

ACT 122

H.B. NO. 1210

A Bill for an Act Relating to Jurors and Prospective Jurors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 612-2, Hawaii Revised Statutes, is amended to read as follows:

“§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 ~~[on account of a]~~ physical [handicap] disability, except as provided in section ~~[612-4(3);]~~ 612-4(b)(1).”

SECTION 2. Section 612-3, Hawaii Revised Statutes, is amended as follows:
1. By adding three new definitions to be appropriately inserted and to read:

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

“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).”

2. By amending the definition of “clerk” to read:

““Clerk” and “clerk of the court” [include any deputy clerk.] 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.”

3. By deleting the definition of “physical handicap”.

~~[““Physical handicap” means a physical impairment which substantially limits one or more of a person’s major life activities.”]~~

SECTION 3. Section 612-4, Hawaii Revised Statutes, is amended to read as follows:

“§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~~[-and]~~;
- (3) ~~Is~~ a resident of the circuit; and
- ~~[(2)]~~ (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 ~~[physical or mental]~~ disability, of rendering satisfactory jury service; but a ~~[person]~~ prospective juror 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;
- (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).”

SECTION 4. Section 612-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[§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.”

SECTION 5. Section 612-8, Hawaii Revised Statutes, is¹ to read as follows:

“§612-8 Pay of jurors; mileage fee; 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 33 cents for each mile actually and necessarily traveled in going to and from 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 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."

SECTION 6. Section 612-9, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§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 ~~[- Each juror shall state on oath to the clerk the number of miles traveled for which the juror is entitled to mileage-] or prospective juror.~~"

SECTION 7. Section 612-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 ~~[names from]~~ other lists of persons ~~[resident therein]~~ residing in the circuit, such as lists of taxpayers and [drivers' licenses. This includes names, addresses, and social security numbers taken from income tax returns and estimates notwithstanding section 235-116.] 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."

SECTION 8. Section 612-13, Hawaii Revised Statutes, is amended to read as follows:

"**§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 ~~[as to matters of form]~~ and shall elicit the name, address ~~[of resident]~~, 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 in case of an omission, ambiguity, or error in a returned form,]~~ 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 ~~[on the juror qualification form]~~.

(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 ~~[a redacted form]~~ 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 ~~[pursuant to section 612-17(e)]~~; or
- (2) When permitted in accordance with section 612-23."

SECTION 9. Section 612-14, Hawaii Revised Statutes, is amended to read as follows:

"§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 ~~[juror]~~ person who, in the previous jury year, wilfully or without reasonable excuse failed to appear as summoned."

SECTION 10. Section 612-15, Hawaii Revised Statutes, is amended to read as follows:

"§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 ~~[fifty citizens, or a greater]~~ 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 se-

quence. 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.”

SECTION 11. Section 612-16, Hawaii Revised Statutes, is amended to read as follows:

“§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 [doing so,] 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 [jury] jurors and alternate grand jurors from time to time, as it may deem necessary.

(e) ~~For the courts of the first circuit of the State from January 1, 1989, to December 31, 1991, and for the courts of all other circuits of the State from January 1, 1990, to December 31, 1992, a grand jury shall serve for a period of six months after being impaneled; provided that a grand jury may:~~

- (1) ~~Sit beyond such period to complete any matter in which the grand jury was impaneled;~~
- (2) ~~Be discharged sooner by the court; and~~
- (3) ~~Sit in all other cases until another grand jury is impaneled and sworn.]~~

(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 [subject to section 612-22], a grand jury shall serve for a period of one year after being impaneled, unless sooner discharged by the court[;

Any vacancy occurring on a grand jury may be filled by the court by drawing at random from names on the certified list of grand jurors.]; provided that a grand jury may sit beyond the one-year period to complete any matter for which the grand jury was impaneled.”

SECTION 12. Section 612-17, Hawaii Revised Statutes, is amended to read as follows:

~~“§612-17 Trial jury[, first circuit]. (a) [In the first circuit, and in any other circuit in which the court so orders, this] This~~ section shall be applicable to the drawing of a trial jury and service thereon.

~~[(b) Not later than January 1 of each year, the clerk shall draw at random from the names on the certified list of trial jurors such number of trial jurors as is deemed sufficient for the ensuing year. When directed by the court, additional jurors shall be drawn. The names and juror qualification forms for the prospective jurors shall be secured in envelopes. The envelopes shall remain secured and in the custody of the clerk.~~

~~(e) [(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. [Upon receipt by the judge of the envelopes containing the juror qualification forms, they shall be made available to the litigants concerned; provided that the jurors’ social security number, driver’s license number and home and business telephone numbers are first redacted. Litigants and their attorneys shall not further divulge the forms or the contents of the forms except when questioning prospective jurors in conjunction with the juror selection process.] 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.~~

~~[(d) Any number of jurors ordered by a judge may be required to attend and serve.] (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. [There is no requirement that all names ordered by a judge be exhausted before other names may be used in the drawing, and the names of jurors which have been transmitted to the judge may be mixed with each other in the container during the drawing.] 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.~~

~~[(e)]~~ (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.

~~[(f)]~~ (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.

~~[(g)]~~ (f) A judge may, having regard to the equitable distribution of jury service, excuse any juror after actual service in a trial.”

SECTION 13. Section 612-18, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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) ~~[If no order is made under subsection (a) in a particular circuit, the judge (or judges, if there are more than one) of that circuit may order a system of jury selection from the certified list of trial jurors which is not contrary to the general purposes of this chapter.]~~ 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. ~~[In selecting the trial jury there is no requirement that all the names ordered by a judge be exhausted before other names may be used in the drawing, and the names of jurors may be mixed with each other for the drawing.]~~”

SECTION 14. Section 612-19, Hawaii Revised Statutes, is amended to read as follows:

“**§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.”

SECTION 15. Section 612-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)§612-21]~~ **Jurors disqualified, exempted, or excused.** Whenever a juror has been disqualified, exempted, or excused, that fact shall be noted ~~[on the juror's juror qualification form]~~, 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.”

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SECTION 16. Section 612-22, Hawaii Revised Statutes, is amended to read as follows:

“§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. ~~[Jurors]~~ 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. ~~[Jurors]~~ 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. ~~[Jurors]~~ 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.”

SECTION 17. Section 612-26, Hawaii Revised Statutes, is amended to read as follows:

“§612-26 Use of electronic ~~[or electromechanical devices]~~ 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 ~~[means of]~~ electronic ~~[or electromechanical devices commonly designated as data processing equipment such as punch cards, electronic tape, random access files, and other solid state devices when the same are available for their use and the court so orders.] data processing or any other method to ensure random selection of jurors and implement the purposes of this chapter.~~”

SECTION 18. Section 612-27, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~§612-27~~[I]~~ 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~~[- The clerk, with the approval of the supreme court, may adopt rules], 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.~~”

SECTION 19. This Act shall not apply to proceedings that commenced or were scheduled prior to its effective date, nor to the qualification, selection, and summoning of persons subject to jury service or serving as jurors for the 2007 calendar year. This Act shall apply to the qualification, selection, summoning, and service of persons for jury duty for proceedings commencing or scheduled for the 2008 jury service year.

SECTION 20. Statutory material to be repealed is bracketed and stricken.
New statutory material is underscored.

SECTION 21. This Act shall take effect upon its approval.

(Approved June 4, 2007.)

Note

1. So in original.