

ACT 191

H. B. NO. 990

A Bill for an Act Relating to Juries.

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

SECTION 1. The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately numbered and to read as follows:

**“CHAPTER
JURORS**

Sec. -1 Declaration of policy. It is the policy of this State that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the court, and that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service in this State and an obligation to serve as jurors when summoned for that purpose.

Sec. -2 Prohibition of discrimination. A citizen shall not be excluded from jury service in this State on account of race, color, religion, sex, national origin, or economic status.

Sec. -3 Definitions. As used in this chapter:

- (1) “Clerk” and “clerk of the court” include any deputy clerk.
- (2) “Court” means the circuit courts of this State, and includes, when the context requires, any judge of the court. When there is an administrative judge, any administrative powers granted by this chapter may be exercised by that judge or his designee, unless otherwise provided.
- (3) “Jury wheel” means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors.
- (4) “Name,” when used in connection with prospective jurors, includes identifying numbers of the jurors.

Sec. -4 Grounds of disqualification. A prospective juror is disqualified to serve as a juror if he:

- (1) Is not a citizen of the United States and of the State, eighteen years old, and a resident of the circuit;
- (2) Is unable to read, speak, and understand the English language;
- (3) Is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; 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; or
- (4) Has been convicted of a felony in a state or federal court and not pardoned.

Sec. -5 Disqualification by interest. No person shall sit as a juror in any case in which his relative by affinity or by consanguinity within the third degree is interested, either as a plaintiff or defendant, or in the issue of which the juror has, either directly or through such relative, any pecuniary interest.

Sec. -6 Exempt when. A person may claim exemption from service as a juror if he is:

- (1) An attorney at law;
- (2) A head of an executive department, an elected official, or a judge, of the United States, State or county;
- (3) A minister or priest following his profession;
- (4) A practicing physician or dentist;
- (5) A member of the armed forces or militia when on active service, or an active member of a police or fire department;
- (6) A person who has served as a juror, either in a court of this State or the United States District Court for the District of Hawaii, within one year preceding the time of filling out the juror qualification form.

Sec. -7 Excused when, for cause. A juror shall not be excused by a court for slight or trivial cause, but only when it appears that jury duty would entail a serious personal hardship, or that for other good cause he should be excused either temporarily or otherwise.

Sec. -8 Pay of jurors; mileage fee. The pay of jurors shall be \$10 for each day of actual attendance at court, and in addition 20 cents for each mile actually and necessarily traveled in going only. The mileage fee may be allowed to a juror although, upon his request, he is excused from jury service, or claims exemption from jury service, provided he reports in person at the time for which he was summoned. In the discretion of the court any juror who incurs expenses for transportation, board, lodging as a result of the distance he resides from the location of the court may be reimbursed for actual expenses.

Sec. -9 Certificate for jury pay. At least once each month, the clerk shall certify the number of days each juror has attended court and the amount due to him. Each juror shall state on oath to the clerk the number of miles traveled for which he is entitled to mileage.

Sec. -10 Jury commission. A jury commission of five members is established in each circuit to perform the duties prescribed by this chapter under the supervision and control of the court. The jury commission shall be com-

posed of the clerk of the circuit court and four jury commissioners appointed by the judge or judges of each circuit court prior to January 15 of each year, for a term of one year from and after January 15. The jury commissioners must be citizens of the United States and of the State and residents in the circuit in which they serve. Any jury commissioner may be removed by the appointing power for any reason deemed sufficient by the appointing power. No more than three commissioners shall be members of the same political party. If a vacancy occurs in the office of a jury commissioner at any time, another commissioner shall be similarly appointed to fill the vacancy. Each jury commissioner, except the clerk of court appointed to the commission, shall be allowed for services on the jury commission such compensation as may be determined by the judge or judges to be just and reasonable, not to exceed \$400 per year in the first circuit and \$175 per year in other circuits, payable out of circuit court expense funds. Any powers granted by this section to the judges of the first circuit may, by order signed by a majority of the judges, be delegated to any one or more of the judges.

Sec. -11 Master list. (a) Each year the jury commission for each circuit shall compile a master list. The master list shall consist of all voter registration lists for the circuit, which may be supplemented with names from other lists of persons resident therein such as lists of taxpayers and drivers' licenses. This includes names, addresses, and social security numbers taken from income tax returns and estimates notwithstanding the provisions of section 235-116.

