



Lisa Sandberg

Bill Analysis
Legislative Service Commission

S.B. 71

125th General Assembly
(As Introduced)

Sens. Goodman, Harris, Amstutz

BILL SUMMARY

- Provides that if a prospective juror fails to attend court as required in a notice to do so because the juror has a physical disability, the commissioner of jurors must report that fact to the court.
- Modifies the penalty for a prospective juror's failure to attend court or failure to answer any legal and pertinent questions put to the prospective juror by a commissioner of jurors by making the penalty a misdemeanor of the third degree instead of contempt of court.
- Requires the court or judge, upon a request made by a juror who appears in person or who contacts the clerk of 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 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 prospective juror has a

mental or physical condition that causes the juror to be incapable of service, or jury service would otherwise cause undue or extreme physical or financial hardship.

- Provides the circumstances to which undue or extreme physical or financial hardship apply.
- Requires a prospective juror who asks a judge to grant an excuse based on undue or extreme physical or financial hardship provide the judge with specified documentation and requires the court to deny the request to be excused if the prospective juror fails to provide satisfactory documentation.
- 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 provision that the court may direct the sheriff to arrest a person who fails 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 of a term of a court of record without having been excused, and provides that whoever violates that prohibition must be fined not less than \$50 nor more than \$500, imprisoned not less than 30 nor more than 90 days, or both.
- The bill changes from three consecutive calendar weeks to one day the time period 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.
- Creates the "Lengthy Trial Fund" and requires the Supreme Court to promulgate rules regarding that fund.

CONTENT AND OPERATION

Failure to attend

Current law provides that the commissioner 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--not in the bill.) If a prospective juror fails to attend as specified in the notice described above, for any cause except physical disability, or if the person refuses to be sworn, or to answer any legal and pertinent questions put to the person by a commissioner of jurors, the commissioner must report that fact to the court, and that person must be dealt with as for contempt of court. The commissioner may serve upon the same person one or more successive notices when the person fails to attend as required by the notice, and that person is liable to punishment as for contempt of court for each failure to attend. A commissioner may dispense with the personal attendance of a person so notified, when another person cognizant of the facts is produced and testifies 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 bill modifies this provision by providing that if a prospective juror fails to attend as required for any reason including a physical disability and refuses to be sworn or to answer any legal and pertinent questions, the commissioner of jurors must report that fact to the court. The bill removes the provision that the prospective juror is liable to punishment as for contempt of court for each failure to attend and the provision that the commissioner may dispense with the attendance of the prospective juror if another person is produced and testifies on the prospective juror's behalf. The bill 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 questions put to the prospective juror by a commissioner. (R.C. 2313.11(B) and (C).) The penalty for a violation of either of those prohibitions is a misdemeanor of the third degree. If successive notices are served on a prospective juror, each failure to attend as specified in the successive notices is a separate offense. (R.C. 2313.99(C).)

Granting of excuse or postponement to juror

The bill 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 on Jurors law (R.C. 2313.12).

Excuse, discharge, or postponement of jury service

Current law allows 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 is 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:

- (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 bill modifies this provision by requiring the court or judge, upon a request made by a juror who appears in person or who contacts the clerk of 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 clerk of 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 that is not more than six months after the date for which the juror was originally called to serve.

The bill 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

Current law requires 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 on Jurors law. The bill 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

Current law generally prohibits 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 bill modifies this provision by providing that the court may excuse a prospective juror if 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.

(2) 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.

(3) 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 determinations. The judge may delegate the authority to make these determinations only to court officials or personnel who are authorized by the laws of this state to function as members of the judiciary.

The bill 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 no later than the date on which the prospective juror is scheduled to appear for jury duty. (R.C. 2313.16(B).)



The bill 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)):

(a) 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.

(b) 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 principle means of support.

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

The bill 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.

Under the bill, 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, including, but not limited to, federal and state income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, and similar documents, that the judge finds to clearly support the request to be excused. If a prospective juror fails to provide satisfactory documentation, the court must deny the request to be excused. (R.C. 2313.16(D) and (E).)

Current law provides that when a person who is liable to serve is excused in a case, the juror can be excused only by the judge presiding in the case or a representative of the judge. An excuse approved must not extend beyond that term. Every approved excuse must be recorded and filed with the commissioners of jurors. The bill additionally 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. 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).)

