

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblywoman WEINBERG, Assemblyman STUHLTRAGER,
Assemblywoman Gill, Assemblymen Jones, Kramer, Lance,
Pascrell, Solomon, Roma, Zisa, and Yuhas

1 AN ACT concerning juries and revising various parts of the
2 statutory law.

3

4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. Four additional chapters, chapters 20, 21, 22, 23 are added
7 to Title 2B of the New Jersey Statutes as follows:

8

TITLE 2B

9

CHAPTER 20

10

QUALIFICATIONS AND SELECTION OF JURORS

11

2B:20-1. Qualifications of jurors.

12

Every person summoned as a juror:

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a. shall be 18 years of age or older;

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b. shall be able to read and understand the English language;

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c. shall be a citizen of the United States;

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d. shall be a resident of the county in which the person is
17 summoned;

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e. shall not be serving a sentence of imprisonment, or be on
19 probation or parole, as a result of a conviction of any indictable
20 offense under the laws of this State, another state, or the United
21 States;

22

f. shall not have any mental or physical disability which will
23 prevent the person from properly serving as a juror.

24

Source: 2A:69-1

25

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

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a. The names of persons eligible for jury service shall be
27 selected from a single juror source list of county residents whose
28 names and addresses shall be obtained from a merger of the
29 following lists: registered voters, licensed drivers, filers of state
30 gross income tax returns and filers of homestead rebate
31 application forms. The county election board, the Division of
32 Motor Vehicles and the State Division of Taxation shall provide
33 these lists annually to the Assignment Judge of the county. The
34 Assignment Judge may provide for the merger of additional lists
35 of persons eligible for jury service that may contribute to the
36 breadth of the juror source list. Merger of the lists of eligible
37 jurors into a single juror source list shall include a reasonable
38 attempt to eliminate duplication of names.

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

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c. The juror source list may be expanded by the Supreme Court
42 as it deems appropriate.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted May 9, 1994.

² Senate floor amendments adopted October 3, 1994.

1 Source: 2A:70-1, 2A:70-2, 2A:70-4, 2A:70-6

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

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

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

11 Source: 2A:70-5

12 2B:20-4. Public and random selection of jurors.

13 a. Before each session of the Superior Court, the Assignment
14 Judge shall provide for the drawing of names from the juror
15 source list of persons to be summoned for service as grand and
16 petit jurors.

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

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

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

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

32 (1) the method of random selection is specified with
33 particularity in the instructions of the assignment judge; and

34 (2) the specification of the method and any programs and
35 procedures used to implement the method, including any
36 computer programs which are utilized, are available for public
37 inspection upon request.

38 Source: 2A:70-4a; 2A:71-3.1; 2A:71-4; 2A:71-8; 2A:71-10;
39 2A:71-12

40 2B:20-5. Certification, filing and posting of juror lists.

41 The list of names randomly selected from the juror source list
42 shall be filed and publicly posted in the office of the County
43 Clerk. The Assignment Judge shall certify on the list that the
44 process specified for the selection of jurors and their assignment
45 to panels has been followed.

46 Source: 2A:70-3

47 2B:20-6. Designation of period of service for petit jury panels.

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

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

53 Source: 2A:71-9

54 2B:20-7. Summoning of jurors.

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

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

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

7 2B:20-8. Form and service of summons.

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

11 b. The summons shall be served at least 30 days prior to the
12 date upon which the juror is to appear, by regular mail addressed
13 to the juror's usual residence or business address unless service
14 at another address is ordered by the Assignment Judge. Service
15 of the summons shall be complete upon mailing.

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

21 Source: 2A:72-5; 2A:71-11

22 2B:20-9. Excuses and deferrals by Assignment Judge.

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

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

31 Source: 2A:78-1

32 2B:20-10. Grounds for excuse from jury service.

33 An excuse from jury service shall be granted only if:

34 a. The prospective juror is 75 years of age or older;

35 b. The prospective juror has served as a juror within the last
36 three years in the county to which the juror is being summoned;

37 c. Jury service will impose a severe hardship due to
38 circumstances which are not likely to change within the following
39 year. Severe hardship includes the following circumstances:

40 (1) The prospective juror has a medical inability to serve which
41 is verified by a licensed physician.

42 (2) The prospective juror will suffer a severe financial hardship
43 which will compromise the juror's ability to support himself,
44 herself, or dependents. In determining whether to excuse the
45 prospective juror, the Assignment Judge shall consider:

46 (a) the sources of the prospective juror's household income;
47 and

48 (b) the availability and extent of income reimbursement; and

49 (c) the expected length of service.

50 (3) The prospective juror has a personal obligation to care for
51 another, including a sick, aged or infirm dependent or a minor
52 child, who requires the prospective juror's personal care and
53 attention, and no alternative care is available without severe
54 financial hardship on the prospective juror or the person requiring
55 care.

1 (4) The prospective juror provides highly specialized technical
2 health care services for which replacement cannot reasonably be
3 obtained.

4 (5) The prospective juror is a health care worker directly
5 involved in the care of a mentally or physically handicapped
6 person, and the prospective juror's continued presence is
7 essential to the regular and personal treatment of that person.