(b) Whoever has custody, possession, or control of any of the lists which are to be used in compiling the master list, shall make the list available to the jury commission for inspection, reproduction, and copying at all reasonable times.

Sec. -12 Master jury wheel. Each year the jury commission for each circuit shall, by random selection, place in the master jury wheel the names of prospective jurors taken from the master list, in such number as the jury commission determines should be processed in order to provide the number of jurors required for the ensuing year. From time to time an additional number may be determined by the jury commission or ordered by the court to be placed in the master jury wheel.

Sec. -13 Juror qualification form. (a) The jury commission shall prepare an alphabetical list of the names in the master jury wheel, which shall not be disclosed to any person other than pursuant to this chapter or specific order of the court. The jury commission shall mail to every name on such list a juror qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The form shall be subject to approval by the court as to matters of form and shall elicit the name, address or resident, age of the prospective juror, other information pertinent to disqualification or exemption from jury service, and such other matters as may be ordered by the court. The form further shall contain the prospective juror's declaration that his responses are true to the best of his knowledge and his acknowledgment that a wilful misrepresentation of a material fact may be punished by a fine of not more than \$500 or imprisonment for not more than

thirty days, or both. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for him and shall indicate that he has done so and the reason therefor. Upon failure or refusal of any person duly receiving the juror qualification form to complete and return it as required, or in case of an omission, ambiguity, or error in a returned form, the court, after first summoning the person to appear before the clerk to complete or correct the form, may punish the person for contempt.

(b) At the time of his appearance for jury service, or at the time of any interview before the court, jury commission, or clerk, any prospective juror may be required or permitted to fill out another juror qualification form in the presence of the court, jury commission, or clerk, at which time the prospective juror may be questioned, but only with regard to his responses to questions contained on the form and grounds for his exemption, excuse or disqualification. Any information thus acquired by the court, jury commission, or clerk shall be noted on the juror qualification form.

(c) The jury commission may in its discretion, by circuit court process, summon prospective jurors before it for examination. A person summoned for examination shall receive mileage as provided in section -8.

(d) Any person who wilfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a petty misdemeanor.

Sec. -14 Qualified jury wheel. (a) Upon return of the juror qualification forms, the jury commission shall, after careful investigation in each case, select for jury service all those persons whom it believes are qualified and not exempt; provided, however, that any person who is exempt may be selected if he waives his exemption. The names of the persons so selected shall be placed in the qualified jury wheel, to be used in compiling lists of jurors subject to service during the ensuing year; provided, however, that the jury commission may, with the approval of the court, excuse a prospective juror for any cause set forth under section -7, in which case the name of such excused person shall not be placed in the qualified jury wheel.

Sec. -15 Certified jury lists. (a) Every year the jury commission of each circuit shall make and, not later than January 5, file with the clerk of its circuit court, one or more certified lists of the names and addresses of fifty citizens, or such greater number as the court may order, subject to serve as grand jurors during the ensuing year from and after January 15. At the same time the jury commission of each circuit shall likewise file a separate certified list of the names and addresses of citizens subject to serve as trial jurors during the ensuing year, from and after January 15, the number for each circuit to be such as the jury commission considers necessary. The certified lists of grand jurors and trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. Upon the order of the court, from time to time, additional lists of persons subject to serve as grand jurors shall be compiled and filed, and additional names shall be added to a grand or trial jury list; provided, that all such additions shall be made by drawing from the qualified jury wheel for the appropriate year.

When more than one grand jury list has been compiled the sequence in which the lists are to be used shall be designated by the jury commission according to the sequence of drawing. The names on the certified lists shall be open to public inspection, subject to orders of the court.

(b) In the second, third and fifth circuits any circuit judge, and in the first circuit a majority of the circuit judges, may at any time, for reasons appearing sufficient to him or them, order the dissolution of any certified list of grand or trial jurors and order the jury commission to make and file a new list, which may include any of the persons so discharged, to serve for the remainder of the year. The new list shall be compiled in the manner prescribed by the court. Until such new list is filed, grand or trial jurors may be drawn from a list thereof compiled and filed by the judge or judges making the order or one or more of them designated by the remainder, which list shall expire no later than thirty days after the filing thereof unless said period is extended, except that any trial jury panel may sit beyond the end of the period above prescribed and after the filing of a new list by the jury commission, for the trial of any case in which the selection of the jury has already commenced.

