

**REPORT AND RECOMMENDATIONS  
RELATING TO JURIES**

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## INTRODUCTION

In 1982 the Supreme Court Task Force on Jury Utilization and Management completed an extensive study of the jury system and issued a report recommending a wide variety of improvements and modifications in the system of jury selection. Since the issuance of the Task Force Report many improvements have been made in the management of the jury system through changes in court rules and administrative practices. Periods of jury service have generally been decreased, "one day, one trial" systems have been implemented in some counties in order to reduce juror waiting time, and juror yields, i.e., the percentage of summoned jurors who actually appear for jury service, have been improved. However, some of the broader, policy-based recommendations of the Task Force which required legislative change were contained in legislation which was vetoed along with legislation which would have increased juror fees.

This project continues the work of the Law Revision Commission in revising the statutes relating to the New Jersey court system; it constitutes a complete revision in the text and organization of the statutes relating to petit jury and grand jury selection and impaneling. Many of the specific changes recommended in this Report were adopted from the recommendations of the Supreme Court Task Force which were not previously implemented. This Report contains no recommendations, however, on the subject of modifying the present system of juror compensation.

One of the most important recommendations of the Supreme Court Jury Utilization and Management Task Force was that the statutory qualifications for jury service be modified in order to increase the number of citizens eligible for jury service. The Law Revision Commission endorses the position taken by the Supreme Court Task Force on the importance of the civic obligation of all citizens to participate in the jury system. In the words of the Task Force Report, at 10:

The basic position taken by the Task Force throughout its term was that jury service is an obligation of citizenship in which all citizens are obligated to participate and that no one is too busy or too important to serve. This philosophy is gaining strength throughout the country as part of the many jury reforms being introduced nationwide. The basis for it is fundamental fairness. For years, jury service has been laid on the backs of many of the same people who serve over and over again, while others exercise exemptions or find excuses for not serving. If every citizen did his civic duty and served for one day or one week, serving as a juror once in a lifetime would not be unrealistic. At present, some citizens are serving every few years; this is unfair and should be remedied.

Broadening the jury pool involves a number of specific statutory changes recommended by the Task Force and included in this Report. The first and most important is the elimination of all class and occupational exemptions and disqualifications from jury service. Under the present system automatic exemptions from jury service are available to numerous classes of people, including fish and game wardens, police and fire personnel, physicians and dentists, legislators, and telegraph and telephone operators and linemen. 2A:69-2. Persons either "directly or indirectly connected with the administration of justice" are disqualified from jury service under 2A:69-1. The Task Force report noted that these exemptions and disqualifications result in a significant reduction in the number of persons available for jury service. In one study of the exercise of statutory exemptions, the number ranged as high as 38 and 43 percent in some counties, with a rough average of approximately 20 percent overall. The Task Force Report noted that arguments have been made that some of the exemptions are based on the public necessity of the services provided by police, fire and medical personnel and others included in the exempted

classes. As noted in the Task Force Report, however, these arguments are unconvincing, as vacations, holidays and medical absences are able to be accommodated in these professions and occupations. Moreover, the statutes proposed in this Report include a provision permitting excuses for severe hardship, and a provision permitting deferral of jury service. These provisions will allow any problems stemming from a potential juror's occupational obligations to be dealt with on a case-by-case basis, in the same manner as such issues are raised by citizens in other occupations.

The proposed statutes in this report also include a provision for an excuse for persons 70 years of age or older, in place of the former disqualification of such persons from jury service. Under this proposed section citizens 70 years of age or older who are able and willing to serve as jurors may do so, while those who are unable may claim the excuse.

In this proposed draft, the Commission has continued the provision in the present statute for the use of voter registration lists and the list of motor vehicle licensees as the source of names of prospective jurors. Questions have been raised as to whether the voter registration and motor vehicle licensee lists include as many as possible of the persons eligible for jury service, and whether other sources should be used to obtain names of prospective jurors. See State v. Ramseur, 106 N.J. 123 (1987). The Commission received and considered many suggestions concerning lists of county residents which might be used, most of which suggestions were rejected either because the proposed lists are unavailable under federal law (e.g., lists of welfare and unemployment benefits recipients, see, e.g., 45 C.F.R. 205.50; 20 C.F.R. 401.1; N.J.A.C. 10:81-7.34; N.J.A.C. 12:17-7.1)) or because the lists would be impractical to use even if available (e.g., telephone directory listings, which usually include only one name per household and frequently do not include a first name). The only government-maintained list which was proposed which would have practical value is the list of state income tax filers and homestead rebate applicants maintained by the Division of Taxation. The Commission recommends that these lists be utilized both to broaden the juror source lists and to provide a more up-to-date and accurate source of address information.

