall be placed in an appropriate container from which a drawing by lot shall be conducted in order to draw a sufficient number of names to constitute a grand jury. A sufficient number of additional names on a certified list, as determined by the court, shall be drawn so that alternate grand jurors may be designated to serve as grand jurors in case of any vacancy occurring on a grand jury. The drawing shall be made in open court in the presence of the judge, no earlier than one week after a publication of notice of the time and place of drawing in a newspaper of general circulation published within the circuit for which the grand jury is drawn; provided that if there is no such newspaper, then after at least one week's posting of such notice in at least three conspicuous places in the circuit.

(c) A certificate listing the names of the grand jurors and alternate grand jurors, and stating the essential facts of the drawing, signed by the judge and attested by the clerk, shall be filed.

(d) The grand jury, being impaneled and sworn, shall be charged by the court. The alternate grand jurors shall also be sworn and charged by the court, but shall not be impaneled. In charging the grand jurors and alternate grand jurors, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the grand jurors and alternate grand jurors from time to time, as it may deem necessary.

(e) Effective January 2, 1992, for the courts of the first circuit of the State of Hawaii, and effective January 2, 1993, for the courts of all other circuits of the State, a grand jury shall serve for a period of one year after being impaneled, unless sooner discharged by the court; provided that a grand jury may sit beyond the one-year period to complete any matter for which the grand jury was impaneled. [L 1973, c 191, pt of §1; am L 1987, c 366, §9; am L 2007, c 122, §11]

Cross References

Indictment by grand jury is required in infamous cases, except in land or naval forces, or militia in actual service in time of war or public danger: U.S. Const., 5th Am.; Const. art. I, §10. See also §806-7.

Grand jury counsel, see §§612-51 to 612-60.

Rules of Court

Grand jury to consist of sixteen members, see HRPP rule 6(a).
A sufficient number to be summoned, see HRPP rule 6(a).
Oath of grand jurors, see HRPP rule 6(h).
Foreperson of grand jury, see HRPP rule 6(c).
Secrecy of proceedings, who may be present, see HRPP rule 6(d), (e).

Case Notes

Objections, manner drawing and impaneling grand jury. 13 H. 413 (1901).

Party who neglects to claim right of challenge to grand jury, before they retire, waives it, although party may be imprisoned at time. 13 H. 413 (1901); 15 H. 139 (1903); 22 H. 618 (1915).

Right to challenge before grand jury retires. 13 H. 413 (1901); 15 H. 139 (1903); 22 H. 618 (1915).

When record is silent as to manner of drawing grand jury supreme court will presume that it was regularly and properly drawn. 13 H. 413 (1901).

Assistance of counsel at impaneling of grand jury. 15 H. 139 (1901).

A person accused of an offense has no right to appear before or to have witnesses heard in person's behalf by the grand jury. 15 H. 612 (1904).

In absence of any showing to contrary, presumption is that grand jurors who found indictment were good and lawful persons and that not less than twelve concurred in finding. 15 H. 612 (1904); 19 H. 496 (1909); 20 H. 240 (1910); 21 H. 66 (1912); 22 H. 116 (1914).

Sheriff may not testify as to facts occurring in the session of the grand jury. 17 H. 126, 131 (1905).

Prior to statute, oath of secrecy could not be required of a witness before a grand jury by one of the judges of circuit court of the first circuit. 17 H. 341 (1906).

Advantage cannot be taken of an irregularity in the drawing of trial jurors unless it clearly appears that the party objecting was injured. 19 H. 496, 497 (1909), criticized on other grounds. 33 H. 167, 172 (1934).

When only twelve grand jurors appear, others of the twenty-three having been excused or not served, court may direct drawing of five additional names from appropriate jury box to fill panel. 20 H. 240 (1910).

Where twenty-three grand jurors had been summoned, jurors not served, excused, etc., only twelve appearing, court may draw additional names to fill panel, invalid. 20 H. 240 (1910).

Objection to irregularities of drawing grand jurors. 22 H. 618 (1915).

Motion to quash indictment, defendant warned before testifying to grand jury. 24 H. 621 (1919).

