

State of New Jersey

# NJLRC

**New Jersey Law Revision Commission**

## **FINAL REPORT**

Relating to

## **JURIES**

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## INTRODUCTION

The current jury statutes were primarily enacted in 1995 in response to a report filed by the Law Revision Commission in 1992. While this enactment represented a comprehensive revision of the law regarding juries, no enactment can be the last word on a subject. Issues always arise that require reexamination of statutes, even those recently revised.

Most important, after the enactment of the jury statute, the Constitution was amended to provide for State funding of the judicial system. As a result of that change, some jury-related functions were transferred from county officers to state judicial employees. The statutes enacted in 1995, like their predecessors, assume that most jury management is done by the sheriffs' offices. The statutes must now be corrected to reflect current practice. Modifications to the statutes after 1995 did not address the issues presented in this report.

Historically, the Superior Court has met in three sessions per year. By Administrative Order of the Chief Justice, these sessions begin on July 1, November 1 and March 1 of each year. The division of the court year into sessions now has limited practical effect. However, the term of service of a juror cannot extend beyond one session of court except that a juror will continue to finish a trial in progress. As a result, jury panels must change on the dates that begin a new term, even if the date is in the middle of a week. The effects on grand juries are more important. Every grand jury, whenever its term begins, must end its term by the end of a session. While no one has suggested that a grand jury be scheduled to sit for more than four months, flexibility in scheduling when grand jury terms start and end would be convenient to courts and prosecution and would simplify compliance with the statutory requirement that there be at least one grand jury sitting in each county at all times.

The only practical purpose served by references in the jury statutes to the terms of court is the establishment of an outside limit for the length of jury service. The references are not necessary for that purpose; a direct four-month limitation would serve as well and more clearly. As a result, the Commission recommends deletion of the references to terms of court and substitution of provisions limiting the length of jury service and making exceptions to the limitations.

The Commission also recommends the enactment of new provisions specifying that a person who is summoned for jury service and not chosen for a jury within two days be released as having completed jury service. That provision represents the practice in a majority of counties, but there are a few where prospective jurors are held for a full week. The statutory requirement implements the expectation that jury reform adopted three years ago would allow the implementation of a two day or one trial rule throughout the state.

#### **2B:20-4. Public and random selection of jurors**

a. ~~Before each session of the Superior Court,~~ At least once per year, the Assignment Judge shall provide for the drawing of names from the juror source list of persons to be summoned for service as grand and petit jurors.

b. The Assignment Judge shall specify the number of panels of grand and petit jurors to be drawn, the number of names to be drawn for each panel and the form and manner of preparation of the lists of names drawn. The lists shall state the name and address and, if available, occupation of each juror to be summoned.

c. The Assignment Judge shall provide for the selection of additional panels of grand and petit jurors from the juror source list at any time when it appears that additional panels of jurors will be required.

d. Both the drawing of names and the assignment of selected names to panels shall be public and random.

e. The Assignment Judge may provide for the random selection of jurors, and their assignment to panels, by the use of electronic devices, if:

(1) the method of random selection is specified with particularity in the instructions of the Assignment Judge ~~assignment judge~~; and

(2) the specification of the method and any ~~programs and~~ procedures used to implement the method, including any computer programs or portions of computer programs which are utilized, are available for public inspection upon request.

#### COMMENT

The proposed amendment to subsection (a) deletes the reference to terms of court. The changes in subsection (e) are stylistic.

#### **2B:20-5. Certification, filing and posting of juror lists**

The list of names randomly selected from the juror source list shall be filed and publicly posted ~~in the office of the County Clerk.~~ in each county court facility in a public place chosen by the Assignment Judge. The Assignment Judge shall certify ~~on the list~~ that the process specified for the selection of jurors and their assignment to panels has been followed.

#### COMMENT

The proposed amendment to the first sentence deletes the requirement that the jury list be posted in the office of the County Clerk. With the state takeover of court functions as a result of the approval of NJ Const. Art 6 §8, effective July 1, 1997, county clerks no longer perform court functions. The proposed amendment to the second sentence removes the requirement that the Assignment Judge's certification be made on the list itself. A separate certification is more convenient and serves the same purpose.