The Commission considered whether a statewide system for the maintenance of juror lists and the selection of jury panels should be established, but concluded that it would not be appropriate at this time. Systems currently are maintained on the county level, consistent with the statutory provisions concerning the respective obligations of the state and the counties for the the court system. The Commission believes, however, that the Supreme Court should consider exercising its rule-making and administrative authority to impose uniform standards in certain particulars of the jury selection process. For example, some counties use a one-step qualification and summoning process, while others still use a two-step process, which involves a separate mailing of juror qualification questionnaires, followed by the issuance of summonses. If study bears out the anecdotal evidence that a one-step process is more efficient and results in a better ultimate juror yield, the court should consider requiring the use of a one-step process in all counties. The Commission's proposed statutes do not preclude such an approach. Similarly, a number of counties have instituted "one trial, one day" systems for jury service. In those counties, jurors who are not seated on a jury at the end of the first day of jury service are dismissed, and those who are seated are dismissed after service on a single trial. This is another area in which the Supreme Court should consider the imposition of a statewide standard.

## Chapter 20 - Qualifications and selection of jurors

### 2B:20-1. Qualifications of jurors

Every person summoned as a juror:

- a. shall be 18 years of age or older;
- b. shall be able to read and understand the English language;
- c. shall be a citizen of the United States;
- d. shall be a resident of the county in which the person is summoned;
- e. shall not be serving a sentence of imprisonment, or be on probation or parole, as a result of a conviction of any indictable offense under the laws of this State, another state, or the United States;
- f. shall not have any mental or physical disability which will prevent the person from properly serving as a juror.

Source: 2A:69-1

#### COMMENT

This section combines the separate source sections on qualification and ineligibility for jury service. Certain of the qualification and ineligibility provisions have been eliminated, in accordance with the recommendations of the Supreme Court Jury Utilization and Management Task Force. The upper age limit of 75 for jury service has been eliminated; the new section on excuses from jury service, 2B:20-10, now provides that persons age 75 or over may claim an excuse. The lower age limit has also been changed from 21 to 18. The requirement that jurors be able to write the English language has been eliminated as unnecessary, in accordance with the Task Force recommendation; the requirements that the juror be able to read and understand the English language have been retained. The two-year state residency requirement has been eliminated, to bring the juror eligibility provisions into line with the provisions relating to eligibility to vote and to obtain a driver's license.

This section also replaces the former provision disqualifying convicted felons from jury service with a provision which limits the period of disqualification to the completion of the person's sentence or the person's discharge from probation or parole; this change is consistent with the 1971 amendment to R.S. 19:4-1 concerning the right of suffrage.

The requirement that a juror not be "either directly or indirectly with the administration of justice" has been eliminated, in accordance with the Task Force recommendation that occupational exemptions and qualifications be eliminated. A person's occupation is a factor to be considered in relation to a person's suitability to sit on a particular jury, not as an absolute bar to jury service.

### 2B:20-2. Preparation of juror source list

a. The names of persons eligible for jury service shall be selected from a single juror source list of county residents whose names and addresses shall be obtained from a merger of the following lists: registered voters, licensed drivers, filers of state gross income tax returns and filers of homestead rebate application forms. The county election board, the Division of Motor Vehicles and the State Division of Taxation shall provide these lists annually to the Assignment Judge of the county. The Assignment Judge may provide for the merger of additional lists of persons eligible for jury service that may contribute to the breadth of the juror

**source list. Merger of the lists of eligible jurors into a single juror source list shall include a reasonable attempt to eliminate duplication of names.**

**b. The juror source list shall be compiled once a year, or more often as directed by the Assignment Judge.**

**Source: 2A:70-1; 2A:70-2; 2A:70-4; 2A:70-6**

#### COMMENT

This section combines the provisions of the source sections, and eliminates some details such as the number of names which must be on a juror list and the requirement that separate lists be prepared for petit jurors and grand jurors. The provision in 2A:70-2 giving the Assignment Judge the discretion to eliminate persons who are in his opinion "unfit for jury service" from the juror list has been eliminated as inappropriate. See the proposed new section on questionnaires, which permits the Assignment Judge to send questionnaires to persons on the juror source list to determine their eligibility for jury service.

The section adds the list of income tax filers and homestead rebate applicants to the voter registration list and the list of motor vehicle licensees now used as the source of names of prospective jurors. The addition of this list will result in an increase in the percentage of eligible persons being considered for jury service. By including more people as potential jurors the burden on any individual juror will be reduced and jury lists will be more representative of the whole population.

This section also gives assignment judges the authority to use additional lists as sources of potential jurors, if the use of additional lists will contribute the breadth of the juror source lists.

Proposals for the use of additional lists of potential jurors to expand the juror source list must include consideration of the cost of merging those additional lists into the lists presently used. As new lists are added, the chances increase that names already on the juror source list will be duplicated. If the duplicates are not eliminated, then the effect of adding the additional names is diluted. While some of the work of eliminating duplicate names can be done electronically, much of the work must be done manually. Additional lists could be more effectively merged if the jurors' social security numbers were available for this purpose; such use, however, is presently prohibited by federal law. The Commissioners urge that federal law be changed to permit the use of social security numbers for the purpose of obtaining the largest possible, cross-representative juror source lists.

### **2B:20-3. Questionnaires concerning qualifications**

**a. The Assignment Judge may direct that questionnaires be sent to potential jurors, requesting that they provide pertinent information concerning their qualifications for jury service, and any claims for exemption or deferral.**

**b. Questionnaires may be sent to all persons on the juror source list, or to persons randomly selected from the juror source list, either before or with the service of a summons for jury service.**

**Source: 2A:70-5**

#### COMMENT

This proposed section continues the provision in the source section giving each county, at the direction of the Assignment Judge, the option to send questionnaires to persons selected for jury service prior to summoning them for service. The provision in the source section that persons who fail to answer questionnaires are in contempt of court, has been moved to a new section covering failure to appear for service and refusal to serve.