Grand jury not incompetent through omission to apportion list of persons from different precincts. 29 H. 7 (1926).

Evidence presented to grand jury must be recorded. 51 H. 589, 465 P.2d 549 (1970).

Under its supervisory powers over grand jury proceedings, court may disqualify an attorney from attending the grand jury where justice requires it. 57 H. 289, 554 P.2d 1131 (1976).

Member of prosecution serving as agent of grand jury held unconstitutional. 57 H. 574, 560 P.2d 1309 (1977).

Prosecutor is not required to present to grand jury evidence which tends to negate guilt of accused unless clearly exculpatory. 60 H. 241, 589 P.2d 517 (1978).

Prosecutorial misconduct before grand jury must be extreme and clearly infringe upon jury's decision making function in order to serve as basis for quashing indictment. 62 H. 209, 614 P.2d 373 (1980).

Presentation of evidence--prosecutor's duty; hearsay evidence. 62 H. 518, 616 P.2d 1383 (1980).

Secrecy of proceedings and disclosure. 62 H. 613, 617 P.2d 1222 (1980).

Exclusion of deputy public defender from the courtroom while impaneling the grand jury violated section. 70 H. 443, 774 P.2d 242 (1989).

Sufficiency of evidence to support indictment. 1 H. App. 396, 620 P.2d 740 (1980).

Unless prosecutor's misconduct clearly infringed on the jury's decision-making function it should not be relied on for dismissal of the indictment. 1 H. App. 430, 620 P.2d 263 (1980).

" **§612-17 Trial jury.** (a) This section shall be applicable to the drawing of a trial jury and service thereon.

(b) Whenever a judge requires the services of a trial jury for use in proceedings before the judge or any other judge of the circuit, the judge may order the required number of jurors from the clerk. The clerk shall randomly select the names of prospective jurors from the certified list and shall compile and submit to the judge the selected names in alphabetical sequence, along with such other information as the judge may require.

(c) For the impaneling of a trial jury, the persons on the list of randomly selected prospective trial jurors ordered by a judge shall be summoned to attend and serve. The names of those summoned and present, and not disqualified, excused or exempted, shall be placed in an appropriate container, from which there

shall be drawn a sufficient number of names to constitute a trial jury. The drawing shall be by lot in open court under the supervision of the judge. If a jury cannot be chosen for the trial of a case from the names placed in the container before the drawing commenced, additional names may be placed in the container. For this purpose, additional names may be ordered and randomly selected from the certified list of prospective trial jurors, and the additional prospective jurors summoned. The judge may summon jurors from among bystanders on consent of all parties. All names initially ordered by the judge need not be exhausted before other names may be used in the drawing, and the names of additional prospective jurors summoned and present may be added to the container during the drawing.

(d) Prospective jurors in attendance, but not actually serving in a trial before the judge, shall be subject to such orders relative to further jury service as the judge deems appropriate, including service before other judges in the circuit.

(e) Each juror ordered by a judge shall serve for a period of one day, commencing from the first day the juror is required to appear for service; provided that any juror may be required to serve beyond the one-day period for the trial of any case in which the selection of the jury commenced within that period. Upon completion of service by all jurors ordered by the judge to serve, the jurors shall be returned to the clerk, who shall not transmit the jurors again to any judge until all other jurors have been exhausted and other jurors which served at a more remote time have been first transmitted for service.

(f) A judge may, having regard to the equitable distribution of jury service, excuse any juror after actual service in a trial. [L 1973, c 191, pt of §1; am L 1975, c 48, §2; gen ch 1985; am L 1987, c 366, §10; am L 1993, c 159, §§2, 3; am L 2002, c 92, §5; am L 2007, c 122, §12]

Case Notes

Not subject of review court discharging jury after seventeen hours of deliberation; when in opinion of court a case previously tried was so nearly parallel to case for trial that jurors who sat upon former case could not be free from bias it was proper to exclude them in a body, without separate examination. 7 H. 352 (1888).

Excusing of jurors in absence of statutory provision to the contrary lies in discretion of trial judge. 9 H. 288 (1893).