## **2B:20-6. Designation of period of service for petit jury panels**

~~a. The Assignment Judge shall designate the period of service of each panel of jurors selected from the juror source list.~~

~~b. A panel of jurors may be designated to serve during a portion of the then current session of the Superior Court, or during a portion of the next session of the Superior Court.~~

### COMMENT

The section is deleted because its only function is to limit jury service to a particular court term, which is four months. Current practice for petit juries as to term set varies depending upon the needs of each individual county, but the term is one week or less. However, if a person is selected to serve on a jury, he serves until the conclusion of the trial, even if the trial continues beyond the court term. The provision on length of petit jury service is now found in Section 2B:20-13. A provision specifically requiring a term to be set for grand juries has been proposed as 2B:21-2(e).

## **2B:20-7. Summoning of jurors**

~~a. Upon receipt of a list of persons selected to serve on a panel of jurors, the sheriff shall, under the direction of the Assignment Judge, shall cause the persons to be summoned.~~

~~b. The sheriff shall make a return to the Assignment Judge of all of the jurors summoned.~~

### COMMENT

Summoning of jurors has been the responsibility of assignment judges rather than sheriffs since the state takeover of court functions as a result of the approval of NJ Const. Art 6 §8, effective July 1, 1997. The proposed amendments reflect that change in practice.

## **2B:20-8. Form and service of summons**

a. The summons for jury service shall be by written notice and shall state the date, time and place where the juror is to appear for service.

b. The summons shall be served at least 30 days prior to the date upon which the juror is to appear, by regular mail addressed to the juror's usual residence or ~~business address~~ to the address found in the records from which jurors are selected unless service at another address is ordered by the Assignment Judge. Service of the summons shall be complete upon mailing.

c. If a sufficient number of jurors is unavailable due to a successful challenge or other unanticipated occurrence and new panels of jurors must be selected from the juror source list, the Assignment Judge may direct that the summons be served less than 30 days prior to the date upon which the jurors are to appear.

### COMMENT

The proposed amendment to subsection (b) reflects practice. Juror summonses are now intended to be mailed to residential addresses. However, addresses are taken from the juror source lists, and, while those addresses are normally residences, in some cases they may not be.

## **2B:20-10. Grounds for excuse from jury service**

An excuse from jury service shall be granted only if:

- a. The prospective juror is 75 years of age or older;
- b. The prospective juror has served as a juror within the last three years in ~~the county to which the juror is being summoned;~~ any state or federal court;
- c. Jury service will impose a severe hardship due to circumstances which are not likely to change within the following year. Severe hardship includes the following circumstances:
  - (1) The prospective juror has a medical inability to serve ~~which is verified by a licensed physician.~~
  - (2) The prospective juror will suffer a severe financial hardship which will compromise the juror's ability to support himself, herself, or dependents. In determining whether to excuse the prospective juror, the Assignment Judge shall consider:
    - (a) the sources of the prospective juror's household income; and
    - (b) the availability and extent of income reimbursement; and
    - (c) the expected length of service.
  - (3) The prospective juror has a personal obligation to care for another, including a sick, aged or infirm dependent or a minor child, who requires the prospective juror's personal care and attention, and no alternative care is available without severe financial hardship on the prospective juror or the person requiring care.
  - (4) The prospective juror provides highly specialized technical health care services for which replacement cannot reasonably be obtained.
  - (5) The prospective juror is a health care worker directly involved in the care of a mentally or physically handicapped person, and the prospective juror's continued presence is essential to the regular and personal treatment of that person.
  - (6) The prospective juror is a member of the full-time instructional staff of a grammar school or high school, the scheduled jury service is during the school term, and a replacement cannot reasonably be obtained. In determining whether to excuse the prospective juror or grant a deferral of service, the Assignment Judge shall consider:
    - (a) the impact on the school considering the number and function of teachers called for jury service during the current academic year; and
    - (b) the special role of certified special education teachers in providing continuity of instruction to handicapped students;
- d. The prospective juror is a member of a volunteer fire department or fire patrol; or
- e. The prospective juror is a volunteer member of a first aid or rescue squad.

COMMENT

The proposed amendment to subsection (b) broadens the ground for excuse from jury service. The proposed amendment to subsection (c) removes the requirement that a request for excuse based on medical inability be verified by a licensed physician. The requirement is inconsistent with the treatment of other grounds for excuse.

**2B:20-12. Retention of records**

All records concerning the granting of excuses from and deferrals of jury service, and all juror questionnaires shall be retained for one year, except that records relating to capital cases shall be retained for a period of three years. All other records relating to the summoning, impaneling and charging of jurors shall be retained for five years.