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

**a. Before each session of the Superior Court, 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; 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.**

**Source: 2A:70-4a; 2A:71-3.1; 2A:71-4; 2A:71-8; 2A:71-10; 2A:71-12**

### **COMMENT**

This proposed section combines and simplifies the provisions of the source sections regarding the selection of panels of petit jurors, giving the Assignment Judge of the county the authority to provide for the drawing of an appropriate number of panels prior to the beginning of each session of the Superior Court, and additionally as needed during the session. The standard for selection of jurors was discussed in State v. Long, 204 N.J. Super. 469 (Law Div. 1985). The court examined the entire statutory scheme, as well as the constitutional requirements governing the selection of jurors from the juror source list, and concluded that the selection process must be "random," i.e., one "which provides pools of jurors that comprise a representative cross section of the community selected in a manner that gives each person an equal chance to be selected, and which spreads the burden of service evenly among the eligible populace." Id. at 485 n. 9.

## **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. 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.**

**Source: 2A:70-3**

### **COMMENT**

This proposed section continues the prior practice requiring certification and filing of juror lists, and their public posting in the office of the County Clerk.

## **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.**

**Source: 2A:71-9**

### COMMENT

This section gives the Assignment Judge the power to designate the period of service of each panel of petit jurors. The current practice varies depending upon the needs of each individual county, but is usually one week. Subsection (b) gives the Assignment Judge the power to designate that a panel shall serve during the then current session, or during the next session of the Superior Court. There are three sessions of the Superior Court each year. See R. 1:30-2(b).

## **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, cause the persons to be summoned.**

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

**Source: 2A:72-2, 2A:72-4**

### COMMENT

Subsection (a) of this proposed section substantially continues the language of source section 2A:72-2. Subsection (b) reduces source section 2A:72-4 to its essential content of requiring the sheriff to make a return to the Assignment Judge of all jurors summoned.

## **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 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.**

**Source: 2A:72-5, 2A:71-11**

### COMMENT

This proposed section simplifies the language of the source section, and continues the practice of summoning jurors by mail. The jurors must be summoned 30 days before they are required to appear. The

thirty day period specified in the source section balances the need of the courts to have sufficient available jurors, and the need of persons summoned for jury service to make appropriate arrangements to permit them to serve. Subsection (c) permits service of the summons less than 30 days before the required appearance in the exceptional situation in which all available panels of jurors have been successfully challenged and additional panels of jurors must be summoned.

#### **2B:20-9. Excuses and deferrals by Assignment Judge**

**a. A person may be excused from jury service or may have jury service deferred only by the Assignment Judge of the county in which the person was summoned, or by the Assignment Judge's designee.**

**b. The Assignment Judge may require verification of any of the facts supporting the grounds for a request for excuse or deferral. Records shall be kept of all requests for excuses and deferrals, and of the granting of excuses and deferrals.**

**Source: 2A:78-1**

#### **COMMENT**

This proposed section requires requests for excuses or deferrals to be decided by the Assignment Judge or the judge's designee, and further requires that records of excuses and deferrals be kept. In many cases the records will consist of the returned jury questionnaires; in others the correspondence received from prospective jurors seeking excuses and deferrals, and an indication of the action taken on the correspondence, will constitute a record. In the case of telephone requests for excuses and deferrals, some record must be kept of the reasons for the excuse or deferral proffered by the prospective juror and the action taken on the request; the precise form and manner of keeping such records is the responsibility of the jury management office and will depend on the recordkeeping system used. Proposed subsection 2B:20-12 specifies the time period during which such records must be kept.

#### **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; or**

**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.**

**Source: 2A:69-4; 2A:78-1**

#### COMMENT

This proposed section follows the recommendation of the Supreme Court Jury Utilization and Management Task Force that excuses from jury service be given only in cases of severe hardship. The source section permitted excuses from jury service without setting a standard for the granting of excuses, and permitted the Assignment Judge to designate a later time when the excused juror might serve.

This proposed section and the one following it clearly distinguish excuses from deferrals. An excuse from jury service discharges the potential juror's obligation to serve until the juror is next selected from the jury list. A deferral from jury service results in the rescheduling of jury service to a later time within a year. The severe hardship must be expected to continue for a year period. Thus, for example, if a person has a physical inability to serve due to recuperation from surgery, a deferral of service usually will be appropriate rather than an outright excuse.

This provision includes a list of circumstances that constitute "severe hardship." A potential juror who can establish the existence of the specified circumstances is entitled to be excused from jury service. The list is not exclusive, and assignment judges have the discretion to consider other analogous circumstances which would constitute a severe hardship justifying an excuse from jury service. Circumstances found not to constitute a severe hardship might justify a deferral of jury service pursuant to 2B:20-11. The assignment judge is given broad discretion under 2B:20-11 to defer jury service to another time within the following year. The aim of 2B:20-11 is to permit the assignment judge to consider individual circumstances and arrange an accommodation that will result in a potential juror being able to serve.