Temporary attack of sickness is not necessarily a reason for discharging a juror. 12 H. 159 (1899).

Order excusing juror from further duty within discretion of court. 13 H. 332 (1901).

Court declaring mistrial not reviewable except on clear showing of abuse of discretion. 24 H. 757 (1919).

Trial court's redaction of home street addresses and home and work telephone numbers on juror qualification forms did not violate this section and there was no substantial failure to comply with subsection (c). 85 H. 258, 942 P.2d 522 (1997).

Word "shall" in subsection (c) is "directory" rather than "mandatory". 85 H. 258, 942 P.2d 522 (1997).

" **§612-18 [Trial jury; additional requirements.]** (a) If the court so orders, prospective trial jurors shall be drawn and summoned, and further proceedings had as provided in section 612-17.

(b) In no case shall the trial jurors be chosen other than by lot, nor shall the trial jury be selected from the prospective jurors other than by lot in open court.

(c) The names of prospective jurors to be summoned to sit as a jury, and the contents of juror qualification forms completed by those jurors, shall be made available to the litigants concerned. [L 1973, c 191, pt of §1; am L 1987, c 366, §11; am L 1993, c 159, §4; am L 2007, c 122, §13]

Case Notes

Purpose of subsection (c) is to uphold a criminal defendant's constitutional guarantees of a presumption of innocence and an impartial jury. 83 H. 507, 928 P.2d 1 (1996).

" **§612-19 Summoning of prospective jurors.** (a) When so ordered by the court, the clerk shall transmit to the chief of police or a bailiff the names of prospective jurors to be summoned. The chief of police or bailiff, either personally or through an authorized subordinate, shall summon the persons named to attend the court by giving personal notice to each of the time and place of required appearance as fixed by order of the court. The court may order the summoning of prospective jurors by any officer of the court, and the service of summons by any form of personal notice, including notice by telephone.

(b) A prospective juror who, wilfully or without reasonable excuse, fails to attend after receipt of a summons by the court may be arrested and punished for contempt.

(c) The clerk may place in the qualified jury wheel for further service in the ensuing jury year the name of any

prospective juror who wilfully or without reasonable excuse failed to attend after receipt of a summons by the court. [L 1973, c 191, pt of §1; am L 1996, c 136, §2; am L 2007, c 122, §14]

Case Notes

It is the right of defendant to have jury drawn from jurors duly summoned, until the array is exhausted by challenges. 3 H. 154, 165 (1869); 7 H. 352 (1888).

In the absence of a law saying when jurors should be summoned, held that they should be summoned within a reasonable time before the term. 4 H. 439 (1881).

Where a venire for named persons selected under the statute was issued and also an open venire, with oral order to summon the same persons, it is immaterial whether the latter was invalid or whether an open venire could issue at all under our statutes, if the venire under the statute was valid. 15 H. 602, 604 (1904).

" **§612-20 Requests for exemption or excuse.** If a person who is exempt or who believes oneself to be entitled to be excused from jury duty, is summoned as a juror, even though the person did not request exemption or excuse previously, or was not exempted or excused by the clerk, the person may make the person's request for exemption or excuse to the judge of the court for which the person is summoned. The request may be made to the clerk or bailiff, who shall deliver it to the judge and, if sufficient in substance, it shall be received as an excuse for nonattendance in person. [L 1973, c 191, pt of §1; gen ch 1985; am L 1987, c 366, §12]

" **§612-21 Jurors disqualified, exempted, or excused.** Whenever a juror has been disqualified, exempted, or excused, that fact shall be noted, and the juror shall not be subject to service for the period of time commensurate with the nature and circumstances of the juror's disqualification, exemption, or excuse. [L 1973, c 191, pt of §1; gen ch 1993; am L 2007, c 122, §15]