Sec. -16 Grand jury. (a) The court shall order one or more grand juries to be impaneled at such times as the public interest requires; provided, however, that there shall be an annual initial impaneling not later than January 15.

(b) For the impaneling of a grand jury, the prospective jurors on a certified list of grand jurors shall be summoned and the names of those who are present, and not disqualified, exempted, or excused, shall be placed in appropriate container from which a drawing by lot shall be conducted in order to draw a sufficient number of names to constitute a grand jury. The drawing shall be made in open court in the presence of the judge, no earlier than one week after a publication of notice of the time and place of drawing in a newspaper of general circulation published within the circuit for which the grand jury is drawn; provided, however, that if there is no such newspaper, then after at least one week's posting of such notice in at least three conspicuous places in the circuit.

(c) A certificate listing the names of the grand jurors and stating the essential facts of the drawing, signed by the judge and attested by the clerk, shall be filed.

(d) The grand jury, being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the grand jury from time to time, as it may deem necessary.

(e) Subject to section -22, a grand jury shall serve for a period of one year after being impaneled, unless sooner discharged by the court. Any vacancy occurring on a grand jury may be filled by the court by drawing at random from names on the certified list of grand jurors.

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

(b) Not later than January 15 of each year, the clerk shall draw at random from the names on the certified list of trial jurors such number of trial jury panels as is deemed sufficient for the ensuing year, each panel to consist of twenty-six names. When directed by the court, additional panels shall be drawn. The names and jurors qualification forms for the prospective jurors on each panel shall be sealed in envelopes, one envelope for each panel. The envelopes shall remain sealed and in the custody of the clerk.

(c) Whenever a judge requires the services of a trial jury for use in proceedings before him or any other judge of the circuit, he may order the required number of panels from the clerk. Upon receipt by the judge of the envelopes containing the panels, the contents thereof shall be made available to the litigants concerned.

(d) The whole or any number of the jurors from a panel or panels ordered by a judge may be required to attend and serve. The names of those summoned and present, and not disqualified, excused or exempted, shall be placed in an appropriate container, from which there shall be drawn a sufficient number of names to constitute a trial jury. The drawing shall be by lot in open court under the supervision of the judge. There is no requirement that names on a particular panel be exhausted before those on another panel may be used in the drawing, and the names of jurors on different panels which have been transmitted to the judge may be mixed with each other in the container during the drawing. If a jury cannot be chosen for the trial of a case from the names placed in the container before the drawing commenced, additional names may be placed in the container. For this purpose additional panels may be ordered and the prospective jurors summoned. The judge may summon jurymen from among bystanders on consent of all parties.

(e) Prospective jurors in attendance but not actually serving in a trial before him shall be subject to such orders relative to further jury service as the judge deems appropriate, including service before other judges in the circuit.

(f) Each panel ordered by a judge shall serve for a period of thirty days, commencing from the first day the panel is required to appear for service; provided, however, that any juror may be required to serve beyond the thirty day period for the trial of any case in which the selection of the jury commenced within that period. Upon completion of service by all members of a panel, such panel shall be returned to the clerk which shall not transmit such panel again to any judge until all other panels have been exhausted and other panels which served at a more remote time have been first transmitted for service.

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

Sec. -18 Trial jury, second, third, fifth circuits. (a) In the second, third, and fifth circuits, if the court so orders, trial jurors shall be drawn, summoned, and further proceedings had as provided in section -17.

(b) If no order is made under subsection (a) in a particular circuit, the judge (or judges, if there are more than one) of that circuit may order a system of jury selection from the certified list of trial jurors which is not contrary to the general purposes of this chapter. In no case shall the trial jury panel or panels be chosen other than by lot, nor shall the trial jury be selected from the

jury panel or panels other than by lot in open court. In selecting the trial jury there is no requirement that the names on a particular panel be exhausted before those on another panel may be used in the drawing, and the names of jurors on different panels may be mixed with each other for the drawing.