#### **2B:20-11. Deferral of jury service**

**Upon a request for deferral of jury service or upon the denial of a request for an excuse from jury service, the Assignment Judge may direct that the jury service of a prospective juror be deferred to another time within the next twelve months.**

**Source: 2A:78-1**

COMMENT

This proposed section complements the new section on excuses from jury service. A prospective juror whose request for an excuse is denied, or who requests a deferral in the first instance, may be granted a deferral of jury service to another time within the following year. No attempt is made in this section to codify the myriad circumstances which would justify the granting of a deferral of jury service. For example, the jury service of a full-time student may be deferred until a vacation period or the end of the school term; the jury service of a person recovering from an illness may be deferred; the service of a worker who is scheduled to travel on business may be deferred. Under this section, the matter is left to the sound discretion and experience of the Assignment Judge.

**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 a period of three years. All other records relating to the summoning, impaneling and charging of jurors shall be retained for five years.**

**Source: New**

COMMENT

The only existing provision concerning retention of jury records is 47:3-9(v), which relates to the retention of records by county clerks. The draft provisions parallel that provision in requiring that most records concerning juries be retained for five years. The Commission recommends, however, that because of the volume of questionnaires and records of excuses and deferrals, this information be retained only for three years.

**2B:20-13. Discharge of unneeded jurors**

**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.**

**Source: 2A:78-3**

COMMENT

This section is substantially identical to the source section.

**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 punished for contempt of court.**

**b. Persons summoned as jurors who, without reasonable excuse, either fail to appear for jury service or 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.**

**Source: 2A:70-5; 2A:79-1**

COMMENT

This section conforms the provisions of the two source sections by imposing a fine both for failing to respond to a questionnaire regarding jury service and for failing to appear for service or for refusing to serve. An additional section, 2A:79-4, containing a sanction for refusal to be sworn as a juror, is recommended for repeal as unnecessary; the refusal to be sworn is treated as refusal to serve by this section.

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

**a. The Assignment Judge may direct the sheriff to send written notice 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, 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 fails to pay the fine in response to the notice, the Assignment Judge may issue process directing the sheriff to recover the fine and costs by levy on the defaulting juror's personal property.**

**Source: 2A:79-2, 2A:79-3**

COMMENT

This proposed section is substantially similar to the source sections.

**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 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, 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.**

**Source: 2A:69-5; 2A:69-6**

COMMENT

This proposed section combines the provisions of the source sections and generalizes the language of the source provisions.

**2B:20-17. Employment protection**

**a. An employer shall not penalize an employee with respect to employment, or threaten or otherwise coerce an employee with respect to that employment, because the employee is required to attend court for jury service.**

**b. An employer who violates subsection (a) of this section is guilty of a disorderly persons offense.**

**c. If an employer penalizes an employee in violation of subsection a. of this section, the employee may bring a civil action for economic damages suffered as a result of the violation and for an order requiring the reinstatement of the employee. The action shall be commenced within 90 days from the date of the violation or the completion of jury service, whichever is later. If the employee prevails, the employee shall be entitled to a reasonable attorney's fee fixed by the court.**

**Source: New**

**COMMENT**

One of the most important recommendations of the Supreme Court Jury Utilization and Management Task Force was that persons summoned for jury service be protected from retaliation by an employer for fulfilling this important civic obligation. This section prohibits employers from firing, threatening or coercing employees who are summoned for jury service or who appear for jury service, and declares it a disorderly persons offense to do so. The employee is also provided with a civil action for recovery of economic damages, and for reinstatement, if the employee is fired for appearing for jury service. The term "economic damages" is intended to exclude recovery for pain and suffering and emotional distress.

**2B:20-18. Oath of allegiance**

**The following oath shall be administered to every person summoned for service as a juror who is not excused from service shall, before beginning service upon the panel:**

**"Do you swear or affirm that you will support the Constitution of the United States and the Constitution of this State?"**

**Source: 2A:69-1.1**

**COMMENT**

This section eliminates the additional language which was added to the source section in 1953.

**Chapter 21 - County grand juries**

**2B:21-1. Number of grand juries**

**The Assignment Judge for each county shall impanel one or more grand juries for that county, as the public interest requires. There shall be at least one grand jury serving in each county at all times.**

**Source: 2A:71-5; 2A:71-6; 2A:71-7**

**COMMENT**

This section has been rewritten to parallel the sections on petit jurors. The particularity of sections 2A:71-6 and 2A:71-7 are unnecessary in light of the generality of this proposed section.

## **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 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 [proposed section 2B:20-1]. The objections by the prosecutor shall be made on the record and shall be decided by the Assignment Judge.**

**Source: 2A:73-1; 2A:78-6; new**

### **COMMENT**

The substance of subsection a. of this section is drawn from 2A:73-1, but states in the affirmative that the grand jury consists of no more than 23 members, and that the selection of persons for grand jury service shall be public and random. The source section stated these matters inferentially. Subsections (b) and (c) are new, but reflect the long-standing practice in the impaneling of a grand jury. The Assignment Judge conducts the selection process and the voir dire; the prosecutor may be present and may object to the selection of any grand juror for cause, on the ground that the juror is unable to be impartial. The prosecutor's objections must be made on the record and be decided by the Assignment Judge; unlike the impaneling of a petit jury, the prosecutor is not entitled to any peremptory challenges in the impaneling of a grand jury.

