

## FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see Rules 23 and 24, Title 18, Appendix, Crimes and Criminal Procedure.

## CROSS REFERENCES

Constitutional provisions relating to trial by jury, see Const. Amends. 6 and 7.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

**§ 1862. Discrimination prohibited**

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 96-417, title III, § 302(c), Oct. 10, 1980, 94 Stat. 1739.)

## HISTORICAL AND REVISION NOTES

This section makes provision for specific exemption of classes of citizens usually excused from jury service in the interest of the public health, safety, or welfare. The inclusion in the jury list of persons so exempted usually serves only to waste the time of the court.

## AMENDMENTS

1980—Pub. L. 96-417 prohibited discrimination against service as juror in the Court of International Trade.

1968—Pub. L. 90-274 substituted provisions prohibiting discrimination against citizens in their service as jurors because of race, color, religion, sex, national origin, or economic status for provisions identifying three groups as exempt from jury service, including members of the armed forces on active duty, members of fire or police departments, and public officers actively engaged in the performance of official duties.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on or commenced on or after such date, see section 701(a) of Pub. L. 96-417, set out as a note under section 251 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1863, 1866, 1878 of this title.

**§ 1863. Plan for random jury selection**

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel

shall examine the plan to ascertain that it complies with the provisions of this title. If the reviewing panel finds that the plan does not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remedying the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time and it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies therewith. Modifications of the plan made at the instance of the district court shall become effective after approval by the panel. Each district court shall submit a report on the jury selection process within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plans formulated under this title.

(b) Among other things, such plan shall—

(1) either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one citizen to serve with the clerk of the court as the jury commission: *Provided, however,* That the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commissioner shall not belong to the same political party as the clerk serving with him. The clerk or the jury commission, as the case may be, shall act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide. Each jury commissioner shall, during his tenure in office, reside in the judicial district or division for which he is appointed. Each citizen jury commissioner shall receive compensation to be fixed by the district court plan at a rate not to exceed \$50 per day for each day necessarily employed in the performance of his duties, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commissioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city di-

rectory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title. The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.

(3) specify detailed procedures to be followed by the jury commission or clerk in selecting names from the sources specified in paragraph (2) of this subsection. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division are placed in a master jury wheel; and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionally represented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division, may be used.

(4) provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially on the master jury wheel, which shall be at least one-half of 1 per centum of the total number of persons on the list used as a source of names for the district or division; but if this number of names is believed to be cumbersome and unnecessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or such other district court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as necessary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5)(A) except as provided in subparagraph (B), specify those groups of persons or occupational classes whose members shall on individual request therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title.

(B) specify that volunteer safety personnel, upon individual request, shall be excused from

jury service. For purposes of this subparagraph, the term "volunteer safety personnel" means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(c) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The panel shall approve or direct the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub. L. 92-269, § 2,

Apr. 6, 1972, 86 Stat. 117; Pub. L. 95-572, §2(a), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100-702, title VIII, §802(b), (c), Nov. 19, 1988, 102 Stat. 4657, 4658; Pub. L. 102-572, title IV, §401, Oct. 29, 1992, 106 Stat. 4511.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940, ed., §415 (Mar. 3, 1911, ch. 231, §278, 36 Stat. 1165).

Subsections (a) and (b) are new and merely declaratory of existing practice.

The phrase "or previous condition of servitude" was omitted as obsolete.

Changes were made in phraseology.

#### REFERENCES IN TEXT

Section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b)(5)(B), is section 1203(6) of Pub. L. 90-351, which is classified to section 3796b(6) of Title 42, The Public Health and Welfare.

The date of enactment of the Jury Selection and Service Act of 1968, referred to in subsec. (c), is the date of enactment of Pub. L. 90-274, which was approved Mar. 27, 1968.

#### AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102-572 inserted at end "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists."

1988—Subsec. (b)(5). Pub. L. 100-702, §802(b), designated existing provisions as subpar. (A), inserted "except as provided in subparagraph (B).", and added subpar. (B).

Subsec. (b)(6). Pub. L. 100-702, §802(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "specify those groups of persons or occupational classes whose members shall be barred from jury service on the ground that they are exempt. Such groups or classes shall be exempt only if the district court finds, and the plan states, that their exemption is in the public interest and would not be inconsistent with sections 1861 and 1862 of this title. The plan shall provide for exemption of the following persons: (i) members in active service in the Armed Forces of the United States; (ii) members of the fire or police departments of any State, district, territory, possession, or subdivision thereof; (iii) public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties."

1978—Subsec. (b)(7) to (9). Pub. L. 95-572 struck out par. (7) relating to random jury selection plan provision for fixing the distance, in miles or in travel time, from each place of holding court beyond which prospective jurors residing should, on individual request, be excused from jury service on the ground of undue hardship in traveling to the place where court was held, now incorporated in definition of "undue hardship or extreme inconvenience" in section 1869(j) of this title, and redesignated pars. (8) and (9) as (7) and (8), respectively.