" **§612-22 Trial jurors subject to one year of service; one day or one trial requirement.** The persons whose names are placed on the certified lists of prospective trial jurors filed by the clerk shall be subject to service for one year from and

after January 1 and until the filing of new certified lists; provided that trial jurors shall serve only one day or one trial during the year. Prospective jurors who are challenged at voir dire and excused, excused for cause, summoned but not called to a courtroom, or called to a courtroom but later excused shall return to the juror pool to await reassignment to another trial. Prospective jurors in the juror pool awaiting reassignment to another trial shall be discharged after it has been determined that their services will not be needed. Prospective jurors who are discharged from the juror pool shall be dismissed from service for the year; provided that prospective jurors who fail to appear as summoned may have their names placed in the qualified jury wheel for service in the ensuing jury year and where a request for deferment of service has been made and granted by the court, the period of time between the first date of summons to appear and the time that the prospective juror is next summoned for service may be tolled and may be applied to extend the eligibility of service if the prospective juror should not again be summoned or serve on an actual trial within the year. Prospective jurors who are accepted to serve on a jury shall complete the duration of the trial and shall be dismissed from service for the year. [L 1973, c 191, pt of §1; am L 1975, c 48, §1; am L 1987, c 366, §13; am L 1988, c 181, §1; am L 1993, c 159, §5; am L 1996, c 136, §3; am L 2007, c 122, §16]

" **§612-23 Challenging compliance with selection procedures.**

(a) Promptly after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the trial 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 chapter in selecting the grand or trial 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 chapter, the moving party is entitled to present in support of the motion the testimony of the clerk, any relevant records and papers not public or otherwise available used by the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a trial jury there has been a substantial failure to comply with this chapter and that the moving party has been prejudiced thereby, the court shall stay the proceedings pending the selection of the jury in conformity with

this chapter, 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 chapter.

(d) The contents of any records or papers used by the clerk in connection with the selection process shall not be disclosed, except as provided by other provisions of this chapter, in connection with the preparation or presentation of a motion under subsection (a), or upon order of the court. 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). [L 1973, c 191, pt of §1; am L 1987, c 366, §14]

Case Notes

Several defendants, counsel must state for which defendant peremptory challenge is made. 3 H. 90 (1869).

Where prosecuting witness after trial paid for dinner of some of the jurors at their request, held misconduct not of sufficient gravity to set aside verdict. 5 H. 64 (1884).

Where juror was incompetent but was passed by court and defendant was obliged to challenge juror peremptorily, defendant has no cause of complaint if defendant's challenges were not exhausted at the conclusion of examination. 8 H. 339 (1892); 11 H. 293 (1898).

Objection to method of selecting jury should be made before they are accepted. 10 H. 166 (1895).

Where after a juror is accepted, there occur to counsel reasons for objecting to juror not known to be existing when juror was accepted, a peremptory challenge may be allowed. 11 H. 293 (1898), questioned on other grounds. 46 H. 197, 210, 377 P.2d 609 (1962).

While disallowance of a proper cause of challenge will work a reversal of judgment, an improper allowance will not necessarily have this effect. 11 H. 293 (1898).

Motion to quash on irregularities drawing grand jury too late after indictment returned. 15 H. 139 (1903); 22 H. 618 (1915).

Overruling of a challenge to array of jurors and motion to quash venire, etc. 15 H. 602, 604 (1904).

Advantage cannot be taken of an irregularity in the drawing of trial jurors unless party objecting was injured. 16 H. 743 (1905); 19 H. 496 (1909); 21 H. 66 (1912); 22 H. 618 (1915).

Challenging. 22 H. 116 (1914).

Challenges to panel or grand jurors only by prosecuting officer or person held to answer criminal charge before grand jury is sworn. 22 H. 618 (1915).

Refusal to sustain challenges for proper cause, error. 23 H. 792 (1917).

Refusal to sustain challenges for proper cause necessitating peremptory challenges on part of the accused will be considered as prejudicial where accused compelled to exhaust all peremptory challenges before final selecting of jury. 23 H. 792 (1917).

Challenge to array of jurors drawn by commissioners of same political party, if true, invalidate jury. 24 H. 608 (1919).

Court may try facts alleged for challenge and if no legal grounds for objection may be summarily overruled. 24 H. 608 (1919).

