



Aida S. Montano

*Final Analysis*  
Legislative Service Commission

**Am. Sub. S.B. 71**  
125th General Assembly  
(As Passed by the General Assembly)

**Sens. Goodman, Harris, Amstutz, Fingerhut, Blessing, DiDonato,  
Robert Gardner, Schuler, Stivers**

**Reps. Seitz, Grendell, Willamowski, Latta, Buehrer, DeGeeter, Hollister,  
Niehaus, T. Patton, Reidelbach, Schmidt, Schneider, Slaby**

**Effective date: \***

---

**ACT SUMMARY**

- Provides that if a prospective juror fails to attend before a commissioner of jurors as required in a notice to do so because the juror has a physical disability, the commissioners of jurors must report that fact to the court in the same manner as the commissioners of jurors reports all other reasons for a prospective juror's failure to attend before a commissioner of jurors.
- Modifies the penalty for a prospective juror's failure to attend before a commissioner of jurors or failure to answer any legal and pertinent questions put to the prospective juror by the court by making the penalty a fine of not less than \$100 nor more than \$250.
- Requires the court to inform a prospective juror that the prospective juror has the right to request an in-camera hearing, on the record and with an attorney present, regarding a legal and pertinent question put to the prospective juror by the court and provides that an in-camera hearing is not required unless information in the prospective juror's response to the question is requested by any person and the prospective juror requests that the information not be released.

---

\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- States that it is the policy of this state that all qualified citizens have an obligation to serve on petit juries when summoned by the courts unless the citizen is excused as provided in the law.
- Requires the court or judge, upon a request made by a juror at least two business days before the juror's initial appearance who appears in person or who contacts the appropriate court employee appointed by the court by telephone, in writing, or by electronic mail, to postpone the juror's initial appearance for jury duty if the juror has not previously been granted a postponement and the juror and court agree on a future date for service.
- Allows the court or judge to grant a second or subsequent postponement of jury service to a juror only in the event of an extreme emergency, or a national disaster or emergency in which the juror is personally involved, that could not have been anticipated at the time the initial postponement was granted.
- Requires the commissioners of jurors to report the names of all jurors granted a postponement or temporarily excused to a subsequent part of a term or to a subsequent term to the officers attending the drawing of the jurors for that term or part of a term.
- Allows the court to excuse a prospective juror only if one or more of the following are shown to the satisfaction of the judge by either the juror or another person acquainted with the facts: the interests of the public will be materially injured by the juror's attendance, the juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill (same as in former law), the juror is a cloistered member of a religious organization (same as in former law), the prospective juror has a mental or physical condition that causes the juror to be incapable of service, jury service would otherwise cause undue or extreme physical or financial hardship to the juror or a person under the juror's care, the juror is over 75 years of age and requests to be excused, or the prospective juror is an active member of a recognized Amish sect and requests to be excused because of the prospective juror's sincere belief that as a result of that membership the prospective juror cannot pass judgment in a judicial matter.
- Provides the circumstances to which undue or extreme physical or financial hardship as described in the preceding dot point apply.

- Requires a prospective juror who asks a judge to grant an excuse based on undue or extreme physical or financial hardship to provide the judge with specified documentation and permits the court to deny the request to be excused if the prospective juror fails to provide satisfactory documentation.
- Requires a prospective juror who requests to be excused from jury service to take all actions necessary to obtain a ruling on the request, and requires a prospective juror who requests to be excused because the juror is over 75 years of age to inform the appropriate court employee of that request, by not later than the date on which the prospective juror is scheduled to appear for jury duty.
- Requires that, after 24 months, a person who was excused from jury service becomes eligible once again for qualification unless the person was excused from service permanently.
- Removes the former provision that allowed the court to direct the sheriff to arrest a person who failed to attend and serve as a juror without having been excused and replaces it with a prohibition against failing to attend and serve as a juror at a term of a court of record without having been excused, and provides that whoever violates that prohibition may be fined not less than \$100 nor more than \$250 and may be punished as for contempt of court.
- Changes from three consecutive calendar weeks to two consecutive calendar weeks the time period of actual services as a juror after which a person who is summoned as a juror and who has actually served as a juror in any county of the state must be discharged.
- Removes the \$40 per day limit on juror compensation.
- Modifies the oath taken by jurors in criminal cases and provides that a court's use of the former oath does not invalidate or affect the validity of the impanelment of the jury or any action taken by the jury.
- Permits the commissioners of jurors to establish an electronic notification system to allow a person who has been drawn as a juror to be notified electronically that the juror must attend in person the term or part of the term specified in the notice.