8 (6) The prospective juror is a member of the full-time
9 instructional staff of a grammar school or high school, the
10 scheduled jury service is during the school term, and a
11 replacement cannot reasonably be obtained. In determining
12 whether to excuse the prospective juror or grant a deferral of
13 service, the Assignment Judge shall consider:

14 (a) the impact on the school considering the number and
15 function of teachers called for jury service during the current
16 academic year; and

17 (b) the special role of certified special education teachers in
18 providing continuity of instruction to handicapped students ¹; or

19 d. The prospective juror is a member of the State
20 Legislature]¹ ²; or

21 d. The prospective juror is a member of a volunteer fire
22 department or fire patrol; or

23 e. The prospective juror is a volunteer member of a first aid or
24 rescue squad².

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

26 2B:20-11. Deferral of jury service.

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

31 Source: 2A:78-1

32 2B:20-12. Retention of records.

33 All records concerning the granting of excuses from and
34 deferrals of jury service, and all juror questionnaires, shall be
35 retained for a period of three years. All other records relating to
36 the summoning, impaneling and charging of jurors shall be
37 retained for five years.

38 Source: New

39 2B:20-13. Discharge of unneeded jurors.

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

45 Source: 2A:78-3

46 2B:20-14. Failure to respond to questionnaire or summons.

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

52 b. Persons summoned as jurors who, without reasonable
53 excuse, either fail to appear for jury service or refuse to serve,
54 shall be liable for a fine not to exceed \$500, payable to the

1 county in which the person was summoned, or may be punished
2 for contempt of court.

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

4 2B:20-15. Notice and collection of fines.

5 a. The Assignment Judge may direct the sheriff to send
6 written notice to a person who has failed to respond to a
7 questionnaire concerning jury service, or who has failed to appear
8 for jury service or has refused to serve, that a fine has been
9 imposed. The notice shall state the amount of the fine, the
10 manner of payment to be made to the sheriff, and the
11 consequences of failure to pay the fine within 30 days of the date
12 specified in the notice. The notice shall be served in the same
13 manner as a summons.

14 b. If a defaulting juror fails to pay the fine in response to the
15 notice, th Assignment Judge may issue process directing the
16 sheriff to recover the fine and costs by levy on the defaulting
17 juror's personal property.

18 Source: 2A:79-2; 2A:79-3

19 2B:20-16. Excuse from employment for jury duty;
20 compensation.

21 Any person employed full-time by any agency, independent
22 authority, instrumentality or entity of the State or of any
23 political subdivision of the State shall be excused from
24 employment at all times the person is required to be present for
25 jury service in any court of this State, any court of another state,
26 or any federal district court or in the United States District
27 Court for New Jersey, and shall be entitled to receive from the
28 employer the person's usual compensation for each day the
29 person is present for jury service, less the amount of per diem fee
30 for each day of jury service as shown on a statement issued to the
31 juror by the sheriff or other court officer making payment of
32 juror fees.

33 Source: 2A:69-5; 2A:69-5

34 2B:20-17. Employment protection.

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

39 b. An employer who violates subsection a. of this section is
40 guilty of a disorderly persons offense.

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

49 Source: New

50 2B:20-18. Oath of allegiance.

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

54 "Do you swear or affirm that you will support the Constitution

1 of the United States and the Constitution of this State?"

2 Source: 2A:69-1.1

3

CHAPTER 21

4

COUNTY GRAND JURIES

5

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

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The Assignment Judge for each county shall impanel one or more grand juries for that county, as the public interest requires.

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There shall be at least one grand jury serving in each county at all times.

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

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2B:21-2. Impaneling grand jury.

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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.

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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.

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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.

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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.

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

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

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

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"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?"

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Source: 2A:73-3

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

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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.

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Source: 2A:73-2

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2B:21-5. Selection of foreperson and deputy foreperson.

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The foreperson and the deputy foreperson of each grand jury

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

6 Source: New

7 2B:21-6. Swearing of witnesses by foreperson.

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

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

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

15 Source: 2A:73-4

16 2B:21-7. Indictment.

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

22 Source: New

23 2B:21-8. Record of proceedings.

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

28 Source: 2A:73B-1

29 2B:21-9. Statement of investigation.

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

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

49 Source: 2A:73B-2

50 2B:21-10. Unauthorized disclosure of grand jury proceedings.

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

1 convicted of a violation of this section shall be dismissed from
2 public office or employment.

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

9 Source: 2A:73B-3

10 CHAPTER 22
11 STATE GRAND JURIES

12
13 2B:22-1. Impaneling State grand jury.

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

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

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

24 Source: 2A:73A-2

25 2B:22-2. Powers and duties of State grand jury.

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

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

34 Source: 2A:73A-3

35 2B:22-3. Selection of State grand jurors.

36 a. The Administrative Director of the Courts, upon receipt of
37 an order directing the impaneling of a State grand jury, shall
38 prepare a list of prospective jurors randomly drawn from the
39 current jurors lists of the several counties. The list of
40 prospective State grand jurors prepared by the Administrative
41 Director of the Courts shall contain numbers of prospective
42 jurors from each county in the same relative proportion as the
43 population of each county bears to the total population of the
44 State.