COMMENT

The proposed amendment reduces the period of retention of jury questionnaires and records relating to excuses from three years to one. An exception is made to require that these records be held for three years when they relate to death-penalty cases. The current three-year retention requirement is burdensome to the court system.

**2B:20-13. Period of service of summoned jurors; discharge of unneeded jurors**

a. A juror summoned for service shall serve for a period of one or two days, as set by the Assignment Judge, unless the juror:

(1) is selected to serve on a jury,

(2) after questioning by a judge, is selected tentatively to serve on a jury, or, in a capital case, is selected for consideration as a juror.

b. A juror so selected shall serve until released by the trial court or until the conclusion of the trial.

c. If the number of jurors in attendance is greater than is necessary for the business of the court, the Assignment Judge may discharge the unneeded jurors before the expiration of the period for which they were summoned. The jurors discharged shall be selected randomly.

COMMENT

The proposed new subsections (a) and (b) establishes rule that jury service extends for one or two days or one trial. Many counties already have such a system in place. Some have a one day, one trial, system and other a two days, one trial system. Others summon jurors for a one-week period but release them after two or three days. At the time that the current jury law was proposed, it was assumed that the broadened jury pool established by that law would allow every county to discharge jurors who were not selected for a trial after one or two days. This section enacts that expectation.

**2B:20-14. Failure to respond to questionnaire or summons**

a. Persons who are sent questionnaires concerning their qualifications for jury service who fail to respond to the questionnaire without reasonable excuse ~~shall be liable for a fine not to exceed \$500, payable to the county from which the questionnaire was sent, or may be fined up to \$500, punished for contempt of court.~~

b. Persons summoned as jurors who, without reasonable excuse, ~~either~~ fail to appear for jury service may be fined up to \$500. ~~or Persons summoned as jurors who refuse to serve, shall be liable for a fine not to exceed \$500, payable to the county in which the person was summoned, or may be punished for contempt of court.~~

#### COMMENT

The current statute contains a \$500 penalty that is not specifically linked to a process to determine whether the prospective juror willfully failed to serve. In practice, courts use the contempt process to make that determination and to impose an appropriate penalty. The proposed amendment adopts that practice. This change is carried forward in 2B:20-15. In addition, the amendment corrects the payee of fines. Under NJ Const. Art 6 §8 ¶1(a)(3) and 1(b)(5), effective July 1, 1997, judicial fines are paid to the State Treasury. In current practice the fines are collected by the Clerk of the Superior Court.

### **2B:20-15. Notice and collection of fines**

a. The Assignment Judge may direct ~~the sheriff to send~~ that written notice be sent to a person who has failed to respond to a questionnaire concerning jury service, or who has failed to appear for jury service, or has refused to serve, to appear for a hearing to determine whether the person is in contempt of court, that a fine has been imposed. The notice shall state the amount of the fine, the manner of payment to be made to the sheriff, and the consequences of failure to pay the fine within 30 days of the date specified in the notice. The notice shall be served in the same manner as a summons.

b. If a ~~defaulting juror~~ person fails to appear ~~pay the fine~~ in response to the notice, the Assignment Judge may issue process to summon or arrest the defaulting juror, directing the sheriff to recover the fine and costs by levy on the defaulting juror's personal property.

c. Fines for contempt for failure, without reasonable excuse, to respond to a juror questionnaire, to appear when summoned for jury service, or to refuse to serve as a juror may be administered through the Comprehensive Enforcement Program established pursuant to 2B:19-1 et seq.

#### COMMENT

The proposed amendment reflects the amendment of 2B:20-14 to correct the process for punishing prospective jurors who refuse to serve. See the comment to that section. In addition, summoning of jurors has been the responsibility of Assignment Judges rather than sheriffs since the state takeover of court functions as a result of the approval of NJ Const. Art 6 §8, effective July 1, 1997. The proposed amendments reflect that change in practice.

The new subsection (c) has been added to refer to the Comprehensive Enforcement Program, the process by which these fines are collected.

### **2B:20-16. Excuse from employment for jury duty; compensation**

Any person employed full-time by any agency, independent authority, instrumentality or entity of the State or of any political subdivision of the State shall be excused from employment at all times the person is required to be present for jury service in any state or federal court ~~of this State, any court of another state, or any federal district court or in the United States District Court~~

for New Jersey, and shall be entitled to receive from the employer the person's usual compensation for each day the person is present for jury service, in lieu of any payment for juror service as provided in P.L.1993, c.275 (C.22A:1-1.1).