## **2B:21-3. Oath of grand jurors**

**The following oath shall be administered to all of the members of the grand jury:**

**"Do you as a member of this grand jury of the State of New Jersey and county of (county) swear or affirm that you will support the Constitution of the United States and the Constitution of this State; that you will diligently inquire into all matters brought before you to the best of your skill, knowledge and understanding; that you will take no action through envy, hatred or malice nor for fear, favor or affection, or for reward or the hope of reward; that you will make a true presentment of all matters coming before you, and that you will keep secret the proceedings of the grand jury?"**

**Source: 2A:73-3**

### **COMMENT**

This section continues the substance of the source section while simplifying its language.

#### **2B:21-4. Vacancies in grand jury**

**A grand juror who becomes ill, dies or does not appear for service after having been sworn may be replaced at the direction of the Assignment Judge. The replacement grand juror shall be selected publicly and randomly and shall be sworn in the same manner as the grand juror being replaced.**

**Source: 2A:73-2**

#### **COMMENT**

This section continues the substance of the source section while simplifying its language.

#### **2B:21-5. Selection of foreperson and acting foreperson**

**The foreperson and the deputy foreperson of each grand jury shall be selected publicly and randomly from the persons impanelled as members of the grand jury. A person selected as the foreperson or deputy foreperson may freely decline to serve in the position, in which case another person shall be selected publicly and randomly to serve.**

**Source: New**

#### **COMMENT**

This new section addresses the problem discussed in State v. Russo, 213 N.J. Super. 219, 228-29 (Law Div. 1986), and State v. Ramseur, 106 N.J. 123, 236-38 (1987), concerning the manner in which the foreman and acting foreman of the grand jury are selected. A person selected as foreperson or acting foreperson may freely decline the position, but remains a member of the grand jury.

#### **2B:21-6. Swearing of witnesses by foreperson**

**a. The foreperson of the grand jury shall administer the following oath to witnesses who give evidence before the grand jury:**

**"Do you swear or affirm that you will tell the truth, the whole truth, and nothing but the truth?"**

**b. The foreperson shall, before being discharged, certify to the court the names of the witnesses who have been sworn.**

**Source: 2A:73-4**

#### **COMMENT**

This section continues the substance of the source section while simplifying its language. The text of the oath to be taken by grand jury witnesses has been added.

#### **2B:21-7. Indictment**

**An indictment may be found only upon concurrence of 12 or more grand jurors who either were present during, or who have read or listened to the record of, all of the proceedings concerning the indictment and who have examined all exhibits presented with respect to the indictment.**

**Source: New**

COMMENT

This provision codifies the common law rule stated in State v. Reynolds, 166 N.J. Super. 570 (Law Div. 1979) that 12 jurors must vote to return an indictment, as modified in State v. Ciba-Geigy Corp., 222 N.J. Super. 343 (App. Div. 1988), which held that an absent grand juror may cast a valid vote if the grand juror has reviewed the stenographic transcript of the presentation for which the grand juror was absent.

**2B:21-8. Record of proceedings**

**The testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury shall be recorded stenographically or electronically.**

**Source: 2A:73B-1**

COMMENT

This section continues the substance of the source section while simplifying its language and providing for either stenographic or electronic recording of the grand jury proceedings.

**2B:21-9. Statement of investigation**

**a. A person who has been investigated by a grand jury and against whom no indictment has been returned, may request the grand jury to issue a statement indicating that a charge against the person was investigated and that the grand jury did not return an indictment from the evidence presented. The grand jury shall issue the statement upon the approval of the court which summoned the grand jury. The statement shall issue upon the completion of the investigation of the charge, but not beyond the end of the grand jury's term.**

**b. A person who has been called to appear before a grand jury for a purpose other than the investigation of a charge against the person, may request the grand jury to issue a statement indicating that the person was called only as a witness in an investigation, and that the investigation did not involve a charge against the person. The grand jury shall issue the statement upon the approval of the court which summoned the grand jury. The statement shall issue upon the completion of the investigation of the charge or a series of related charges, but not beyond the end of the grand jury's term.**

**Source: 2A:73B-2**

COMMENT

This section continues the substance of the source section while simplifying its language.

**2B:21-10. Unauthorized disclosure of grand jury proceedings**

**a. Any person who, with the intent to injure another, purposely discloses any information concerning the proceedings of a grand jury, other than as authorized or required by law, commits a crime of the fourth degree. A public officer or employee**

who is convicted of a violation of this section shall be dismissed from public office or employment.

b. A person injured as a result of a violation of subsection a. of this section may bring a civil action against the person convicted of the violation. The person convicted shall be liable to the person injured for actual damages, punitive damages of not less than \$1,000.00 or more than \$100,000.00, reasonable litigation costs and reasonable attorney fees.