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

48 Source: 2A:73A-4

49 2B:22-4. Summoning of State grand jurors.

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

1 for service on the State grand jury.

2 Source: 2A:73A-5

3 2B:22-5. Judicial supervision of State grand jury.

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

8 Source:2A:73A-6

9 2B:22-6. Presentation of evidence to State grand jury.

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

12 Source: 2A:73A-7

13 2B:22-7. Return of indictment or presentment.

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

20 Source: 2A:73A-8

21 2B:22-8. Expenses of State grand jury.

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

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

34 Source: 2A:73A-9

35 CHAPTER 23

36 PETIT JURORS

37 2B:23-1. Number of jurors.

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

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

44 Source: New

45 2B:23-2. Selection of trial jury from panel.

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

51 b. The box containing the markers shall be shaken so as to mix
52 the markers thoroughly and the officer designated by the court
53 shall, at the direction of the court, publicly in open court, draw
54 the markers from the box, one at a time, until the necessary

1 number of persons is randomly selected. If any of the persons so
2 selected is successfully challenged or excused from serving on
3 that jury, the drawing shall be continued until the necessary
4 number of persons is selected.

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

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

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

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

15 2B:23-3. Impaneling of additional jurors.

16 The court may direct the impaneling of a jury with additional
17 members having the same qualifications and impaneled and sworn
18 in the same manner as a jury of 12 or 6. All the jurors shall hear
19 the case, but the court for good cause may excuse any of them
20 from service provided the number of jurors is not reduced to less
21 than 12 or 6 in an appropriate civil case. If more than the
22 prescribed number are left on the jury at the conclusion of the
23 court's charge, the clerk of the court in its presence shall, by
24 drawing names, randomly select that number of jurors' names as
25 will reduce the jury to the required number.

26 Source: 2A:74-2

27 2B:23-4. Names of selected trial jurors.

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

30 Source: 2A:74-4

31 2B:23-5. Names of jurors drawn for trial jury replace in pool.

32 After a jury has been selected and sworn, the names or
33 identifying numbers of jurors not sworn to try the case shall be
34 returned to the general pool of eligible jurors before the drawing
35 of another jury. The names or identifying numbers of those jurors
36 shall be returned to the general pool of eligible jurors unless the
37 Assignment Judge directs otherwise.

38 Source: 2A:74-5

39 2B:23-6. Oath of jurors.

40 The following oath shall be administered to each juror:

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

43 Source: 2A:74-6

44 2B:23-7. Oath of officer attending jury.

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

47 "Do you swear or affirm that you will do your best to keep
48 every person sworn on this jury together in a private place, and
49 that you will not allow any person to speak to them, nor speak to
50 them yourself, except by order of the court, and except to ask
51 them if they have agreed on a verdict, until they have so agreed?"

52 Source: 2A:74-7

53 2B:23-8. Jurors to serve beyond period for which drawn until
54 completion of trial.

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

6 Source: 2A:74-11

7 2B:23-9. Juries drawn from other counties.

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

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

18 Source: 2A:76-1; 2A:76-2

19 2B:23-10. Examination of jurors.

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

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

31 Source: 2A:78-4

32 2B:23-11. Challenge to qualifications of jurors.

33 It shall be good cause for challenge to any person summoned as
34 a juror that the person does not possess the qualifications
35 required by N.J.S. 2B:20-1 or that the person's name does not
36 appear on the jury lists prepared pursuant to N.J.S. 2B:20-4. If
37 the challenge is verified according to law or on the person's oath
38 the person shall be discharged.

39 Source: 2A:69-3; 2A:78-6

40 2B:23-12. Interest in action by or against county or
41 municipality.

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

48 Source: 2A:78-5

49 2B:23-13. Peremptory challenges.

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

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

53 b. Upon an indictment for kidnapping, murder, aggravated
54 manslaughter, manslaughter, aggravated assault, aggravated

1 sexual assault, sexual assault, aggravated criminal sexual
2 contact, aggravated arson, arson, burglary, robbery, forgery if it
3 constitutes a crime of the third degree as defined by subsection
4 b. of N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory
5 challenges if tried alone and 10 challenges if tried jointly and the
6 State, 12 peremptory challenges if the defendant is tried alone
7 and 6 peremptory challenges for each 10 afforded the defendants
8 if tried jointly. The trial court, in its discretion, may, however,
9 increase proportionally the number of peremptory challenges
10 available to the defendant and the State in any case in which the
11 sentencing procedure set forth in subsection c. of N.J.S.2C:11-3
12 might be utilized.

13 c. Upon any other indictment, defendants, 10 each; the State,
14 10 peremptory challenges for each 10 challenges allowed to the
15 defendants. When the case is to be tried by a jury from another
16 county, each defendant, 5 peremptory challenges, and the State,
17 5 peremptory challenges for each 5 peremptory challenges
18 afforded the defendants.

19 Source: 2A:78-7

20 2B:23-14. Trial of challenges to jurors.

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

23 Source: 2A:78-8

24 2B:23-15. Time for making challenges.

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

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

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

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

33 Source: 2A:78-9

34 2B:23-16. Jury of view.

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

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

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

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

48 2B:23-17. Verdict by five-sixths of the jury.