#### COMMENT

The modification to this section deletes duplicative language. This section also reflects the 2001 amendment, which replaces the original 1995 text (“less the amount of per diem fee for each day of jury service as shown on a statement issued to the juror by the sheriff or other court officer making payment of juror fees”) with “in lieu of any payment for juror service as provided in P.L. 1993, c.275 (C.22A:1-1.1).” The cited statute increases a juror’s pay by \$35/day after three days of duty.

### **2B:21-2. Impaneling grand jury**

a. A grand jury shall consist of not more than 23 persons selected from the panel of jurors summoned for service as grand jurors. The grand jurors shall be selected publicly and randomly, in the same manner as is provided by statute for the impaneling of petit jurors.

b. The Assignment Judge, or a Superior Court judge designated by the Assignment Judge, shall conduct the voir dire of members of the grand jury panel and shall decide all requests for excuse or deferral of service on the grand jury.

c. The Assignment Judge, or a Superior Court judge designated by the Assignment Judge, shall ~~excuse~~ disqualify any person from service on the grand jury if the person is a federal, State or local government police officer or prosecutor.

d. The prosecutor may object to the selection of any person as a grand juror on the basis of the person's inability to be impartial or on the grounds that the person does not meet the qualifications specified in N.J.S.2B:20-1. The objections by the prosecutor shall be made on the record and shall be decided by the Assignment Judge.

e. The Assignment Judge, or a Superior Court judge designated by the Assignment Judge, shall set the term of service of the grand jury not to exceed four months. If at the end of the term set, there are matters before the grand jury that could not have been concluded before the end of the term, the judge may order that the jury serve for an additional term not to exceed three months and the time necessary to conclude the matters.

#### COMMENT

The proposed amendment to subsection (c) clarifies that law enforcement officers may not serve on the grand jury whether or not they request to be excused from service. The proposed subsection (e) provides for setting a term for grand juries. Current law limits grand jurors to service within one term of court, a period of four months. See 2B:20-6. Current court rules do not call for a particular term to be set; a grand jury serves until discharged by the Assignment Judge but not more than 20 weeks. R. 3:6-10(a). The proposed subsection would not require a change in practice but would allow flexibility in the beginning and ending of grand jury terms.

At present, there is nothing in the statutes that specifically allows the extension of a grand jury’s term. Court rules allow for specific extensions of not more than three months each. R. 3:6-10(b). The proposed subsection is based on 2B:23-8 which allows a petit juror to serve beyond his term to complete a trial.

## **2B:22-4. Summoning of jurors**

The Administrative Director of the Courts shall ~~transmit the names of~~ cause the prospective jurors selected for service on the State grand jury ~~to the sheriffs of the counties in which the prospective jurors reside. The sheriffs of the respective counties shall cause the prospective jurors resident in their counties~~ to be summoned for service ~~on the State grand jury~~.

### COMMENT

Jurors for state grand juries have been summoned by the Administrative Office of the Courts rather than by the sheriffs since the state takeover of court functions as a result of the approval of NJ Const. Art 6 §8, effective July 1, 1997. The proposed amendments reflect that change in practice and eliminates surplus language.

## **2B:22-9. Instruction to grand jury; use of force by law enforcement officer**

a. In a grand jury proceeding where the use of force by a law enforcement officer has been introduced as an issue, the prosecutor shall instruct the grand jury in the elements of justification for the use of force in law enforcement pursuant to N.J.S. 2C:3-7 and N.J.S.2C:3-9.

b. The prosecutor shall specifically charge the grand jury as follows:

(1) Subject to the limitations set out below, the use of force upon or toward the person of another is justifiable when a law enforcement officer is making an arrest or assisting in making an arrest and the officer reasonably believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable unless:

(A) The officer makes known the purpose of the arrest or reasonably believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(B) When the arrest is made under a warrant, the warrant is valid or reasonably believed by the officer to be valid.

