

LEGISLATIVE BILL 234

Approved by the Governor May 17, 1979

Introduced by Judiciary Committee, Nichol, 48, Chmn.; Reutzel, 15; Pirsch, 10; Wagner, 41; Venditte, 7

AN ACT to amend sections 25-1601, 25-1603, 25-1609, 25-1611, 25-1625, 25-1627.01, 25-1631.03, and 25-1637, Reissue Revised Statutes of Nebraska, 1943, and sections 25-1627 and 25-1629, Revised Statutes Supplement, 1973, relating to juries; to provide legislative intent; to change procedures relating to the selection of jurors; to change a penalty; to provide duties; and to repeal the original sections, and also sections 25-1631.01, 25-1631.02, 25-1633.02, 25-1633.03, and 25-1638, Reissue Revised Statutes of Nebraska, 1943, and section 25-1631, Revised Statutes Supplement, 1978.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature hereby declares that it is the intent and purpose of this act to create a jury system which will insure that:

(1) All persons selected for jury service are selected at random from a fair cross section of the population of the area served by the court;

(2) All qualified citizens have the opportunity to be considered for jury service;

(3) All qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose; and

(4) No citizen is excluded from jury service in this state as a result of discrimination based upon race, color, religion, sex, national origin, or economic status.

Sec. 2. That section 25-1601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1601. (1) All citizens of the United States residing in any of the counties of this state and having the qualifications of electors in such counties, who are over the age of ~~twenty-one~~ nineteen years, ~~and under the age of seventy years and who are intelligent, of fair character, of approved integrity, well-informed,~~ able to

read, write speak, and understand the English language, ~~of--sound--mind--and--discretion~~; and free from all disqualifications herein set forth under this section and from all other legal exceptions; are and shall be competent persons to serve on all grand and petit juries in their respective counties. Persons disqualified to serve as either grand or petit jurors are: (a) Judges of any court, (b) clerks of the Supreme or district courts, (c) sheriffs, (d) jailers, ~~persons who have served either as petit or grand jurors in any court of record within two years previous to the time their names are drawn as jurors, either as petit or grand jurors~~; (e) persons, or the wife or husband of any such person, who are parties to suits pending in the district court of the county of his, her, or their then residence for trial at that jury panel, (f) persons who have been convicted of a criminal offense punishable by imprisonment in the Nebraska Penal and Correctional Complex, when such conviction has not been set aside or a pardon issued, and (g) persons who are subject to liability for the commission of any offense which by special provision of law does and shall disqualify them. Persons who are husband and wife shall not be summoned as jurors on the same panel. Persons who are incapable, by reason of physical or mental disability, of rendering satisfactory jury service shall not be qualified to serve on a jury; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion.

(2) Any persons belonging to any of the following classes, who shall make such request to the court, shall be exempt from serving on grand and petit juries:-- (a) Coroners;-- (b) ministers of the gospel;-- (c) county commissioners or supervisors;-- (d) practicing attorneys; (e) practicing physicians;-- (f) practicing dentists;-- (g) druggists;-- (h) postmasters;-- (i) carriers of the United States mail;-- (j) licensed embalmers;-- (k) members of a fire department or company of any city or village or any member of any such company who has retired after ten years or more of service;-- (l) members of the national or state guard;-- (m) clerks of any court other than Supreme or district courts;-- (n) persons subject to a bodily infirmity amounting to a disability;-- (o) members of the legislature during the term for which elected;-- and-- (p) public and parochial school teachers during the term of school.

Nothing in this section set forth shall be deemed to prohibit the (2) The district court, or any judge thereof, from exercising, in its or his sound discretion, may exercise the power of excusing any grand or petit

juror or any person summoned for grand or petit jury service; ~~for any disclosed reason or cause which is deemed good and sufficient by such court or judge; upon a showing of undue hardship, extreme inconvenience, or public necessity, for such period as the court deems necessary. At the conclusion of such period the person shall reappear for jury service in accordance with the court's direction. All excuses and the grounds for such excuses shall be entered upon the record of the court and shall be considered as a public record. Provided, in In~~ In districts having more than one judge of the district court, the court may by rule or order assign or delegate to the presiding judge or any one or more judges the sole authority to grant such excuses.