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

52 Source: 2A: 80-2

53 2B:23-18. Disagreement of jurors.

54 If the jury does not agree on a verdict, the court may order a

1 new trial.
2 Source: 2A:80-3
3 2. A new section is added to Title 2B of the New Jersey
4 Statutes as follows:
5 2B:4-4. Grand jury clerks.
6 a. The assignment judge of each county may appoint and set
7 the salary of a clerk for the grand jury. The salary of the grand
8 jury clerk shall be paid by the county.
9 b. The assignment judge of each county may appoint and set
10 the salary of such assistants to the clerk of the grand jury as may
11 be necessary for the operation of the grand jury. The salary of
12 the assistants to the clerk of the grand jury shall be paid by the
13 county.
14 Source: 2A:73-5; 2A:73-6; 2A:73-7
15 3. a. The following are repealed:
16 N.J.S.2A:69-1;
17 Section 2 of P.L.1953, c.331 (C.2A:69-1.1);
18 N.J.S.2A:69-2 through N.J.S.2A:69-4;
19 Sections 1 and 2 of P.L.1971, c.403 (C.2A:69-5 and 2A:69-6);
20 N.J.S. 2A:70-2 and N.J.S. 2A:70-3;
21 Section 12 of P.L.1989, c.87 (C.2A:70-4a);
22 Section 2 of P.L.1979, c.271 (C.2A:70-4.1);
23 N.J.S.2A:70-5 and N.J.S.2A:70-6;
24 Section 1 of P.L.1958, c.54 (C.2A:71-3.1);
25 N.J.S.2A:71-4 through N.J.S.2A:71-14;
26 N.J.S.2A:72-1 and N.J.S.2A:72-2;
27 N.J.S.2A:72-4 through N.J.S.2A:72-8;
28 N.J.S.2A:73-1 through N.J.S.2A:73-7;
29 Sections 1 through 9 of P.L.1968, c.361 (C.2A:73A-1 through
30 2A:73A-9);
31 Section 1 of P.L.1981, c.475 (C.2A:73B-1);
32 Section 1 of P.L.1981, c.476 (C.2A:73B-2);
33 Section 1 of P.L.1981, c.477 (C.2A:73B-3);
34 N.J.S.2A:74-1 through N.J.S.2A:74-8;
35 N.J.S.2A:74-10 through N.J.S.2A:74-12;
36 N.J.S.2A:76-1 and N.J.S.2A:76-2;
37 N.J.S.2A:77-1 through N.J.S.2A:77-3;
38 N.J.S.2A:78-1 through N.J.S.2A:78-9;
39 N.J.S.2A:79-1 through N.J.S.2A:79-4;
40 N.J.S.2A:80-1 through N.J.S.2A:80-3.
41 b. The following are repealed on January 1, 1995:
42 N.J.S.2A:70-1 and N.J.S. 2A:70-4.
43 4. This act shall take effect on the 90th day after enactment,
44 except that N.J.S.2B:20-2 shall take effect on January 1, 1995.
45
46
47
48
49 Revises law relating to selection and impaneling of juries.

Sponsor's statement starts on page 13
A531
13

- 1 2B:4-4. Grand jury clerks.
2 a. The assignment judge of each county may appoint and set
3 the salary of a clerk for the grand jury. The salary of the grand
4 jury clerk shall be paid by the county.
5 b. The assignment judge of each county may appoint and set
6 the salary of such assistants to the clerk of the grand jury as may
7 be necessary for the operation of the grand jury. The salary of
8 the assistants to the clerk of the grand jury shall be paid by the
9 county.
10 Source: 2A:73-5; 2A:73-6; 2A:73-7
11 3. a. The following are repealed:
12 N.J.S.2A:69-1;
13 Section 2 of P.L.1953, c.331 (C.2A:69-1.1);
14 N.J.S.2A:69-2 through N.J.S.2A:69-4;
15 Sections 1 and 2 of P.L.1971, c.403 (C.2A:69-5 and 2A:69-6);
16 N.J.S. 2A:70-2 and N.J.S. 2A:70-3;
17 Section 12 of P.L.1989, c.87 (C.2A:70-4a);
18 Section 2 of P.L.1979, c.271 (C.2A:70-4.1);
19 N.J.S.2A:70-5 and N.J.S.2A:70-6;
20 Section 1 of P.L.1958, c.54 (C.2A:71-3.1);
21 N.J.S.2A:71-4 through N.J.S.2A:71-14;
22 N.J.S.2A:72-1 and N.J.S.2A:72-2;
23 N.J.S.2A:72-4 through N.J.S.2A:72-8;
24 N.J.S.2A:73-1 through N.J.S.2A:73-7;
25 Sections 1 through 9 of P.L.1968, c.361 (C.2A:73A-1 through
26 2A:73A-9);
27 Section 1 of P.L.1981, c.475 (C.2A:73B-1);
28 Section 1 of P.L.1981, c.476 (C.2A:73B-2);
29 Section 1 of P.L.1981, c.477 (C.2A:73B-3);
30 N.J.S.2A:74-1 through N.J.S.2A:74-8;
31 N.J.S.2A:74-10 through N.J.S.2A:74-12;
32 N.J.S.2A:76-1 and N.J.S.2A:76-2;
33 N.J.S.2A:77-1 through N.J.S.2A:77-3;
34 N.J.S.2A:78-1 through N.J.S.2A:78-9;
35 N.J.S.2A:79-1 through N.J.S.2A:79-4;
36 N.J.S.2A:80-1 through N.J.S.2A:80-3.
37 b. The following are repealed on January 1, 1995:
38 N.J.S.2A:70-1 and N.J.S. 2A:70-4.
39 4. This act shall take effect on the 90th day after enactment,
40 except that N.J.S.2B:20-2 shall take effect on January 1, 1995.
41