Prohibited actions of employer of a juror

Current law prohibits an employer from discharging or threatening to discharge any permanent employee who is summoned to serve as a juror if the

employee gives reasonable notice to the employer of the summons prior to the commencement of the employee's service as a juror and if the employee is absent from employment because of the actual jury service. The bill additionally prohibits an employer from subjecting any permanent employee to any adverse employment action as a result of the employee's service as a juror. (R.C. 2313.18(A).)

Under the bill, 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 bill requires a court to automatically postpone and reschedule the service of a summoned juror of an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer has previously been summoned to appear during the same period. That postponement will not constitute the excused individual's right to one automatic postponement as described in "*Excuse, discharge, or postponement of jury service*", above.

The bill 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

Current law provides that when a person whose name is drawn and who is notified, fails 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, may direct the sheriff to arrest the person and bring the person before the court; and when the person has been so brought in, it may compel the person to serve, or it may punish the person as for contempt of court. The bill removes the provision that allows the court to direct the sheriff to arrest the person and instead prohibits a person 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.) Whoever violates this prohibition must be fined not less than \$50 nor more than \$500, imprisoned not less than 30 nor more than 90 days, or both. (R.C. 2313.99(B).)

Discharge of juror

Under current law, a person who is summoned as a juror and who has actually served as a juror in any county of the state for three consecutive calendar

weeks must be discharged by the court, except that the person must not be discharged until the close of a trial in which the person may be serving when the person's jury term expires. The bill changes the time period after which the juror must be discharged from three consecutive calendar weeks to one day. (R.C. 2313.34.)

Lengthy Trial Fund

Under the bill, the Supreme Court must promulgate rules to establish a Lengthy Trial Fund that must be used to provide full or partial wage replacement or wage supplementation to jurors who serve as petit jurors for more than ten days. The court rules must provide for all of the following (R.C. 2313.48(A)):

- (1) The selection and appointment of an administrator for the fund;
- (2) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel;
- (3) Procedures for the accounting, auditing, and investment of money in the Lengthy Trial Fund;
- (4) A report by the Supreme Court of Ohio on the administration of the Lengthy Trial Fund in its annual report on the judicial branch, setting forth the money collected for and disbursed from the fund.

Notwithstanding any other compensation or fees payable under the laws of this state, each trial court in the state must collect from each attorney who files a civil case, unless otherwise exempted under these provisions, a fee of \$20 per case to be paid into the Lengthy Trial Fund. An attorney is considered to have filed a case at the time the first pleading or other filing on which an individual attorney's name appears is submitted to the court for filing and opens a new case. The trial court must forward all fees collected to the administrator of the Lengthy Trial Fund for deposit into that fund.

The administrator must use the fees deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full regular wages when the period of jury service lasts more than ten days.

The bill allows the court to pay replacement or supplemental wages of up to \$300 per day per juror beginning on the 11th day of service. This wage replacement or supplementation must be granted in addition to any reimbursements for expenses or other payments a juror may receive. Additionally, for any jurors who qualify for payment by virtue of having served on a jury for more than ten days, the court may, upon finding that such service posed a

significant financial hardship to a juror, even in light of payments made with respect to jury service after the 10th day, award replacement or supplemental wages of up to \$100 per day from the 4th to the 10th day of jury service.

Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service commenced on or after the effective date of this provision, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment must be limited to the difference between the state paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period. The form must disclose the juror's regular wages, the amount the employer will pay during the term of jury service starting on the 11th day and thereafter, the amount of replacement or supplemental wages requested, and any other information the administrator deems necessary for proper payment.

The juror is also required to submit verification from the employer as to the wage information provided to the administrator, for example, the employee's most recent earnings statement or similar document, prior to initiation of payment from the fund. If an individual is self-employed or receives compensation other than wages, the individual may provide a sworn affidavit attesting to the individual's approximate gross weekly income, together with such other information as the administrator may require, in order to verify weekly income. (R.C. 2313.48(E).)

Exemption from payment into the Lengthy Trial Fund

Under the bill, the following attorneys and causes of action are exempt from payment of the Lengthy Trial Fund fee (R.C. 2313.48(F)):

- (1) Government attorneys entering appearances in the course of their official duties;
- (2) Pro se litigants;
- (3) Cases in small claims court;
- (4) Claims seeking social security disability determinations; individual veterans' compensation or disability determinations; recoupment actions for government backed educational loans or mortgages; child custody and support cases; actions brought in forma pauperis; and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial by jury.

HISTORY

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Introduced	04-17-03	p. 287

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