(3) No qualified prospective juror is exempt from jury service.

Sec. 3. That section 25-1603, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1603. In each of the counties of this state, wherein a district court is appointed or directed to be held, the lists of grand and petit jurors shall be made up and jurors drawn selected for jury duty in the manner prescribed in sections 25-1525 to 25-1638 and sections 12 to 16 of this act.

Sec. 4. That section 25-1609, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1609. ~~No person shall be summoned as a juror in any district court of this state more than once in two years. Both husband and wife shall not be summoned as jurors in the same panel. A spouse of a member of the regular panel shall not be called as a juror.~~ It shall be sufficient cause of challenge of the petit juror that he or she lacks any one of the qualifications mentioned in section 25-1601, or that he or she has requested or solicited any officer of the court or officer charged in any manner with the duty of selecting the jury to place him or her upon the panel.

Sec. 5. That section 25-1611, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1611. ~~If any person summoned to appear as grand juror or petit juror fails, refuses, or neglects to appear, such person shall be considered guilty of contempt of court, and may be fined by the court in any~~

sum not less than five dollars nor more than fifty dollars and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail; and if any person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for such failure to comply with the summons. If such person fails to show good cause for noncompliance with the summons he or she shall be guilty of contempt of court.

If any jury commissioner or deputy jury commissioner, or sheriff, or deputy sheriff, or person having charge of election records, neglects or fails to perform the duties imposed by sections 25-1601 to 25-1638 and sections 12 to 16 of this act, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five dollars nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

Sec. 6. That section 25-1625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1625. (1) In each county of the State of Nebraska there shall be a jury commissioner.

(2) In counties having a population of not more than fifty thousand inhabitants, the clerk of the district court shall be jury commissioner ex officio.

(3) In counties having a population of more than fifty thousand, and not more than one hundred fifty thousand inhabitants, the jury commissioner shall be a separate office in the county government or the duties may be performed, when authorized by the judges of the district court within such counties, by the election commissioner. The jury commissioner shall receive an annual salary of not less than twelve hundred dollars.

(4) In counties having a population of more than one hundred fifty thousand inhabitants and not more than two hundred thousand inhabitants, the chief adult probation officer or any deputy probation officer for the probation district in which such county is situated shall, when so authorized by a majority of the judges of the district courts within such probation district, perform the duties of jury commissioner and shall be paid

by the county reasonable compensation therefor. In such counties, if a probation officer is not so designated and serving as jury commissioner, or in the absence or disability of the jury commissioner, the clerk of the district court shall perform the duties of jury commissioner without additional compensation.

(5) In counties having a population in excess of two hundred thousand inhabitants, the election commissioner shall be jury commissioner ex officio.

(6) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with said board.

(7) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of his county of all county personal property in his custody or possession, as provided in sections 23-346 to 23-350.

Sec. 7. That section 25-1627, Revised Statutes Supplement, 1978, be amended to read as follows:

25-1627. The jury commissioner shall in the presence of one of the judges of the district court of the county, at such times as may be necessary, or as he may be ordered to do so by the district judge, select a number to be known as a key number. The selecting of a key number shall be done in a manner which will insure that the number selected is the result of chance. The key number shall be selected from among the numbers one to ten, number ten small cards in numerical order from one to ten, both inclusive, shall place not more than one number on each card, and shall use each number but once, in the manner hereafter provided. He shall then place the cards in a small box or wheel provided for that purpose, close the box or wheel and thoroughly shake the same, and then draw therefrom, by chance, one of the cards in the presence of the judge. The number thus drawn shall be known as the key number. The jury commissioner shall immediately after drawing the key number deliver it to the officer or officers having charge of the election records, who shall thereafter be the custodian thereof, and the The jury commissioner shall make a record of the manner in which the key number was selected, the name of the judge present, and the date and the hour of the selection, his acts at once, including the placing of the cards in the box or wheel, the drawing of the key number therefrom, the presence of

~~the judge, naming him, and the date and hour of such drawing;~~ the same to be certified by the jury commissioner, and such records shall become a part of the public records of the county. The jury commissioner may use an electrical or mechanical system or device in carrying out his or her duties pursuant to this section.