Source: 2A:73B-3

COMMENT

This section continues the substance of the source section while simplifying its language.

## Chapter 22 - State grand juries

### 2B:22-1. Impaneling state grand jury

a. There shall be at least one State grand jury with jurisdiction extending throughout the State serving at all times.

b. The State grand jury shall be impaneled by a judge of the Superior Court designated for that purpose by the Chief Justice.

c. The Attorney General or the Director of the Division of Criminal Justice may, when they determine it to be in the public interest, apply in writing to the designated judge requesting that one or more additional State grand juries be impaneled. The judge may, for good cause shown, order the impaneling of additional State grand juries.

Source: 2A:73A-2

COMMENT

This section continues the substance of the source section while simplifying its language.

### 2B:22-2. Powers and duties of state grand jury

a. A State grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury except that its jurisdiction shall extend throughout the State. The law applicable to county grand juries shall apply to State grand juries to the extent that it is consistent with the specific provisions relating to State grand juries.

b. The Supreme Court may promulgate rules to govern particularly the procedures of State grand juries.

Source: 2A:73A-3

COMMENT

This section continues the substance of the source section while simplifying its language.

### **2B:22-3. Selection of state grand jurors**

**a. The Administrative Director of the Courts, upon receipt of an order directing the impaneling of a State grand jury, shall prepare a list of prospective jurors randomly drawn from the current juror lists of the several counties. The list of prospective state grand jurors prepared by the Administrative Director of the Courts shall contain numbers of prospective jurors from each county in the same relative proportion as the population of each county bears to the total population of the State.**

**b. The designated judge shall impanel a State grand jury from the prospective jurors on the list. The selection of jurors for service on the state grand jury shall be public and random.**

**Source: 2A:73A-4**

#### **COMMENT**

The Commission recommends that the restriction in the prior statute on the number of state grand jurors from any single county who may serve on a particular state grand jury be abandoned as it raises constitutional questions concerning the randomness and representativeness of the state grand jurors. The Commission recommends a system in which the selection of state grand jurors is completely random and is as similar as possible to the selection process used for county grand jurors. The Commission's recommended solution to the problem of representativeness in state grand juries is the random selection of state grand jurors from a list composed of a proportional number of jurors from each county in the state, based upon population. .

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

**The Administrative Director of the Courts shall transmit the names of 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.**

**Source: 2A:73A-5**

#### **COMMENT**

This section continues the substance of the source section while simplifying its language.

### **2B:22-5. Judicial supervision of state grand jury**

**The judge designated by the Chief Justice shall maintain judicial supervision over the grand jury. All indictments, presentments and formal returns of any kind made by a State grand jury shall be returned to the designated judge.**

**Source: 2A:73A-6**

#### **COMMENT**

This section continues the substance of the source section while simplifying its language.

## **2B:22-6. Presentation of evidence to state grand jury**

**The Attorney General or the designee of the Attorney General shall present evidence to the State grand jury.**

**Source: 2A:73A-7**

### **COMMENT**

This section continues the substance of the source section while simplifying its language.

## **2B:22-7. Return of indictment or presentment**

**The judge who issues an order impaneling a State grand jury shall designate the county of venue for the purpose of trial of an indictment returned by the State grand jury. The judge may direct the consolidation of an indictment returned by a county grand jury with an indictment returned by a State grand jury and may fix the venue for trial of both indictments.**

**Source: 2A:73A-8**

### **COMMENT**

This section continues the substance of the source section while simplifying its language.

## **2B:22-8. Expenses of state grand jury**

**a. The State shall pay the expenses of impaneling and operating a State grand jury out of funds appropriated for this purpose to the Department of Law and Public Safety, Division of Criminal Justice.**

**b. The expenses incurred by a county for the prosecution and trial of a State grand jury indictment shall be paid by the State out of funds appropriated for this purpose to the Department of Law and Public Safety, Division of Criminal Justice. The county treasurer shall make application for payment of the expenses to the Assignment Judge of the county, and the Assignment Judge shall fix and certify the amount of the expenses.**

**Source: 2A:73A-9**

### **COMMENT**

This section continues the substance of the source section while simplifying its language.

## **Chapter 23 - Petit Jurors**

### **2B:23-1. Number of jurors**

**a. Juries in criminal cases shall consist of 12 persons. Except in trials of crimes punishable by death, the parties in criminal cases may stipulate in writing, before the verdict and with court approval, that the jury shall consist of fewer than 12 persons.**

**b. Juries in civil cases shall consist of 6 persons unless the court shall order a jury of 12 persons for good cause shown.**

**Source: New**

COMMENT

This section reflects the amendments made to the New Jersey Constitution, Art. 1, §9, in 1973, and to R. 1:8-2 in 1975.