Erroneous overruling objection to juror avails nothing to defendant if defendant does not finally exhaust peremptory challenges. 30 H. 685 (1928).

Challenge of jurors on examination on voir dire, is right to reject not to select. 30 H. 697 (1929).

In absence of improper motive or prejudice no advantage can be taken of the irregularity of the fixing of a ratio between men and women on the jury list. 45 H. 247, 365 P.2d 460 (1961).

Challenge to grand jury, timeliness. 46 H. 103, 375 P.2d 1 (1962).

Timeliness of challenge. 46 H. 103, 375 P.2d 1 (1962).

Foundation requirement is satisfied by substantial compliance. 57 H. 26, 548 P.2d 1402 (1976).

Trial court's reassigning from the jury venire to other trials occurring that day potential jurors who admitted having knowledge about the case did not result in a "substantial failure to comply" with the provisions of this chapter and did not prejudice defendant. 98 H. 1, 41 P.3d 157 (2002).

" **§612-24 Preservation of records.** All records and papers compiled and maintained by the clerk in connection with the selection and service of jurors shall be preserved by the clerk for four years after the termination of the prescribed period of service and for any longer period ordered by the court. [L 1973, c 191, pt of §1; am L 1987, c 366, §15]

" **[§612-25] Protection of jurors' employment.** (a) An employer shall not deprive an employee of the employee's employment, or threaten or otherwise coerce the employee 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 a petty misdemeanor.

(c) If an employer discharges an employee in violation of subsection (a) the employee within ninety days from the date of discharge 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 six weeks. If the employee prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [L 1973, c 191, pt of §1; gen ch 1985]

" **§612-26 Use of electronic or other means for drawing grand and trial juries.** Selections of citizens who are subject to jury duty and drawings of jury lists, may be made by electronic data processing or any other method to ensure random selection of jurors and implement the purposes of this chapter. [L 1973, c 191, pt of §1; am L 1993, c 159, §6; am L 2007, c 122, §17]

" **§612-27 Rules.** The supreme court is authorized to adopt, amend, and repeal rules of court, not inconsistent with the policies and objectives set forth in this chapter, regulating all aspects of the selection and management of grand and trial jurors, and setting forth policies, procedures, and forms for the selection and management of grand and trial jurors in the jury pools, in courtrooms, and in other appropriate circumstances in furtherance of the objectives of this chapter. [L 1987, c 366, §2; am L 2007, c 122, §18]

"PART II. GRAND JURY COUNSEL AND PROCEEDINGS

Revision Note

Part heading added pursuant to §23G-15.

§612-51 Grand jury counsel; appointment and removal. The chief justice of the state supreme court shall appoint one or more grand jury counsel for the four judicial circuits of the State, without regard to chapters 76 and 89. Right to removal shall rest with the chief justice. [L 1980, c 209, §2; am L 2002, c 148, §45]

" **§612-52 Grand jury counsel; qualifications.** The grand jury counsel shall be licensed to practice law before the supreme court of the State, and shall not be a public employee. [L 1980, c 209, §3]

" **§612-53 Grand jury counsel; length of term; extension of term; limitation on reappointment.** (a) Grand jury counsel shall serve for a term of one year following appointment.

(b) The term of a grand jury counsel may be extended when the matters for which the counsel was called to service cannot be completed before the end of the counsel's term. The extension shall be authorized by the chief justice where completion of such matters would be substantially extended or hindered by the assignment of another counsel.

(c) In no case shall grand jury counsel be reappointed to serve consecutive terms.

(d) The term of the grand jury counsel whenever practicable shall be such that it will not be coterminous with the term of the grand jury. [L 1980, c 209, §4]

" **§612-54 Grand jury counsel; call to duty.** Grand jury counsel shall be subject to call by the appointing authority during the counsel's term of office. Such a call for service shall include an estimate of the number of hours or days, or other reasonable approximation of the time that the grand jury shall desire counsel's services. No later than twenty-four hours after a call to service, the grand jury counsel shall notify the appointing authority whether or not the call for service is accepted. [L 1980, c 209, §5]

" **§612-55 Grand jury counsel; compensation.** The grand jury counsel shall be compensated on a daily basis at the same rate as per diem judges of the district court. [L 1980, c 209, §6]

Cross References

Per diem district court judges, see §604-2.