- Prohibits an employer from requiring or requesting an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury.
- Requires a court to automatically postpone and reschedule the service of a summoned juror of an employer with 25 or fewer full-time employees if another employee of that employer has previously been summoned to appear during the same term or part of a term of that court for which that juror has been summoned.
- Eliminates the maximum of four days or parts thereof on the amount of jury fees that may be taxed as costs in a civil action.
- Permits the costs of summoning jurors to be included in the costs of prosecution if a jury has not been sworn at the trial of a criminal case due to the defendant's failure to appear without good cause.
- Adds one additional judge for the general division of the Clermont County Court of Common Pleas to be elected in 2006 for a term to begin January 3, 2007.
- Changes the status of the part-time judge of the Berea Municipal Court to that of a full-time judge to be elected in 2005, and provides that the part-time judge elected in 1999 remains in office until the end of the judge's term and that the full-time judge to be elected in 2005 is to be the successor to that part-time judge.
- Authorizes a municipal judge to appoint electors who are residents of the county as special constables if the territory within the municipal court's jurisdiction is coextensive with the boundaries of the county in which the court is located and the municipal court is a successor court of a county court that previously served that county.
- Modifies the provision crediting an employee's accumulated sick leave to the employee who had been separated from public service upon re-employment in the public service within ten years of the date on which the employee was last terminated from public service, by providing that this ten-year period must be tolled for any period during which the employee holds elective public office, whether by election or by appointment.

---

## TABLE OF CONTENTS

Failure of prospective juror to attend.....	5
State policy regarding jury service.....	6
Excuse, discharge, or postponement of jury service.....	6
Report of names of jurors excused to subsequent term.....	7
When a juror may be excused.....	8
Annual jury list.....	10
Prohibited actions of employer of a juror.....	10
Arrest for failure to attend.....	11
Discharge of juror; compensation of juror.....	11
Form of oath.....	12
Electronic notification system.....	12
Maximum on amount of jury fees.....	13
Costs of summoning jurors in criminal trials.....	14
Additional judge for Clermont County Court of Common Pleas.....	14
Full-time judge for Berea Municipal Court.....	14
Appointment of special constables.....	15
Crediting of unused sick leave of public officials returning to public employment.....	15

---

## CONTENT AND OPERATION

### *Failure of prospective juror to attend*

Continuing law provides that the commissioners of jurors may serve personally or by mail on any person within the county, a notice requiring the person to attend before a commissioner at a specified time, not less than five days after service of the notice, for the purpose of testifying concerning the person's own qualifications or liability, or those of any other person, to serve as a juror. A person so notified must attend and testify. (R.C. 2313.10.) Under former law, if a prospective juror failed to attend as specified in the notice described above, for any cause except physical disability, or if the person refused to be sworn, or to answer any legal and pertinent question put to the person by a commissioner of jurors, the commissioner was required to report that fact to the court, and that person had to be dealt with as for contempt of court. The commissioner could serve upon the same person one or more successive notices when the person failed to attend as required by the former notice, and that person was liable to punishment as for contempt of court for each failure to attend. A commissioner could dispense with the personal attendance of a person so notified, when another person cognizant of the facts was produced and testified in the person's stead. When a person has so attended twice for examination, the person cannot be required to attend again in the same jury year. (R.C. 2313.11.)