**2B:23-2. Selection of trial jury from panel**

**a. When a jury is required for trial, the names or identifying numbers of the jurors who constitute the panel or panels from which the jury is to be selected shall be placed on uniform pieces of paper or other uniform markers. The markers shall be deposited in a box.**

**b. The box containing the markers shall be shaken so as to mix the markers thoroughly and the officer designated by the court shall, at the direction of the court, publicly in open court, draw the markers from the box, one at a time, until the necessary number of persons is randomly selected. If any of the persons so selected is successfully challenged or excused from serving on that jury, the drawing shall be continued until the necessary number of persons is selected.**

**c. The Assignment Judge of the county may provide for the random selection of jurors for impaneling by the use of electronic or electro-mechanical devices, if:**

**(1) the method of random selection is specified with particularity in an order of the Assignment Judge; and**

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

**Source: 2A:74-1; 2A:74-8**

COMMENT

This section retains the specific procedure in 2A:74-1 for selecting the jury. In the controlling case, State v. Wagner, 180 N.J. Super. 564 (App. Div. 1981), the trial judge exercised no procedure to assure randomness; he simply placed in the jury box the first fourteen jurors who entered the courtroom. The appellate court reversed the two defendants' convictions, finding it "vital that the juries be selected in a manner wholly free from taint and suspicion. To that end the pertinent practice safeguards in the statute must be carefully observed." Wagner, 180 N.J. Super at 567.

Subsection (c) also permits the use of modern technology, such as computers, in the selection of jurors for service on a particular jury. These methods may be used, however, only if the process is random, and the public may have sufficient access to the technology used to evaluate the randomness of the process.

**2B:23-3. Impaneling of additional jurors**

**The court may direct the impaneling of a jury with additional members having the same qualifications and impaneled and sworn in the same manner as a jury of 12 or 6. All the jurors shall hear the case, but the court for good cause may excuse any of them from service provided the number of jurors is not reduced to less**

**than 12 or 6 in an appropriate civil case. If more than the prescribed number are left on the jury at the conclusion of the court's charge, the clerk of the court in its**

**presence shall, by drawing names, randomly select that number of jurors' names as will reduce the jury to the required number.**

**Source: 2A:74-2**

COMMENT

This section streamlines the source statute amended in 1975.

**2B:23-4. Names of selected trial jurors**

**The names of the jurors selected and sworn to try a case shall be made a part of the record of the case.**

**Source: 2A:74-4**

COMMENT

This section simplifies the language of the source section.

**2B:23-5. Names of jurors drawn for trial jury replaced 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.**

**Source: 2A:74-5**

COMMENT

This section is a more concise version of the source statute.

**2B:23-6. Oath of jurors**

**The following oath shall be administered to each juror:**

**"Do you swear or affirm that you will try the matter in dispute and give a true verdict according to the evidence?"**

**Source: 2A:74-6**

COMMENT

This section deletes the archaic language of the source section.

**2B:23-7. Oath of officer attending jury**

**The following oath shall be administered to the officer appointed to attend the jury:**

**"Do you swear or affirm that you will do your best to keep every person sworn on this jury together in a private place, and that you will not allow any person**

**to speak to them, nor speak to them yourself, except by order of the court, and except to ask them if they have agreed on a verdict, until they have so agreed?"**

**Source: 2A:74-7**

COMMENT

This section eliminates the archaic language of the source section.

**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.**

**Source: 2A:74-11**

COMMENT

This section reduces the wordiness of the source section.

**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 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.**

**Source: 2A:76-1, 2A:76-2**

COMMENT

This section condenses and combines the two source sections and the versions of them in the Report of the Jury Utilization and Management Task Force and deletes the designation, "foreign jury."

**2B:23-10. Examination of jurors**

**a. In the discretion of the court, parties to any trial may question any person summoned as a juror after the name is drawn and before the swearing, and without the interposition of any challenge, to determine whether or not to interpose a peremptory challenge or a challenge for cause. Such examination shall be permitted in order to disclose whether or not the juror is qualified, impartial and without interest in the result of the action. The questioning shall be conducted in open court under the trial judge's supervision.**

**b. The examination of jurors shall be under oath only in cases in which a death penalty may be imposed.**

**Source: 2A:78-4**

COMMENT

This section is a concise version of the source section and is consistent with R. 1:8-3(a). In State v. Moore, 122 N.J. 420, 457 (1991), the court defined the test for excluding a prospective juror for cause as "whether the person's beliefs or attitudes would substantially interfere with the duties of a juror."

**2B:23-11. Challenge to qualifications of jurors**

**It shall be good cause for challenge to any person summoned as a juror that the person does not possess the qualifications required by section 2B:20-1 or that the person's name does not appear on the jury lists prepared pursuant to section 2B:20-4. If the challenge is verified according to law or on the person's oath, the person shall be discharged.**

**Source: 2A:69-3, 2A:78-6**

COMMENT

This section combines the substantial elements of the two source sections. The second paragraph of 2A:78-6 has been eliminated as duplicative of proposed section 2B:23-15.

**2B:23-12. Interest in action by or against county or municipality**

**In an action in which a county or municipality is or may be a party or otherwise has an interest in the action, it shall not be a ground for challenge to the jury panel that the court officers, court employees or jurors, solely because they are inhabitants of the county or municipality, are interested in the action or are taxed in the county.**

**Source: 2A:78-5**

COMMENT

This section retains the substance of the versions found in the source section and in the Report of the Jury Utilization and Management Task Force. The statute, passed originally in 1849, was the basis of the recent decision in In re Presentation of Passaic Cty. Grand Jury, 220 N.J. Super. 470 (Law Div. 1986). The court denied petitioners' (former Paterson municipal officials) motion to quash a grand jury presentment which charged them with mismanagement of CETA funds. The court found no evidence that participation of five Paterson residents on the grand jury comprised per se bias and articulated the benefit derived from N.J.S. 2A:78-5 which bars per se disqualification of residents and taxpayers. This section does not, of course, bar challenges to jurors for other reasons.

