



Aida S. Montano

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. S.B. 71**

125th General Assembly  
(As Reported by H. Civil and Commercial Law)

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

**Reps. Seitz, Grendell, Willamowski, Latta**

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### **BILL 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.
- 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 existing law), the juror is a cloistered member of a religious organization (same as in existing 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 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 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 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.
- 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.

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## TABLE OF CONTENTS

Failure to attend .....	4
Granting of excuse or postponement to juror.....	5
Excuse, discharge, or postponement of jury service .....	6
Report of names of jurors excused to subsequent term .....	7
When a juror may be excused.....	7
Annual jury list .....	9
Prohibited actions of employer of a juror .....	10
Arrest for failure to attend .....	10
Discharge of juror .....	11
Form of oath.....	11
Electronic notification system.....	12
Maximum on amount of jury fees .....	12
Costs of summoning jurors in criminal trials.....	13
Additional judge for Clermont County Court of Common Pleas .....	13
Appointment of special constables.....	14

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## CONTENT AND OPERATION

### *Failure to attend*

Current 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.) 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 former 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 specified in the notice described above for any reason or 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 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 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 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 bill 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 a 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).)

### **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 of 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 (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 bill 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 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 of 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 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 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 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 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)):

(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 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 (R.C. 2313.16(C)(2)).

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 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).)

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 approved excuse must not extend beyond that term. Every approved excuse must be recorded and filed with the commissioners of jurors. The bill provides that an approved excuse, *including whether or not it is a permanent excuse*, must not extend beyond that term. The bill 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 current 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 bill 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. (R.C. 2313.08(B).)

### **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 taking any disciplinary action that could lead to the discharge of any permanent employee under such circumstances. (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 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 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 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.) Whoever 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**

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 two consecutive calendar weeks. (R.C. 2313.34(A).)

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

### **Form of oath**

Currently in criminal cases jurors and the jury must take the following oath to be 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 is permitted to make affirmation and the words "this you do as you shall answer under the pains and penalties of perjury" must be substituted for the words, "So help you God." (R.C. 2945.48.)

The bill modifies the oath by requiring the jurors and jury in criminal cases to take the following oath and 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?" (R.C. 2945.48(A).)

The bill 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 oath set forth in the preceding paragraph, 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 bill 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 current law, the clerk of the court of common pleas is 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 must 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 may be served personally, by mail, or by leaving it at the juror's residence or usual place of business. The bill provides that the sheriff must notify each juror *in person or electronically* as specified in the next sentence, and must serve the notice in the manner described above. The bill 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 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 must notify the jurors that are drawn, in the same manner as other jurors are notified, to attend the term, or part of a term at a time specified in the order. The bill specifies that the sheriff must so notify the jurors to attend the term or part of a term, in person or electronically as specified in the procedure established under the bill. (R.C. 2313.26.)

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

Current 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.**) The following are the exceptions to this requirement (R.C. 2335.28(A), (B), and (E)):

(1) If a civil action in a court of common pleas is settled after jurors are sworn, the fees of the jurors sworn must be paid in accordance with the settlement agreement. If the agreement does not provide for the payment of the fees, the court must order that the fees be paid by any party, allocated among the parties, or paid by the county. In making this determination, the court must consider whether 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.

(2) Jury fees must be taxed as costs for each day or part of a day that a sworn juror serves, *up to a maximum of four days or parts thereof.*

The bill 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 bill 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 currently has 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 bill, 2301.02(B), and R.C. 2301.03(Q), not in the bill).

The bill 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).)

### **Appointment of special constables**

Under existing law, 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, *but only if* the territory within the jurisdiction of the municipal court served by the municipal court judge is contiguous to territory within the jurisdiction of a county court, the judge of that county court has 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 is the property within the application for which a special constable is being sought. In order to be eligible to serve as a special constable, an elector must hold a valid certificate issued by the Ohio Peace Officer Training Commission. (R.C. 1901.141(A).)

The bill modifies existing law by providing 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 existing law as modified by the bill, an elector must hold a valid certificate issued by the Ohio Peace Officer Training Commission. (R.C. 1901.141(A)(1) and (2).)

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### **COMMENT**

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).)

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## HISTORY

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