The act modifies this provision by providing that if a prospective juror fails to attend as specified in the notice described above for any reason or refuses to be sworn or to answer any legal and pertinent question put to the prospective juror by a commissioner of jurors, the commissioner must report that fact to the court. The act removes the provision that the prospective juror who fails to attend must be dealt with as for contempt of court and, if successive notices are sent, is liable to punishment as for contempt of court for each failure to attend and the provision that the commissioner may dispense with the personal attendance of the prospective juror if another person cognizant of the facts is produced and testifies on the prospective juror's behalf. The act instead prohibits a prospective juror from failing to attend as specified in the notice described above and from failing to answer any legal and pertinent question put to the prospective juror by the court. (R.C. 2313.10(B) and 2313.11(A) and (B).) The penalty for a violation of either of those prohibitions is a fine of not less than \$100 nor more than \$250, and the offender may be punished as for contempt of court. (R.C. 2313.99(A).)

The act also requires the court to inform a prospective juror that the prospective juror has the right to request an in-camera hearing, on the record and with an attorney present, regarding any legal and pertinent question put to the prospective juror by the court. The court is not required to hold an in-camera hearing under this provision unless the information that is contained in the response to the question put to the prospective juror by the court is requested by any person, and the prospective juror requests that the information should not be released. (R.C. 2313.11(C).)

### **State policy regarding jury service**

The act states that it is the policy of this state that all qualified citizens have an obligation to serve on petit juries when summoned by the courts of this state unless the citizen is excused as provided in the Commissioners of Jurors Law (R.C. 2313.12).

### **Excuse, discharge, or postponement of jury service**

Prior law allowed the court of common pleas or a common pleas judge to discharge, for the term of a court or for part of a term of a court, one or more jurors summoned for jury duty whose attendance is not required for the trial of issues at that term or part of a term. The court or judge was also allowed to postpone the whole or part of a juror's time of service on jury duty, after summoning the juror for jury duty, to either of the following (R.C. 2313.13(A) and (B)(1)):

- (1) To a later date during the same term of court or part of a term of court;



(2) To a subsequent term of court or part of a term of court of the same jury year.

The act modifies this provision by requiring the court or judge, upon a request made at least two business days before the juror's initial appearance by a juror who appears in person or who contacts the appropriate court employee appointed by the court by telephone, in writing, or by electronic mail, to postpone the juror's initial appearance for jury duty if both of the following apply (R.C. 2313.13(A)):

(1) The juror has not previously been granted a postponement.

(2) The juror and the appropriate court employee appointed by the court agree to a specified date on which the juror will appear for jury service. The specified date must be one on which the court is in session and, unless extraordinary circumstances exist, that is not more than six months after the date for which the juror was originally called to serve. If extraordinary circumstances exist, the court may, at the court's discretion, specify a date on which the juror will appear for jury service that is more than six months after the date for which the juror was originally called to serve.

The act allows the court or judge to grant a second or subsequent postponement of jury service to a juror only in the event of an extreme emergency, such as a death in the juror's family, a sudden illness of the juror, or a natural disaster or national emergency in which the juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Before receiving a second or subsequent postponement, the juror must agree to a specified date on which the juror will appear for jury service. The specified date must be one on which the court is in session and that is not more than six months after the date of the postponement. (R.C. 2313.13(B).)

### **Report of names of jurors excused to subsequent term**

Former law required the commissioners of jurors to report the names of all jurors excused to a subsequent part of a term or to a subsequent term to the officers attending the drawing of the jurors for that term or part of a term, and each name must be placed upon the list of jurors drawn as provided in the Commissioners of Jurors law. The act modifies this provision by requiring the commissioners to report the names of all jurors *granted a postponement or temporarily* excused to a subsequent part of a term or to a subsequent term. (R.C. 2313.15.)

### *When a juror may be excused*

Prior law generally prohibited the court of common pleas from excusing a person who is liable to serve as a juror and who is drawn and notified, unless it is shown to the satisfaction of the judge by either the juror or another person acquainted with the facts that one or more of the following applies (R.C. 2313.16):

(1) The juror is then necessarily absent from the county and will not return in time to serve.

(2) The interests of the public or of the juror will be materially injured by the juror's attendance.

