

ACT 366

H.B. NO. 121

A Bill for an Act Relating to Jurors.

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

SECTION 1. The purpose of this Act is to establish a statewide "one day or one trial" system for jury service. This system and other changes to chapter 612, Hawaii Revised Statutes, made by this Act are intended to implement the comprehensive recommendations concerning the jury system made in a report by the National Center for State Courts which was commissioned by the State Judiciary to study the concerns expressed in House Resolution No. 127, Eleventh Legislature of the State of Hawaii, Regular Session of 1982.

SECTION 2. Chapter 612, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§612- Rules.** The supreme court is authorized to adopt, amend, and repeal rules of court, not inconsistent with this chapter, regulating all aspects of the selection and management of grand and trial jurors. The clerk, with the approval of the supreme court, may adopt rules setting forth policies, procedures, and forms for the selection and management of grand and trial jurors in the jury pools, in court rooms, and in other appropriate circumstances in furtherance of the objectives of this chapter."

SECTION 3. Section 612-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§612-6]] Exempt when. (a) No person shall be authorized to claim an exemption from service as a juror in the courts of the first circuit from January 1, 1989 through December 31, 1990 and in the courts of all circuits, other than the first circuit from January 1, 1990 through December 31, 1991.**

**(b) From January 1, 1991, for the courts of the first circuit, and from January 1, 1992, for all other circuits of the State of Hawaii, [A] a person may claim exemption from service as a juror if the person 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 the minister's or priest's 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."

SECTION 4. Section 612-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§612-11] Master list.** (a) Each year the [jury commission] clerk for each circuit shall compile a master list. The master list shall consist of all voter registration lists for the circuit, which [may] shall 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. Each person's name shall appear only once on the master list.

(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] clerk for inspection, reproduction, and copying at all reasonable times."

SECTION 5. Section 612-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§612-12] Master jury wheel.** Each year the [jury commission] clerk for each circuit [shall], by random selection, shall place in the master jury wheel the names of prospective jurors taken from the master list, in such number as the [jury commission] clerk 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] clerk or ordered by the court to be placed in the master jury wheel."

SECTION 6. Section 612-13, Hawaii Revised Statutes, is amended to read as follows:

**"[§612-13] Juror qualification form.** (a) The [jury commission] clerk 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] clerk 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 of 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 also contain the prospective juror's declaration that the prospective juror's responses are true to the best of the prospective juror's knowledge and the prospective juror's acknowledgement 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 the prospective juror and shall indicate that the person 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 the prospective juror's 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 the prospective juror's responses to questions contained on the form and grounds for the prospective juror's 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 612-8.

(d)] (c) 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."

SECTION 7. Section 612-14, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§612-14**~~]]~~ **Qualified jury wheel.** (a) Upon return of the juror qualification form,<sup>1</sup> the [jury commission shall,] clerk, after careful investigation in each case, shall select for jury service all those persons whom [it] the clerk believes are qualified and not exempt; provided that any person who is exempt may be selected if the person waives the person's exemption.

(b) 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 that the [jury commission may,] clerk, with the approval of the court, may excuse a prospective juror for any cause set forth under section 612-7, in which case the name of [such] the excused person shall not be placed in the qualified jury wheel."

SECTION 8. Section 612-15, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§612-15**~~]]~~ **Certified jury lists.** (a) Every year the [jury commission] clerk of each circuit shall make and[,] file, 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] clerk 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] clerk 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] clerk 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 the judge or them, may order the dissolution of any certified list of grand or trial jurors and order the [jury commission] clerk 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] the 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] not later than thirty days after the filing thereof unless [said] the period is extended, except that any trial jury panel may sit beyond the end of the period [above] prescribed in this subsection and after the filing of a new list by the [jury commission,] clerk, for the trial of any case in which the selection of the jury has already commenced."

SECTION 9. Section 612-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) [Subject to section 612-22,] For the courts of the first circuit of the State of Hawaii from January 1, 1989 to December 31, 1991, and for the courts of all other circuits of the State of Hawaii from January 1, 1990 to December 31, 1992, a grand jury shall serve for a period of [one year] six months after being impaneled[, unless sooner discharged by the court.]; provided that a grand jury may:

- (1) Sit beyond such period to complete any matter in which the grand jury was impaneled;
- (2) Be discharged sooner by the court; and
- (3) Sit in all other cases until another grand jury is impaneled and sworn.

Effective January 2, 1992 for the courts of the first circuit of the State of Hawaii, and effective January 2, 1993 for the courts of all other circuits of the State of Hawaii subject to section 612-22, 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."

SECTION 10. Section 612-17, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Each panel ordered by a judge shall serve for a period of [thirty days,] one day, commencing from the first day the panel is required to appear for service; provided that any juror may be required to serve beyond the [thirty day] one 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] the panel shall be returned to the clerk [which], who shall not transmit [such] the 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."

SECTION 11. Section 612-18, Hawaii Revised Statutes, is amended to read as follows:

“[[§612-18]] Trial jury], second, third, fifth circuits]. (a) [In the second, third, and fifth circuits, if] If the court so orders, trial jurors shall be drawn, summoned, and further proceedings had as provided in section 612-17.

(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.]”

SECTION 12. Section 612-20, Hawaii Revised Statutes, is amended to read as follows:

“[[§612-20]] Requests for exemption or excuse. If a person who is exempt or who believes oneself to be entitled to be excused from jury duty, is summoned as a juror, [the person may,] even though the person did not request exemption or excuse previously, or was not exempted or excused by the [jury commission,] clerk, the person may make the person’s request for exemption or excuse to the judge of the court for which the person 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.”

SECTION 13. Section 612-22, Hawaii Revised Statutes, is amended to read as follows:

“§612-22 [Jurors serve] Trial jurors subject to<sup>1</sup> one year[,] of service; one day or one trial requirement.<sup>1</sup> The persons whose names are placed on the certified lists filed by the [jury commission] clerk shall be subject to service for one year from and after January 15 and until the filing of new certified lists; provided that trial 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 for the completion of any matter in which such grand jury was impaneled within the said period; in all other cases until another grand jury is impaneled and sworn.] shall serve only one day or one trial during the year. Prospective jurors who are challenged at voir dire and excused, excused for cause, summoned but not called to a courtroom, or called to a courtroom but later excused shall be dismissed from service for the year. Jurors who are accepted to serve on a jury shall complete the duration of the trial and shall be dismissed from service for the year.”

SECTION 14. Section 612-23, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(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.”

2. By amending subsection (d) to read:

“(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).”

SECTION 15. Section 612-24, Hawaii Revised Statutes, is amended to read as follows:

“**[[§612-24]] Preservation of records.** All records and papers compiled and maintained by [the jury commission or] the clerk in connection with the 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.”

SECTION 16. Section 612-10, Hawaii Revised Statutes, is repealed.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1987-1988, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the judiciary.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 19. Section 1 of this Act shall take effect upon its approval. Sections 2 to 16 shall take effect on January 1, 1989 for the courts of the first circuit of the State of Hawaii, and on July 1, 1990 for the courts of all other circuits of the State.

(Approved July 2, 1987.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.