Sec. 3. That section 25-1627.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1627.01. In counties having a population of less than three thousand inhabitants, the jury commissioner shall ~~draw~~ select two key numbers or such larger number of key numbers as the district judge or judges may order instead of only one, and all the provisions of sections 25-1627 and 25-1628 shall apply to the ~~drawing~~ selecting, recording, and use of such numbers in making up the key number list. In other counties having a population of three thousand inhabitants or more, where experience demonstrates that the use of only one key number does not produce a list of names of sufficient number to make the system of practical use, the district judge or judges of such counties may, in their discretion, order the ~~drawing~~ selecting of two key numbers as herein provided for.

Sec. 9. That section 25-1629, Revised Statutes Supplement, 1973, be amended to read as follows:

25-1629. The jury commissioner shall immediately upon receiving the proposed juror list mail a juror qualification form to each proposed juror pursuant to section 12 of this act and investigate the persons whose names are found ~~thereon~~ on the list. If he finds that any one of them is not possessed of the qualifications of petit jurors, as set forth in section 25-1601, or is excluded by the terms thereof, he shall strike such name from the list and make a record of each name stricken, which record shall be kept in his office subject to inspection by the court and attorneys of record in cases triable to a jury pending before the court, under such rules as the court may prescribe. The list as thus revised shall constitute the list from which petit jurors shall be selected, until such list shall have been exhausted in the manner hereinafter set forth, or until otherwise ordered by the judge or judges. Unless otherwise ordered by the judge or judges, the jury commissioner shall immediately upon completing the revision of ~~the~~ the list, in the presence of a judge for such district, ~~in districts having three judges or less and in the presence of three judges in districts having more than three judges;~~ select at random the names of

eighty persons possessing the qualifications for grand jurors as set out in section 25-1601. Where no grand jury list is drawn selected the judge or judges may at any time order the drawing selecting of a grand jury list. This list shall constitute the list from which grand jurors shall be chosen; Provided, that any judge of the district court shall upon the request of any person entitled to access to the list of names stricken, if satisfied that said such request is made in good faith, direct the jury commissioner to appear before the judge at chambers and in the presence of the complaining person state his or her reasons for striking the name specified in the request.

Sec. 10. That section 25-1631.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1631.03. The judge shall examine all jurors so drawn selected, under the provisions of sections 25-1631 and 25-1631.01, who appear and if, after all excuses have been allowed more than twenty-four petit jurors for each judge sitting with a jury, who are qualified and not excluded by the terms of section 25-1601, shall remain, the court may excuse by lot such number in excess of twenty-four as the court may see fit. Those jurors who have been discharged in excess of twenty-four for each judge, but are qualified, shall not be discharged permanently, but ~~their--names--shall--be returned--to--the--box--or--wheel;--and~~ shall there remain subject to be resummoned for jury service upon the same panel and before a new key number is drawn selected.

Sec. 11. That section 25-1637, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-1637. ~~If the officer in charge of the records in making up the list, which it is his duty to make up under sections 25-1625 to 25-1638, shall fail to select said names from the poll books or current precinct record in accordance with the provisions of section 25-1628; it shall be sufficient ground for quashing the entire panel.~~
(1) A party may move to stay the proceedings, to quash the entire panel, or for other appropriate relief, on the ground of substantial failure to comply with Chapter 25, article 16, and sections 12 to 16 of this act in selecting the grand or petit jury. Such motion shall be made within seven days after the moving party discovered or by the exercise of diligence could have discovered the grounds for such motion, and in any event before the petit jury is sworn to try the case.