(3) The juror is physically unable to serve.

(4) The juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill.

(5) The juror had been called as a juror for trial in a court of record in the county within the same jury year.

(6) The juror is a cloistered member of a religious organization.

The act modifies this provision by providing that the court may not excuse a prospective juror unless it is shown to the satisfaction of the judge by either the juror or another person acquainted with the facts that one or more of the following applies (R.C. 2313.16(A)):

(1) The interests of the public will be materially injured by the juror's attendance (similar to (2), above, except that the court no longer considers the interests of the juror).

(2) The juror's spouse or a near relative of the juror or the juror's spouse has recently died or is dangerously ill (same as (4), above).

(3) The juror is a cloistered member of a religious organization (same as (6), above).

(4) The prospective juror has a mental or physical condition that causes the prospective juror to be incapable of performing jury service. The prospective juror, or the prospective juror's personal representative, must provide the court with documentation from a physician licensed to practice medicine verifying that a mental or physical condition renders the prospective juror unfit for jury service for a period of up to 24 months.

(5) Jury service would otherwise cause undue or extreme physical or financial hardship to the prospective juror or a person under the care or supervision of the prospective juror. A judge of the court for which the prospective juror was called to jury service must make undue or extreme physical or financial hardship determinations. The judge may delegate the authority to make these determinations to an appropriate court employee appointed by the court.

(6) The juror is over 75 years of age, and the juror requests to be excused.

(7) The prospective juror is an active member of a recognized Amish sect and requests to be excused because of the prospective juror's sincere belief that as a result of that membership the prospective juror cannot pass judgment in a judicial matter.

The act requires a prospective juror who requests to be excused from jury service to take all actions necessary to obtain a ruling on that request by not later than the date on which the prospective juror is scheduled to appear for jury duty. A prospective juror who requests to be excused as described in (6), above, is required to inform the appropriate court employee appointed by the court of the prospective juror's request by not later than the date on which the prospective juror is scheduled to appear for jury duty. The prospective juror must inform that court employee of the request to be so excused by appearing in person before the employee or contacting the employee by telephone, in writing, or by electronic mail. (R.C. 2313.16(B).)

The act provides that undue or extreme physical or financial hardship is limited to circumstances in which any of the following apply (R.C. 2313.16(C)(1)):

(1) The prospective juror would be required to abandon a person under the prospective juror's personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury.

(2) The prospective juror would incur costs that would have a substantial adverse impact on the payment of the prospective juror's necessary daily living expenses or on those for whom the prospective juror provides the principal means of support.

(3) The prospective juror would suffer physical hardship that would result in illness or disease.

The act also provides that undue or extreme physical or financial hardship does not exist solely based on the fact that a prospective juror will be required to be absent from the prospective juror's place of employment (R.C. 2313.16(C)(2)).

Under the act, a prospective juror who asks a judge to grant an excuse based on undue or extreme physical or financial hardship must provide the judge with documentation that the judge finds to clearly support the request to be excused. If a prospective juror fails to provide satisfactory documentation, the court may deny the request to be excused. (R.C. 2313.16(D).)

Former law provided that when a person who was liable to serve was excused in a case, the juror could be excused only by the judge presiding in the case or a representative of the judge. An approved excuse could not extend beyond that term. Every approved excuse had to be recorded and filed with the commissioners of jurors. The act provides that an approved excuse of a prospective juror, *including whether or not it is a permanent excuse*, must not extend beyond that term and must be recorded and filed with the commissioners of jurors. The act additionally requires that, after 24 months, a person who was excused from jury service becomes eligible once again for qualification as a juror unless the person was excused from service permanently. A person is excused from jury service permanently only when the deciding judge determines that the underlying grounds for being excused are of a permanent nature. (R.C. 2313.16(E).)

### **Annual jury list**

Under prior law, in the selection of names for the annual jury list, the commissioners of jurors may select all names from the list of electors certified by the board of elections or may select all names from the list of qualified driver licensees certified by the Registrar of Motor Vehicles *and* from the list of electors certified by the board of elections. The act modifies this provision by providing that the commissioners may not select for the annual jury list names of persons excused from service permanently pursuant to the procedure discussed above in "**When a juror may be excused.**" (R.C. 2313.08(B).)