42 *Sponsor* STATEMENT
43

44 This bill, which is based on recommendations of the New Jersey
45 Law Revision Commission, revises the law relating to petit and
46 grand jury selection and impaneling. It should be noted that many
47 of the specific changes recommended in the Law Revision
48 Commission's report were adopted from recommendations of the
49 Supreme Court Task Force on Jury Utilization and Management.
50 The bill modifies the jury qualifications provisions which are
51 found in the present law in order to increase the number of
52 citizens eligible for jury service. Under the provisions of the bill,
53 a person may be excused from jury service or may have jury
54 service deferred only by the Assignment Judge of the county in

1 which the person was summoned, or by the Assignment Judge's
2 designee.

3 An excuse from jury service shall be granted only if: The
4 prospective juror is 75 years of age or older; the prospective juror
5 has served as a juror within the last three years in the county to
6 which the juror is being summoned; or jury service will impose a
7 severe hardship due to circumstances which are not likely to
8 change within the following year. Severe hardship includes the
9 following circumstances: (1) The prospective juror has a medical
10 inability to serve which is verified by a licensed physician. (2)
11 The prospective juror will suffer a severe financial hardship
12 which will compromise the juror's ability to support himself,
13 herself, or dependents. (3) The prospective juror has a personal
14 obligation to care for another, including a sick, aged or infirm
15 dependent or a minor child, who requires the prospective juror's
16 personal care and attention, and no alternative care is available
17 without severe financial hardship. (4) The prospective juror
18 provides highly specialized technical health care services for
19 which replacement cannot reasonably be obtained. (5) The
20 prospective juror is a health care worker directly involved in the
21 care of a mentally or physically handicapped person, and the
22 prospective juror's continued presence is essential to the regular
23 and personal treatment of that person. (6) The prospective juror
24 is a member of the full-time instructional staff or a grammar
25 school or high school, the scheduled jury service is during the
26 school term, and a replacement cannot reasonably be obtained.

27 The bill would also expand the lists of potential jurors.
28 Currently, the lists are compiled from voter registration and
29 driver license lists. This bill would expand the sources for
30 compiling jury lists to include State income tax filers and
31 homestead rebate applicants.

32 In addition, the bill would require all records with regard to
33 excuses from or deferrals of jury service as well as juror
34 questionnaires to be retained for a period of three years. All
35 other records concerning the summoning or impaneling and
36 charging of jurors would be required to be retained for five years.

37 The bill would also make it a disorderly persons offense for any
38 employer to penalize, threaten or otherwise coerce an employee,
39 who is called for jury service, with respect to that employee's
40 job. The bill would also provide for an employee to bring a civil
41 action against any employer who penalizes him with regard to
42 serving on a jury.

43 Under the provisions of the bill a foreperson and a deputy
44 foreperson would be selected publicly and randomly from the
45 persons impanelled as members of the grand jury. The bill would
46 also codify the common law with regard to the return of
47 indictments. Under the provisions of the bill the indictment may
48 be found only upon the concurrence of 12 or more grand jurors
49 who have been present or read or listened to all of the
50 proceedings concerning the indictment and who have examined all
51 the exhibits.

52 Remaining provisions of the bill may be summarized as follows:
53 CHAPTER 20 QUALIFICATIONS AND SELECTION OF JURORS

54 Every person summoned as a juror shall be 18 years of age or

1 older; shall be able to read and understand the English language;
2 shall be a citizen of the United States; shall be a resident of the
3 county in which the person is summoned; shall not be serving a
4 sentence of imprisonment, or be on probation or parole, as a
5 result of a conviction of any indictable offense; shall not have
6 any mental or physical disability which will prevent the person
7 from properly serving as a juror.

8 The summons for jury service shall be by written notice and
9 shall state the date, time and place where the juror is to appear
10 for service. The summons shall be served at least 30 days prior
11 to the date upon which the juror is to appear, by regular mail
12 addressed to the juror's usual residence or business address unless
13 service at another address is ordered by the Assignment Judge.
14 Service of the summons shall be complete upon mailing.

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

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

25 CHAPTER 21 COUNTY GRAND JURIES

26 There shall be at least one grand jury serving in each county at
27 all times. A grand jury shall consist of not more than 23 persons
28 selected from the panel of jurors summoned for service as grand
29 jurors. The Assignment Judge, or a Superior Court judge
30 designated by the Assignment Judge, shall excuse any person
31 from service on the grand jury if the person is a federal, State or
32 local government police officer or prosecutor.