" **§612-56 Grand jury counsel; disqualification.** (a) Grand jury counsel shall disqualify oneself in any matter in which circumstances render substantial question upon the counsel's impartiality or which would jeopardize public confidence in the grand jury.

(b) The prosecutor may petition the court for disqualification of the grand jury counsel for cause. Upon a hearing, the court shall issue an appropriate order permitting or denying such petition. [L 1980, c 209, §7; gen ch 1985]

" **§612-57 Grand jury counsel; duties.** The grand jury counsel shall serve, upon request of the grand jury, as independent legal counsel to the grand jury, to be at the call of the grand jury during its proceedings in obtaining appropriate advice on matters of law after the grand jury has been sworn and charged by the court under section 612-16(d) and during the court's absence. The grand jury counsel may be present during grand jury proceedings, and if not present in the building shall be in the immediate vicinity to the building in which the grand jury meets, so that counsel will be readily available to the grand jury, but shall not participate in the questioning of the witnesses or the prosecution. The grand jury counsel's function shall be only to receive inquiries on matters of law sought by the grand jury, conduct legal research, and provide appropriate answers of law. [L 1980, c 209, §8; am L 1982, c 101, §2]

" **§612-58 Grand jury proceedings.** (a) Each grand jury proceeding conducted under the authority of the State shall be provided with access to grand jury counsel.

(b) The deliberation and the voting of the grand jury shall be private; provided that the grand jury may interrupt its deliberation or voting in order to call in the grand jury counsel for the purpose of making specific inquiries of counsel or may transmit written inquiries to counsel from the privacy of its deliberation or voting, but all such inquiries shall be restricted to matters of law.

(c) All inquiries made by the grand jury of the grand jury counsel and all exchanges between them shall be recorded verbatim and made part of the record of the grand jury proceedings. [L 1980, c 209, §9; am L 1982, c 101, §3]

Case Notes

At outset of each session, grand jury counsel must note presence on record and give instructions on procedures to summon for consultation; grand jury counsel need not be physically present throughout proceeding. 64 H. 197, 638 P.2d 309 (1981).

Given that appellant was indicted prior to enactment of this part, indictment was not defective for absence of grand jury counsel. 64 H. 363, 641 P.2d 320 (1982).

" **§612-59 Dismissal of indictment.** Any indictment which is based upon a grand jury proceeding in which a violation of section 612-56, 612-57, or 612-58 has occurred may be subject to dismissal without prejudice by an appropriate state court in the exercise of its discretion. Motion for such dismissal may be made by either party or the court. [L 1980, c 209, §10]

Case Notes

As applied to the facts of the case, the circuit court did not abuse its discretion in finding that the grand jury counsel's statements did not give rise to a tendency to prejudice and did not warrant dismissal of the indictment, where statement that defendant's case was in the newspaper was a fact already known to at least one juror, and statements regarding sex offender registration were clarified so that it made clear that the grand jury counsel was not stating a fact in defendant's case. 126 H. 40 (App.), 266 P.3d 448 (2011).

The standard in grand jury counsel misconduct should be the authorized role and function of the grand jury counsel, that is, to advise the grand jury on the law to be applied in making its probable cause determination; thus, to warrant dismissal of an indictment, a defendant must show that the grand jury counsel's misconduct has clearly infringed upon the grand jury's decision-making function and invaded the province of the grand jury, and that the misconduct tended to induce action other than that which reasonable grand jurors, in their uninfluenced judgment, would deem warranted based on the evidence fairly presented to them. 126 H. 40 (App.), 266 P.3d 448 (2011).

" **§612-60 Grand jury counsel; court review.** If the court finds that the grand jury counsel has provided the grand jury erroneous counsel or has acted improperly, the court may require that the grand jury be given the corrected advice or shall be advised as to improper action, and shall then continue the case. [L 1982, c 101, §4]

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