### **Prohibited actions of employer of a juror**

Former law prohibited an employer from discharging or threatening to discharge any permanent employee who was summoned to serve as a juror if the employee gave reasonable notice to the employer of the summons prior to the commencement of the employee's service as a juror and if the employee was absent from employment because of the actual jury service. The act additionally prohibits an employer from taking any disciplinary action that could lead to the discharge of any permanent employee under such circumstances. (R.C. 2313.18(A).)



Under the act, an employer is prohibited from requiring or requesting an employee to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury. This provision does not require an employer to provide annual, vacation, or sick leave to employees under the provisions described above who otherwise are not entitled to those benefits under the employer's policies. (R.C. 2313.18(B).)

The act requires a court to automatically postpone and reschedule the service of a summoned juror of an employer with 25 or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same term or part of a term of that court for which that juror has been summoned and if that employer or employee demonstrates to the sufficiency of the court that the other employee has been so summoned. That postponement does not constitute the excused individual's right to one automatic postponement as described in "Excuse, discharge, or postponement of jury service," above.

The act continues the penalty of contempt of court pursuant to R.C. Chapter 2705. for a violation of the above described prohibitions (R.C. 2313.18(D)).

#### **Arrest for failure to attend**

Prior law provided that when a person whose name was drawn and who was notified, failed to attend and serve as a juror at a term of a court of record, without having been excused, the court, besides imposing a fine, could direct the sheriff to arrest the person and bring the person before the court. When the person had been so brought in, the court could compel the person to serve or punish the person as for contempt of court. The act removes the provision that allowed the court to direct the sheriff to arrest the person and instead prohibits a person whose name is drawn and who is notified, from failing to attend and serve as a juror at a term of a court of record, without having been excused. (R.C. 2313.30.) A person who violates this prohibition may be fined not less than \$100 nor more than \$250 and may be punished as for contempt of court (R.C. 2313.99(A)).

#### **Discharge of juror; compensation of juror**

Under former law, a person who was summoned as a juror and who had actually served as a juror in any county of the state for three consecutive calendar weeks was required to be discharged by the court, except that the person could not be discharged until the close of a trial in which the person could be serving when the person's jury term expired. The act changes the time period of actual service as a juror after which the juror must be discharged from three consecutive calendar weeks to two consecutive calendar weeks with the above exception. (R.C. 2313.34(A).)



Prior law required the board of county commissioners by resolution to fix the compensation of each juror, not to exceed \$40 for each day's attendance, payable out of the county treasury. The act removes the \$40 limit. (R.C. 2313.34(B)(1).)

### **Form of oath**

Formerly in criminal cases jurors and the jury were required to take the following oath administered by the trial court or the clerk of the court of common pleas:

"You shall well and truly try, and true deliverance make between the State of Ohio and the defendant (giving his name). So help you God."

The juror was permitted to make affirmation and the words "this you do as you shall answer under the pains and penalties of perjury" were substituted for the words, "So help you God." (R.C. 2945.28.)

The act modifies the oath by requiring the jurors and jury in criminal cases to take the following oath and requiring the jurors to respond to the oath "I do swear" or "I do affirm":

"Do you swear or affirm that you will diligently inquire into and carefully deliberate all matters between the State of Ohio and the defendant (giving the defendant's name)? Do you swear or affirm you will do this to the best of your skill and understanding, without bias or prejudice? So help you God?"

The juror is allowed to make affirmation and the words quoted above in the third preceding paragraph must be substituted for "So help you God." (R.C. 2945.28(A).)

The act provides that if, on or after the effective date of this provision, a court that impanels a jury in a criminal case uses the oath that was in effect prior to that effective date instead of the new oath set forth in the act, the court's use of the former oath does not invalidate or affect the validity of the impanelment of the jury or any action taken by the jury (R.C. 2945.28(B)).