(c) The names of prospective jurors on a trial jury panel which is to be summoned, and the contents of juror qualification forms completed by those jurors, shall be made available to the litigants concerned.

(d) A judge may, having regard to the equitable distribution of jury service, excuse any juror after actual service in a trial.

Sec. -19 Summoning of jurors. (a) When so ordered by the court, the clerk shall transmit to the chief of police or a bailiff the names of jurors to be summoned. The chief of police or bailiff, either personally or through an authorized subordinate, shall summon the persons named to attend the court by giving personal notice to each of the time and place of required appearance as fixed by order of the court. The court may order the summoning of jurors by any officer of the court, and the service of summons by any form of personal notice, including notice by telephone.

(b) A juror who wilfully or without reasonable excuse, fails to attend after personal service of written summons by a bailiff or police officer may be arrested and punished for contempt.

Sec. -20 Requests for exemption or excuse. If a person who is exempt or who believes himself to be entitled to be excused from jury duty, is summoned as a juror, he may, even though he did not request exemption or excuse previously, or was not exempted or excused by the jury commission, make his request for exemption or excuse to the judge of the court for which he is summoned. The request may be made to the clerk or bailiff, who shall deliver it to the judge and if sufficient in substance it shall be received as an excuse for nonattendance in person.

Sec. -21 Jurors disqualified, exempted, or excused. Whenever a juror has been disqualified, exempted, or excused, that fact shall be noted on his juror qualification form and he shall not be subject to service for the period of time commensurate with the nature and circumstances of his disqualification, exemption, or excuse.

Sec. -22 Jurors serve one year. The persons whose names are placed on the certified lists filed by the jury commission shall be subject to service for one year from and after January 15 and until the filing of new certified lists; provided, that jurors may sit beyond the end of the period above prescribed, (1) in the case of a trial jury for the trial of any case in which the selection of the jury commenced within said period, and (2) in the case of a grand jury until another grand jury is impaneled and sworn.

Sec. -23 Challenging compliance with selection procedures. (a) Promptly after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the trial jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this chapter in selecting the

grand or trial jury.

(b) Upon motion filed under subsection (a) containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of a jury commissioner or the clerk, any relevant records and papers not public or otherwise available used by the jury commission or the clerk, and any other relevant evidence. If the court determines that in selecting either a grand jury or a trial jury there has been a substantial failure to comply with this chapter and that the moving party has been prejudiced thereby, the court shall stay the proceedings pending the selection of the jury in conformity with this chapter, quash an indictment, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the State, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.

(d) The contents of any records or papers used by the jury commission or the clerk in connection with the selection process shall not be disclosed, except as provided by other provisions of this chapter, or in connection with the preparation or presentation of a motion under subsection (a), or upon order of the court. 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 (a).

Sec. -24 Preservation of records. All records and papers compiled and maintained by the jury commission or the clerk in connection with selection and service of jurors shall be preserved by the clerk for four years after the termination of the prescribed period of service and for any longer period ordered by the court.

Sec. -25 Protection of jurors' employment. (a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) Any employer who violates subsection (a) is guilty of a petty misdemeanor.

(c) If an employer discharges an employee in violation of subsection (a) the employee within ninety days from the date of discharge may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court.

Sec. -26 Use of electronic or electromechanical devices for drawing grand and trial juries. Selections of citizens who are subject to jury duty and drawings of jury lists and panels, may be made by means of electronic or electromechanical devices commonly designated as data processing equipment such as punch cards, electronic tape, random access files, and other solid state devices when the same are available for their use and the court so orders."

SECTION 2. Chapter 609, Hawaii Revised Statutes, is repealed.

SECTION 3. All laws and parts of laws heretofore enacted which are inconsistent or in conflict with the provisions of this act shall be superseded by the provisions of this act.

SECTION 4. The repeal of chapter 609 and the enactment of the new chapter on jurors shall take effect with respect to the 1974 jury lists, proceedings relating thereto, and jurors drawn therefrom, except that the provisions enacted by this act relating to the summoning of jurors and the period of service shall take effect on July 1, 1973.

SECTION 5. This Act shall take effect upon its approval, except as otherwise provided.

(Approved May 24, 1973.)