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

37 A person who has been investigated by a grand jury and against
38 whom no indictment has been returned, may request the grand
39 jury to issue a statement indicating that a charge against the
40 person was investigated and that the grand jury did not return an
41 indictment from the evidence presented. The grand jury shall
42 issue the statement upon the approval of the court which
43 summoned the grand jury.

44 Any person who, with the intent to injure another, purposely
45 discloses any information concerning the proceedings of a grand
46 jury, other than as authorized or required by law, commits a
47 crime of the fourth degree.

48 A person injured as a result of a violation of this disclosure
49 may bring a civil action against the person convicted of the
50 violation.

51 CHAPTER 22 STATE GRAND JURIES

52 There shall be at least one State grand jury with jurisdiction
53 extending throughout the State serving at all times. A State
54 grand jury shall have the same powers and duties and shall

1 function in the same manner as a county grand jury except that
2 its jurisdiction shall extend throughout the State. The Supreme
3 Court may promulgate rules to govern particularly the procedures
4 of State grand juries.

5 CHAPTER 23 PETIT JURORS

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

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

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

14 In any civil action, each party, 6.

15 Upon an indictment for kidnapping, murder, aggravated
16 manslaughter, manslaughter, aggravated assault, aggravated
17 sexual assault, sexual assault, aggravated criminal sexual
18 contact, aggravated arson, arson, burglary, robbery, forgery if it
19 constitutes a crime of the third degree as defined by subsection
20 b. of N.J.S. 2C:21-1, or perjury, the defendant, 20 peremptory
21 challenges if tried alone and 10 challenges if tried jointly and the
22 State, 12 peremptory challenges if the defendant is tried alone
23 and 6 peremptory challenges for each 10 afforded the defendants
24 if tried jointly. The trial court, in its discretion, may, however,
25 increase proportionally the number of peremptory challenges
26 available to the defendant and the State in any case in which the
27 death penalty sentencing procedure might be utilized.

28 Upon any other indictment, defendants, 10 each; the State, 10
29 peremptory challenges for each 10 challenges allowed to the
30 defendants. When the case is to be tried by a jury from another
31 county, each defendant, 5 peremptory challenges, and the State,
32 5 peremptory challenges for each 5 peremptory challenges
33 afforded the defendants.

34 The assignment judge of each county may appoint and set the
35 salary of a clerk for the grand jury.

36 The bill repeals the existing Title 2A provisions pertaining to
37 juries.

38

39

40

41

42 _____
Revises law relating to selection and impaneling of juries.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 531

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 531.

This bill, which is based on recommendations of the New Jersey Law Revision Commission, revises the law relating to petit and grand jury selection and impaneling. It should be noted that many of the specific changes recommended in the Law Revision Commission's report were adopted from recommendations of the Supreme Court Task Force on Jury Utilization and Management.

The bill modifies the jury qualifications provisions which are found in the present law in order to increase the number of citizens eligible for jury service. Under the provisions of the bill, 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.

An excuse from jury service is set forth in N.J.S. 2B:20-10 and shall be granted only if: The prospective juror is 75 years of age or older; the prospective juror has served as a juror within the last three years in the county to which the juror is being summoned; jury service will impose a severe hardship due to circumstances which are not likely to change within the following year or the prospective juror is a member of the State Legislature. Severe hardship includes: (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. (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. (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 or a grammar school or high school, the scheduled jury service is during the school term, and a replacement cannot reasonably be obtained.

The bill would also expand the lists of potential jurors. Currently, the lists are compiled from voter registration and driver license lists. This bill would expand the sources for compiling jury lists to include State income tax filers and homestead rebate applicants.

In addition, the bill would require all records with regard to excuses from or deferrals of jury service as well as juror questionnaires to be retained for a period of three years. All other records concerning the summoning or impaneling and charging of jurors would be required to be retained for five years.

The bill would also make it a disorderly persons offense for any employer to penalize, threaten or otherwise coerce an employee, who is called for jury service, with respect to that employee's job. The bill would also provide for an employee to bring a civil action against any employer who penalizes him with regard to serving on a jury.

Under the provisions of the bill a foreperson and a deputy foreperson would be selected publicly and randomly from the persons impanelled as members of the grand jury. The bill would also codify the common law with regard to the return of indictments. Under the provisions of the bill the indictment may be found only upon the concurrence of 12 or more grand jurors who have been present or read or listened to all of the proceedings concerning the indictment and who have examined all the exhibits.

Remaining provisions of the bill may be summarized as follows:

CHAPTER 20 QUALIFICATIONS AND SELECTION OF JURORS

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

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. 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.

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.

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.

CHAPTER 21 COUNTY GRAND JURIES

There shall be at least one grand jury serving in each county at all times. A grand jury shall consist of not more than 23 persons selected from the panel of jurors summoned for service as grand jurors. 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.

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.

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.

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 person injured as a result of a violation of this disclosure may bring a civil action against the person convicted of the violation.

CHAPTER 22 STATE GRAND JURIES

There shall be at least one State grand jury with jurisdiction extending throughout the State serving at all times. 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 Supreme Court may promulgate rules to govern particularly the procedures of State grand juries.

CHAPTER 23 PETIT JURORS

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.

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

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

In any civil action, each party, 6.