### **Electronic notification system**

The act allows the commissioners of jurors to establish an electronic notification system to allow a person who has been drawn as a juror to be notified electronically that the juror must attend in person the term or part of the term specified in the notice. The types of electronic notification include, but are not limited to, cellular telephone, pager, or other forms of telecommunication. If the commissioners of jurors establish an electronic notification system, the

commissioners must establish a procedure for implementing the system, a procedure for the juror to select the method of electronic notification that is applicable to the juror, and a procedure for the juror to opt in or opt out of the electronic notification system, whichever is applicable. (R.C. 2313.251.)

Under former law, the clerk of the court of common pleas was required to deliver to the sheriff venires containing the names and addresses of the jurors drawn and specifying when the jurors must appear. The sheriff was required to notify each juror named in the venires to attend the term or part of a term for which the juror was drawn, by serving upon the juror at least six days before the commencement of the term or part of a term, a notice addressed to the juror stating that the juror has been drawn as a juror for, and is required to attend, the term or part of a term specified in the notice. Such notice could be served personally, by mail, or by leaving it at the juror's residence or usual place of business. The act provides that the sheriff must notify each juror named in the venires to attend *in person or electronically*, and requires the notice to state that the juror is required to attend *in person or electronically*, as specified in the second succeeding sentence. The sheriff must serve the notice in the manner described above. The act also provides that if the commissioners of jurors establish a procedure for the electronic notification of a person who has been drawn as a juror, the notice addressed to the juror and served under the procedure discussed above must specify the procedure for electronically notifying the juror. (R.C. 2313.25(A) and (B).)

Current law, not affected by the act, provides that at any time, during the term of a court of record, the court may order an additional number of jurors to be drawn by the commissioners of jurors for the term, or part of a term, at which the order is made, or for immediate service in a particular case. The sheriff formerly was required to notify the jurors that were so drawn, in the same manner as other jurors were notified, to attend the term, or part of a term at a time specified in the order. The act specifies that the sheriff must so notify the jurors drawn as described in the second preceding sentence to attend the term or part of a term, in person or electronically as specified in the procedure established under the act. (R.C. 2313.26.)

### **Maximum on amount of jury fees**

Continuing law generally requires that in any civil action in a court of common pleas in which a jury is sworn, the fees of the jurors sworn must be taxed as costs unless the court determines that the payment of the fees by a party against whom they are proposed to be taxed would cause significant financial hardship to that party or would not be in the interest of justice. (See **COMMENT 1**.) Formerly, one of the exceptions to this requirement was that jury fees were

required to be taxed as costs for each day or part of a day that a sworn juror served, *up to a maximum of four days or parts thereof*. (R.C. 2335.28(A) and (E).)

The act eliminates the *maximum of four days or parts thereof* on the amount of jury fees that may be taxed as costs in a civil action (R.C. 2335.28(E)).

### **Costs of summoning jurors in criminal trials**

Under the continuing law on judgments for costs and jury fees in criminal cases, if a jury has been sworn at the trial of a case, the fees of the jurors must be included in the costs, which must be paid to the public treasury from which the jurors were paid (R.C. 2947.23(A)(2)).

The act provides that the following apply in all criminal cases: (1) the above provision in continuing law and (2) if a jury has not been sworn at the trial of a case because of a defendant's failure to appear without good cause, the costs incurred in summoning jurors for that particular trial may be included in the costs of prosecution. If the costs incurred in summoning jurors are assessed against the defendant, those costs must be paid to the public treasury from which the jurors were paid. (R.C. 2947.23(A)(2)(a) and (b).)

### **Additional judge for Clermont County Court of Common Pleas**

The Clermont County Court of Common Pleas formerly had five judges: three judges of the general division, one judge of the domestic relations division, and one judge of the probate and juvenile division (R.C. 2101.02, not in the act, 2301.02(B), and R.C. 2301.03(Q), not in the act).

The act adds a new judge to the Clermont County Court of Common Pleas. The new judge is to be elected initially in 2006 for a term to begin January 3, 2007. The new judge will be a general division judge. (R.C. 2301.02(B).)