(2) Upon a motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with Chapter 25, article 16, and sections 12 to 16 of this act, the moving party is entitled to present, in support of the motion, the testimony of the jury commissioner or the clerk, any relevant records and papers not public or otherwise available which were used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with Chapter 25, article 16 and sections 12 to 16 of this act, the court shall stay the proceedings pending the selection of the jury in conformity with Chapter 25, article 16 and sections 12 to 16 of this act, quash an entire panel, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which the state, a person accused of a crime, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with Chapter 25, article 16 and sections 12 to 16 of this act.

(4) The contents of any records or papers used by the jury commissioner or the clerk in connection with the selection process and not made public under Chapter 25, article 16, and sections 12 to 16 of this act shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section, until after all persons on the revised proposed juror list have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

(5) Whenever the entire panel is quashed the court shall make an order directing the jury commissioner to draw select a new key number, in the manner provided in section 25-1627, and deliver the same to the officer in charge of the election records, and it shall be the duty of the said officer upon receiving the new key number to proceed with the selection of a list of names in the manner provided in section 25-1628, to certify the list, and deliver the same to the jury commissioner, who shall proceed in all respects with the said list as hereinbefore set forth.

Sec. 12. The jury commissioner shall mail to every prospective juror whose name appears on the proposed juror list a juror qualification form accompanied by instructions to fill out and return the

form by mail to the jury commissioner within ten days after its receipt. The juror qualification form shall be in the form prescribed by the jury commissioner, subject to approval by the court. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for him or her and shall indicate that he or she has done so and the reason therefor. If it appears that there is an omission, ambiguity, or error in a returned form, the jury commissioner shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commissioner within ten days after its second receipt.

Sec. 13. Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commissioner to appear before him or her to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service or at the time of any interview before the court or jury commissioner, any prospective juror may be required to fill out another juror qualification form, at which time the prospective juror may be questioned with regard to his or her responses to questions contained on the form and grounds for his or her excuse or disqualification. Any information thus acquired by the court or jury commissioner shall be noted on the juror qualification form.

Any person who knowingly fails to complete and return or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror shall be guilty of contempt of court.

Sec. 14. In lieu of the procedure set forth in sections 12 and 13 of this act, a jury commissioner may institute a one-step qualifying and summoning system as prescribed in section 15 of this act.

Sec. 15. After a proposed jury list has been selected, the jury commissioner may require that each person listed on the proposed jury list be served with a summons, issued by the jury commissioner, to appear before the court at a time and place certain for jury duty. The jury qualification questionnaire may be sent together with the summons in a single mailing to a prospective juror. The summons may be served upon each juror by certified or registered mail, or by personal service by a jury commissioner, the clerk, or other person authorized by the court. After the initial appearance of the juror, he or she shall appear for jury

service in any court of the county as directed by the judge of any court during the term of jury service of the juror.

Sec. 16. In any five-year period no person shall be required to:

(1) Serve or be available for prospective service as a petit juror for more than four consecutive calendar weeks, except if necessary to complete service in a particular case;

(2) Serve on more than one grand jury; or

(3) Serve as both a grand and petit juror.

Sec. 17. Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty, as a result of his or her absence from employment due to such jury duty, upon giving reasonable notice to his or her employer of such summons. No employer shall subject an employee to discharge, loss of pay, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty. Any person violating the provisions of this section shall be guilty of a Class IV misdemeanor.

Sec. 18. That original sections 25-1601, 25-1603, 25-1609, 25-1611, 25-1625, 25-1627.01, 25-1631.03, and 25-1637, Reissue Revised Statutes of Nebraska, 1943, and sections 25-1627 and 25-1629, Revised Statutes Supplement, 1973, and also sections 25-1631.01, 25-1631.02, 25-1633.02, 25-1633.03, and 25-1638, Reissue Revised Statutes of Nebraska, 1943, and section 25-1631, Revised Statutes Supplement, 1973, are repealed.