1972—Subsec. (b)(4). Pub. L. 92-269 inserted provisions requiring the master jury wheel to be emptied and refilled in not greater than four years intervals.

1968—Subsec. (a). Pub. L. 90-274 substituted provisions requiring a written plan covering the random selection of jurors by each United States District Court and the adoption, review, and modification of the plan for provisions authorizing district judges to exclude or excuse for good cause persons called as jurors.

Subsec. (b). Pub. L. 90-274 substituted provisions setting out the nine required features of a plan for random jury selection, including management by commission

or clerk, selection from voter registration lists, detailed procedures for selecting names, a master jury wheel, excused or exempted groups, maximum distances of travel, disclosure of names, and procedures for assigning jurors drawn from the jury wheel to particular grand and petit jury panels, for provisions authorizing the district court to excuse, for the public interests, classes or groups upon a finding that such jury service would entail undue hardship, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice.

Subsec. (c). Pub. L. 90-274 substituted provisions covering the transmittal of the plan to a reviewing panel and the modification thereof for provisions prohibiting the exclusion of any citizen from juror service on account of race or color.

Subsec. (d). Pub. L. 90-274 added subsec. (d).

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

#### REFILLING OF MASTER JURY WHEEL NOT LATER THAN SEPTEMBER 1, 1973; REFILLING OF QUALIFIED JURY WHEEL NOT LATER THAN OCTOBER 1, 1973; RETROACTIVE EFFECT

Sections 3 and 4 of Pub. L. 92-269 provided that:

"SEC. 3. (a) Each judicial district and each division or combination of divisions within a judicial district, for which a separate plan for random selection of jurors has been adopted pursuant to section 1863 of title 28, United States Code, other than the District of Columbia and the districts of Puerto Rico and the Canal Zone, shall not later than September 1, 1973, refill its master jury wheel with names obtained from the voter registration lists for, or the lists of actual voters in, the 1972 general election.

"(b) The District of Columbia and the judicial districts of Puerto Rico and the Canal Zone shall not later than September 1, 1973, refill their master jury wheels from sources which include the names of persons eighteen years of age or older.

"(c) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

"SEC. 4. (a) Nothing in this Act amending this section and section 1865 of this title shall affect the composition of any master jury wheel or qualified jury wheel prior to the date on which it is first refilled in compliance with the terms of section 3.

"(b) Nothing in this Act shall affect the composition or preclude the service of any jury empaneled on or before the date on which the qualified jury wheel from which the jurors' names were drawn is refilled in compliance with the provisions of section 3."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1866, 1867, 1868 of this title.

**§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form**

(a) From time to time as directed by the district court, the clerk or a district judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk of the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$100 or imprisoned not more than three days, or both. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$100 or imprisoned not more than three days, or both.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 57; Pub. L. 100-702, title VIII, § 803(a), Nov. 19, 1988, 102 Stat. 4658.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 412, 412a (Mar. 3, 1911, ch. 231, § 276, 36 Stat. 1164; Feb. 3, 1917, ch. 27, 39 Stat. 873; May 21, 1945, ch. 129, title IV, 59 Stat. 198; July 5, 1946, ch. 541, title IV, 60 Stat. 478).

The words "The district court" were substituted for the phrase "the judge thereof, or by the judge senior in commission in districts having more than one judge" to conform to other sections authorizing appointment of court officers. See section 751 of this title relating to appointment of district court clerk.

The limitation in section 412a of title 28, U.S.C., 1940 ed., that jury commissioners shall serve no more than three days in any one term of court was omitted as unnecessary. This is a matter that may safely be left to the discretion of the court.

The last paragraph was added in conformity with section 11-1401 of the District of Columbia Code, 1940 ed., providing for three jury commissioners.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

As finally enacted, act July 9, 1947, ch. 211, title IV, 61 Stat. 304, which was classified to Title 28, U.S.C., 1946 ed., § 412a, was also a source of this section. Accordingly such act was included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-702 amended second sentence generally. Prior to amendment, second sentence read as follows: "The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title."

1968—Pub. L. 90-274 substituted provisions for the public drawing of names from the master jury wheel, the completion of the jury qualification form, and the penalties for failure to appear and for misrepresentation of material facts for provisions requiring the drawing of names from a jury box, the refilling of the box by the clerk and a jury commissioner, the requirements and compensation of the commissioner, and the alternate placement of names by the clerk and the commissioner.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Jurors and juries, see rules 38, 39, 46, 47, and 48, Appendix to this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Jurors and juries, see rules 6, 23, 24, and 51, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1869 of this title.

**§ 1865. Qualifications for jury service**

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determina-