### **Full-time judge for Berea Municipal Court**

The Berea Municipal Court formerly had one part-time judge.<sup>1</sup> The act changes the status of the part-time judge of the Berea Municipal Court to that of a full-time judge to be elected in 2005. It provides that the part-time judge who was elected in 1999, remains the part-time judge until the end of the judge's term, and the full-time judge who is elected in 2005, is to be the successor to the part-time judge who was elected in 1999. (R.C. 1901.08 and Section 3.)

---

<sup>1</sup> *The office of another part-time judge of that Court had earlier been abolished.*

### **Appointment of special constables**

Under former law, upon the written application of the Director of Administrative Services or of at least three freeholders of the territory, a municipal judge could appoint one or more electors who were residents of the county as special constables, *but only if* the territory within the jurisdiction of the municipal court served by the municipal court judge was contiguous to territory within the jurisdiction of a county court, the judge of that county court had appointed a special constable to guard and protect territory abutting territory in the municipal court's jurisdiction, and the abutting territory within the municipal court's jurisdiction was the property within the application for which a special constable was being sought. In order to be eligible to serve as a special constable, an elector needed to hold a valid certificate issued by the Ohio Peace Officer Training needed to. (R.C. 1901.141(A).)

The act provides that upon the written application of the Director of Administrative Services or of at least three freeholders of the territory, a municipal judge may appoint one or more electors who are residents of the county as special constables if the provision described in the preceding paragraph applies *or if the territory within the jurisdiction of the municipal court served by the municipal court judge is coextensive with the boundaries of the county in which the court is located, and the municipal court is a successor court of a county court that previously served that county.* In order to be eligible to serve as a special constable under this provision, an elector must hold a valid certificate issued by the Ohio Peace Officer Training Commission. (R.C. 1901.141(A)(1) and (2).)

### **Crediting of unused sick leave of public officials returning to public employment**

Under continuing law, each of the following is entitled to sick leave of 4.6 hours with pay for each completed 80 hours of service: (1) employees in the various offices of the county, municipal, and civil service township service, other than superintendents and management employees of county boards of mental retardation and developmental disabilities, (2) employees of any state college or university, and (3) employees of any board of education for whom sick leave is not provided under the school law. Unused sick leave is cumulative without limit. (R.C. 124.38.)

Former law required the previously accumulated sick leave of an employee who had been separated from public service to be placed to the employee's credit upon re-employment in the public service, provided such re-employment took place within ten years of the date on which the employee was last terminated from public service. (See **COMMENT 2.**) The act provides that this ten-year period must be tolled for any period during which the employee holds elective public office, whether by election or by appointment. (R.C. 124.38.)

---

## COMMENT

1. Upon receipt of fees taxed as costs or paid in accordance with a settlement agreement, the clerk of the court must pay the fees to the county treasurer to be deposited in the county treasury. If any juror serves on more than one jury on the same day, the court must tax the juror's jury fees for that day as costs equally among the parties who are required to pay the fees either as determined by the court or pursuant to a settlement agreement. (R.C. 2335.28(C) and (D).)

2. Under current law, not affected by the act, employees whose salaries or wages are paid by warrant of the Auditor of State and who have accumulated sick leave generally must be paid for a percentage of their accumulated balances upon separation from public service. Generally, an employee of a state college or university or an employee of a political subdivision, subject to certain conditions, may elect upon retirement to be paid in cash for one-fourth of the value of the employee's accrued but unused sick leave credit. (R.C. 124.384(A) and 124.39(A) and (B), not in the act.)

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-17-03	p. 287
Reported, S. Civil Justice	04-22-04	p. 1755
Passed Senate (32-0)	05-05-04	pp. 1846-1847
Reported, H. Civil & Commercial Law	11-17-04	pp. 2273-2274
Passed House (93-0)	12-08-04	pp. 2403-2416
Senate concurred in House amendments (27-3)	12-08-04	pp. 2676-2687

04-sb71-125.doc/kl