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 the 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 death penalty sentencing procedure might be utilized.

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.

The bill repeals the existing Title 2A provisions pertaining to juries.

This bill was prefiled for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEES

STATEMENT TO

ASSEMBLY, No. 531

STATE OF NEW JERSEY

DATED: JUNE 23, 1994

The Senate Judiciary Committee reports favorably Assembly Bill No. 531.

These bills which are based on recommendations of the New Jersey Law Revision Commission, revise the law relating to petit and grand jury selection and impaneling. It should be noted that many of the specific changes recommended in the Law Revision Commission's report were adopted from recommendations of the Supreme Court Task Force on Jury Utilization and Management.

These bills modify the jury qualifications provisions which are found in the present law in order to increase the number of citizens eligible for jury service. Under the provisions of those bills, 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.

An excuse from jury service shall be granted only if: The prospective juror is 75 years of age or older; the prospective juror has served as a juror within the last three years in the county to which the juror is being summoned or 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. (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. (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 or a grammar school or high school, the scheduled jury service is during the school term, and a replacement cannot reasonably be obtained.

These bills would also expand the lists of potential jurors. Currently, the lists are compiled from voter registration and driver license lists. These bills would expand the sources for compiling jury lists to include State income tax filers and homestead rebate applicants. With regard to this expansion of sources for compiling jury lists, it is the committee's intent that the providing of the names of income tax filers and homestead rebate applicants to the AOC by the Division of Taxation would not constitute a

violation of those provisions of the uniform tax procedure statute (N.J.S.A. 54:50-1 et seq.) regarding the confidentiality of income tax related information. It is also the committee's intent in this regard that the Division of Taxation be responsible for submitting a single list of names to the AOC for use in compiling jury lists.

In addition, the bills would require all records with regard to excuses from or deferrals of jury service as well as juror questionnaires to be retained for a period of three years. All other records concerning the summoning or impaneling and charging of jurors would be required to be retained for five years.

The bills would also make it a disorderly persons offense for any employer to penalize, threaten or otherwise coerce an employee, who is called for jury service, with respect to that employee's job. The bill would also provide for an employee to bring a civil action against any employer who penalizes him with regard to serving on a jury.

Under the provisions of these bills, a foreperson and a deputy foreperson would be selected publicly and randomly from the persons impanelled as members of the grand jury. The bills would also codify the common law with regard to the return of indictments. The indictment maybe found only upon the concurrence of 12 or more grand jurors who have been present or read or listened to all of the proceedings concerning the indictment and who have examined all the exhibits.

Remaining provisions of the bill may be summarized as follows:

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

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. 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.

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.

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.

There shall be at least one grand jury serving in each county at all times. A grand jury shall consist of not more than 23 persons selected from the panel of jurors summoned for service as grand jurors. 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.

There shall be at least one State grand jury with jurisdiction extending throughout the State serving at all times. 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 Supreme Court may promulgate rules to govern particularly the procedures of State grand juries.

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.

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.

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 person injured as a result of a violation of this disclosure may bring a civil action against the person convicted of the violation.

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.

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

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

In any civil action, each party, 6.

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 the 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 death penalty sentencing procedure might be utilized.

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.

The bill repeals the existing Title 2A provisions pertaining to juries.

third chapters are substantial re-enactments of the New Jersey Air Safety and Hazardous Zoning Act of 1983 (as amended) and the New Jersey Airport Safety Act of 1983.

C. Replevin

The Commission filed a Final Report and Recommendations Relating to Replevin (see Appendix C).

Current New Jersey replevin statutes consist of 19 sections derived from the 1877 revision of the statutes. While some of the sections were amended between 1890 and 1963, the statutory replevin procedure for repossessing property has not changed significantly for more than a century.

In 1974 the New Jersey Supreme Court held that the statutes were violative of due process because they do not require notice and hearing prior to divestment of property. The Singer Co. v. Gardner, 65 N.J. 403, 415 (1974). The Commission proposal provides constitutionally required pre-judgment notice and hearing and simplifies and modernizes the law.

D. Juries

The Commission filed a Final Report and Recommendations Relating of Juries (see Appendix D).

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 of the text and organization of the statutes relating to petit jury and grand jury selection and impaneling.

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. However, some of the broader, policy-based recommendations of the Task Force were contained in legislation which was vetoed because it would also have increased juror fees. Many of the specific changes recommended in the Commission's Report were adopted from the recommendations of the Supreme Court Task Force which were not previously implemented.

The Law Revision Commission Report 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.

A number of specific statutory changes have been recommended by the Commission to broaden the jury pool: elimination of all class and occupational exemptions and disqualifications from jury service; elimination of the disqualification of persons over age 70; and expansion of the lists used to obtain jurors to include state income tax filers.

E. Articles 3 and 4 of the Uniform Commercial Code

The Commission filed a Final Report and Recommendations Relating to Articles 3 and 4 of the Uniform Commercial Code (see Appendix E).