**2B:23-13. Peremptory challenges**

**Upon the trial of any action in any court of this State, the parties shall be entitled to peremptory challenges as follows:**

**a. In any civil action, each party, 6.**

**b. Upon an indictment for kidnapping, murder, aggravated manslaughter, manslaughter, aggravated assault, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, aggravated arson, arson, burglary, robbery, forgery if it constitutes a crime of the third degree as defined by subsection b. of N.J.S. 2C:21-1, or perjury, the defendant, 20 peremptory challenges if tried alone and 10 challenges if tried jointly and the State, 12 peremptory challenges if the**

**defendant is tried alone and 6 peremptory challenges for each 10 afforded defendants if tried jointly. The trial court, in its discretion, may, however, increase proportionally the number of peremptory challenges available to the defendant and the State in any case in which the sentencing procedure set forth in subsection c. of N.J.S. 2C:11-3 might be utilized.**

**c. Upon any other indictment, defendants, 10 each; the State, 10 peremptory challenges for each 10 challenges allowed to the defendants. When the case is to be tried by a jury from another county, each defendant, 5 peremptory challenges, and the State, 5 peremptory challenges for each 5 peremptory challenges afforded the defendants.**

**Source: 2A:78-7**

COMMENT

This section is virtually identical to the source section except for redesignation of the subsections.

**2B:23-14. Trial of challenges to jurors**

**All challenges to panels of jurors or to individual jurors shall be decided by the court.**

**Source: 2A:78-8**

COMMENT

This proposed section retains the substance of the source section.

**2B:23-15. Time for making challenges**

**a. Challenges to jurors may be made at any time before the juror is sworn to try the case.**

**b. No challenge to a juror may be made after the juror is sworn to try the case unless:**

**(1) the basis for the challenge could not reasonably have been known earlier to the person making the challenge; and**

**(2) the challenge is based upon the juror's inability to render a fair and impartial verdict.**

**Source: 2A:78-9**

COMMENT

This section combines the rule of 2A:78-9, which permits jury challenges to be made at any time up to the point the juror is sworn to try the case, and 2A:78-6, which prohibits challenges to juror qualifications after the juror is sworn. This proposed section would permit post-swearing challenges only if the basis of the challenge was not or could not have been previously known, and if the basis for the challenge is the juror's inability to render a fair and impartial verdict.

#### **2B:23-16. Jury of view**

**a. At any time during trial the court may order that the jury view the lands, places or personal property in question to understand the evidence better. The court shall direct the viewing procedure. The order shall be directed to the proper officer, specifying the day and place in question. Neither side shall give evidence when the jury is viewing. The officer who executes the order shall, by a special return, certify that the view has occurred according to the order.**

**b. In a civil case, the court shall determine which party shall bear the expense of a view.**

**c. The trial shall proceed even though a view which was ordered has not taken place.**

**Source: 2A:77-1; 2A:77-3; 2A:77-2**

#### **COMMENT**

Subsection a. of the section condenses source section 2A:77-1 and its version in the Report of Jury Utilization and Management Task Force. Subsection b. retains the substance of source section 2A:77-3. Subsection c. condenses source section 2A:77-2.

#### **2B:23-17. Verdict by five-sixths of the jury**

**In any civil trial by jury, at least five-sixths of the jurors shall render the verdict unless the parties stipulate that a smaller majority of jurors may render the verdict.**

**Source: 2A:80-2**

#### **COMMENT**

This section condenses the source section and is consistent with R. 1:8-9.

#### **2B:23-18. Disagreement of jurors**

**If the jury does not agree on a verdict, the court may order a new trial.**

**Source: 2A:80-3**

#### **COMMENT**

This section modernizes the source section.

### **SECTION TO BE COMPILED IN TITLE 2B:**

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

**a. The 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.**

**b. The 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.**

**Source: 2A:73-5; 2A:73-6; 2A:73-7**

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2A:72-5	2B:20-8	
2A:72-6	Deleted	Unnecessary.
2A:72-7	Deleted	See identical provision, R.S.10:1-
8.		
2A:72-8	Deleted	See 2C:30-1.
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2A:73A-1	Deleted	Unnecessary.
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2A:73B-3	2B:21-10	
2A:74-1	2B:23-2	
2A:74-2	2B:23-3	
2A:74-3	Deleted	Unnecessary. "Talesman" is a
term		referring to jurors summarily
summoned		for service, off the street or by
appearing		at factories and businesses, when
		the regularly-summoned panel of
jurors		has been exhausted. This method
		of obtaining jurors is of
questionable		constitutionality and has not been
in use		for some years.
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2A:74-11	2B:23-8	
2A:74-12	Deleted	Unnecessary.
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Unnecessary; see proposed section

Unnecessary.

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2B:20-17	New
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