(3) The use of deadly force is not justifiable unless:

(A) The officer effecting the arrest is authorized to act as a law enforcement officer; and

(B) The officer reasonably believes that the force employed creates no substantial risk of injury to innocent persons; and

(C) The officer reasonably believes that the crime for which the arrest is made was homicide, kidnapping, an offense under N.J.S. 2C:14-2 or N.J.S. 2C:14-3, arson, robbery, burglary of a dwelling, or an attempt to commit one of these crimes; and

(D) The officer reasonably believes:

(i) There is an imminent threat of deadly force to himself or to a third party; or

(ii) The use of deadly force is necessary to thwart the commission of a crime as set forth in subparagraph (c) of this paragraph; or

(iii) The use of deadly force is necessary to prevent an escape.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody under the provisions of this Act. A correction officer or other person authorized to act as a law enforcement officer is, however, justified in using any force including deadly force, which ~~he~~ the actor reasonably believes to be immediately necessary to prevent the escape of a person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense so long as the actor believes that the force employed creates no substantial risk of injury to innocent persons.

(5) The justification for the use of force afforded by this Act is unavailable when:

(a) The officer's belief in the unlawfulness of the force or conduct against which ~~he~~ the officer employs protective force or ~~his~~ the officer's belief in the lawfulness of an arrest which ~~he~~ the officer endeavors to effect by force is erroneous; and

(b) ~~His~~ The officer's error is due to ignorance or mistake as to the provisions of the code, any other provisions of the criminal law or the law governing the legality of an arrest or search.

c. When the officer is justified under N.J.S. 2C:3-3 to 2C:3-8 in using force upon or toward the person of another but ~~he~~ the officer recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence towards innocent persons.

#### COMMENT

This section was added by the Legislature after the issuance of the Commission's final report on Juries. This section was adopted by L. 2001, c. 381, § 1, and was effective January 8, 2002. The only changes made to this section are modifications proposed to render the language gender neutral.

### **2B:23-5. Names of jurors drawn for trial jury replace in pool**

After a jury has been selected and sworn, the names or identifying numbers of jurors not sworn to try the case shall be returned to the general pool of eligible jurors ~~before the drawing of another jury. The names or identifying numbers of those jurors shall be returned to the general pool of eligible jurors~~ unless the Assignment Judge directs otherwise. As soon as the jury has rendered a verdict or is discharged by the court, the members of the jury shall be relieved from further jury service unless the Assignment Judge directs otherwise.

#### COMMENT

Two changes are proposed to this statute. The change in the first two sentences deletes language that would appear to forbid selecting more than one jury from a panel unless the second jury is selected after all unused jurors have been returned to the panel. In practice, while unused jurors are returned as quickly as possible, there are situations where a portion of the panel is used to select a second jury before all jurors have returned. The new final

sentence implements the two day or one trial rule for jury service. See comment to proposed amendment to 2B:20-13. Under such a system, jurors are normally discharged after service on a single trial jury.

### **~~2B:23-8. Jurors to serve beyond period for which drawn until completion of trial~~**

~~When a jury does not complete its trial service during the session for which its members are to serve as jurors, the court may order that the jury shall serve until the completion of the trial even though such trial may extend into the next session or sessions.~~

#### COMMENT

The proposed amendment deletes the section. With the abolition of court sessions, the section becomes unnecessary. Limitations on the length of jury service are now found in Section 2B:20-13.

### **2B:23-9. Juries drawn from other counties**

a. When a court orders a trial by a jury drawn from outside the county in which the court is sitting, the order shall specify the number of jurors to be returned and shall be directed, and made returnable, to the ~~sheriff~~ Assignment Judge of the county from which the jury is to be taken. The jurors shall be competent jurors in the county from which they are to be taken and shall be selected in the same manner as the general panel of jurors is selected.

b. The county in which the trial will be held shall pay the expense of summoning and returning the jurors and of their attendance at the court.

#### COMMENT

Administration of the jury system has been the responsibility of assignment judges rather than sheriffs since the state takeover of court functions as a result of the approval of NJ Const. Art 6 §8, effective July 1, 1997. The proposed amendments reflect that change in practice.

### **2B:4-4. Grand jury clerks**

a. The Assignment Judge ~~assignment judge~~ of each county may appoint and set the salary of a clerk for the grand jury. The salary of the grand jury clerk shall be paid by the ~~county~~. State.

b. The Assignment Judge ~~assignment judge~~ of each county may appoint and set the salary of such assistants to the clerk of the grand jury as may be necessary for the operation of the grand jury. The salary of the assistants to the clerk of the grand jury shall be paid by the ~~county~~. State.

#### COMMENT

Under NJ Const. Art 6 §8 ¶1(a)(2), effective July 1, 1997, judicial employees are employees of the State. The proposed amendments changing "county" to "State" reflect that change. The other amendments correct capitalization.