In 1991, the National Conference of Commissioners on Uniform State Laws and the American Law Institute approved Revised Article 3 and Amended Article 4 of the Uniform Commercial Code. The existing Articles

3 and 4 are part of the Uniform Commercial Code adopted by New Jersey in 1961. N.J.S. 12A:3-101 to 12A:4-506. Article 3 governs negotiable instruments and Article 4 governs bank collections. The Law Revision Commission studied the revised articles and has recommended that the Legislature adopt them with two non-uniform amendments. The non-uniform amendments modify the loss allocation rules of the revised articles.

The Commission recommends an amendment to Section 3-406 of the Code to limit the customer's obligation to pay an unauthorized check even though the customer's negligence contributed to the forgery. Second, the Commission recommends an amendment to Section 4-401 of the Code to allow a bank to pay an item bearing a facsimile signature, whether authorized or not, provided the customer authorizes the bank to pay checks bearing the facsimile signature. The non-uniform amendments do not change the basic structure or concepts of the Code, nor do they upset balances struck by various parties who participated in the drafting process of the revised articles.

IV. PROJECTS AWAITING FINAL RECOMMENDATION

A. Title 45

In 1992, the Commission completed a Tentative Report and Recommendations Relating to Title 45 and distributed it for public comment (see Appendix F).

Title 45 of the Revised Statutes contains provisions regulating the practice of certain professions and occupations. These provisions have accreted over the years beginning in the nineteenth century. Chapter 1 of the title contains general provisions; each of the other chapters is devoted to the

**REPORT AND RECOMMENDATIONS
RELATING TO JURIES**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575**

TABLE OF DISPOSITIONS

2A:69-1	2B:20-1	
2A:69-1.1	2B:20-18	
2A:69-2	Deleted	The Commission has recommended the elimination of all occupational exemptions from jury service
2A:69-3	2B:23-11	
2A:69-4	2B:20-10	
2A:69-5	2B:20-16	
2A:69-6	2B:20-16	
2A:70-1	2B:20-2	
2A:70-2	2B:20-2	
2A:70-3	2B:20-5	
2A:70-4	2B:20-2	
2A:70-4a	2B:20-4	
2A:70-4.1	Deleted	Unnecessary.
2A:70-5	2B:20-3; 2B:20-14	
2A:70-6	2B:20-2	
2A:71-3.1	2B:20-4	
2A:71-4	2B:20-4	
2A:71-5	2B:21-1	
2A:71-6	2B:21-1	
2A:71-7	2B:21-1	
2A:71-8	2B:20-4	
2A:71-9	2B:20-6	
2A:71-10	2B:20-4	
2A:71-11	2B:20-8	
2A:71-12	2B:20-4	
2A:71-13	Deleted	Unnecessary; the delegation of duties in the absence of a county clerk or deputy county clerk should be left to the appropriate assignment judge.
2A:71-14	Deleted	Unnecessary. To the extent that the Superior Court has derivative powers concerning jury selection and impaneling as the successor to pre-1948 courts, that power derives from the judiciary article of the 1947 Constitution and need not be statutorily specified.
2A:72-1	Deleted	Unnecessary. The "ordering" of jurors by the assignment judge is effectively provided for in proposed sections 2B:20-4 Public and random selection of jurors; 2B:20-6 Designation of period of service for petit jury panels; and 2B:20-7 Summoning of jurors.
2A:72-2	2B:20-7	
2A:72-4	2B:20-7	
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.

2A:73-1	2B:21-2
2A:73-2	2B:21-4
2A:73-3	2B:21-3
2A:73-4	2B:21-6
2A:73-5	2B:4-4
2A:73-6	2B:4-4
2A:73-7	2B:4-4
2A:73A-1	Deleted
2A:73A-2	2B:22-1
2A:73A-3	2B:22-2
2A:73A-4	2B:22-3
2A:73A-5	2B:22-4
2A:73A-6	2B:22-5
2A:73A-7	2B:22-6
2A:73A-8	2B:22-7
2A:73A-9	2B:22-8
2A:73B-1	2B:21-8
2A:73B-2	2B:21-9
2A:73B-3	2B:21-10
2A:74-1	2B:23-2
2A:74-2	2B:23-3
2A:74-3	Deleted

Unnecessary.

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.

2A:74-4	2B:23-4
2A:74-5	2B:23-5
2A:74-6	2B:23-6
2A:74-7	2B:23-7
2A:74-8	2B:23-2
2A:74-10	Deleted
2A:74-11	2B:23-8
2A:74-12	Deleted
2A:76-1	2B:23-9
2A:76-2	2B:23-9
2A:77-1	2B:23-16
2A:77-2	2B:23-16
2A:77-3	2B:23-16
2A:78-1	2B:20-9; 2B:20-10; 2B:20-11
2A:78-2	Deleted
2A:78-3	2B:20-13
2A:78-4	2B:23-10
2A:78-5	2B:23-12
2A:78-6	2B:21-2; 2B:23-11
2A:78-7	2B:23-13
2A:78-8	2B:23-14
2A:78-9	2B:23-15
2A:79-1	2B:20-14
2A:79-2	2B:20-15

See comment to 2A:74-3.

Unnecessary.

Unnecessary.

2A:79-3
2A:79-4
2A:80-1
2A:80-2
2A:80-3

2B:20-15
Deleted
Deleted
2B:23-17
2B:23-18

Unnecessary; see proposed section 2B:20-14.
Unnecessary.

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 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