Ohio Legislative Service Commission

Bill Analysis

Lisa Sandberg

Sub. H.B. 268

129th General Assembly
(As Passed by the House)

Reps. Szollosi and Butler, Pillich, Garland, Letson, Antonio, Gardner, Yuko, Stinziano, Okey, Murray, Anielski, Baker, Barnes, Blair, Bubp, Carney, DeGeeter, Gonzales, Grossman, C. Hagan, Johnson, Luckie, Mallory, Martin, McClain, Milkovich, Patmon, Peterson, Weddington, Williams, Winburn, Batchelder

BILL SUMMARY

- Reorganizes the jury service law and repeals or rewords obsolete provisions relating to jury wheels, data storage devices, and venires.

- Authorizes the judges of the general division of a common pleas court to appoint court employees as commissioners of jurors and to remove a commissioner without showing good cause, eliminates the requirement that commissioners and deputy commissioners of jurors be paid monthly, and gives to commissioners certain powers now belonging solely to judges, court clerks, or sheriffs.

- Requires commissioners of jurors of a county to compile an annual jury source list from information provided by the Board of Elections and, at their discretion, from information provided by the Registrar of Motor Vehicles, as well as an annual jury list from which the names of potential jurors are drawn.

- Permits the use of any manual, electronic, or automated method of drawing jurors that provides each person on the annual or supplemental jury source list with an equal, random probability of selection.

- Prohibits discrimination in drawing jurors on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, or any other factor that forms the basis of a cognizable group of citizens.

- Modifies the reasons for which jury service may be postponed and the commissioners' record-keeping requirements regarding postponements.

- Eliminates the requirement that a person who is not registered to vote must have a valid driver's license to serve as a juror.

- Eliminates language governing jury challenges based on misnomers and allows challenges to entire arrays based on violations of the nondiscrimination provision.
- Protects juror privacy during voir dire.
- Penalizes failure to appear for jury duty following a postponement of jury service in the same manner as an initial failure to appear.
- Requires each court of common pleas to determine, in accordance with the Supreme Court's Rules of Superintendence, the retention period for all records filed with the commissioners of jurors.
- Authorizes each municipal court to establish juror fees in that court and modifies juror fees in certain cases in the court of common pleas when jurors are drawn from an adjoining county.
- Modifies the taxation of juror fees as costs in civil cases and includes the costs of summoning jurors in the costs of prosecution to be paid by defendants in certain criminal cases.

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CONTENT AND OPERATION

Introduction

R.C. Chapter 2313. creates the office of commissioner of jurors and establishes the procedures through which the commissioners summon jurors and draw their names for service. The chapter also sets forth the obligations of jurors who are summoned and drawn, the grounds for which jury service may be excused or postponed, and the

compensation of jurors. The purposes of the bill, as expressed in its title, are to reorganize the jury service law, modernize its language, and remove obsolete provisions. The bill eliminates old terms such as "venire" and provisions pertaining to jury wheels and data storage devices that maintain information on potential jurors. It renumbers many sections and repeals others, although it retains much of the content of the repealed sections. The bill rearranges the provisions of Chapter 2313., reduces the number of sections, corrects cross-references to conform to the reorganization, and adopts gender-neutral language where necessary.

The bill contains much language that appears to be new because it is underlined. In some cases, that language has simply been moved from other Revised Code sections, either verbatim or amended to some degree. For example, R.C. 2313.02(B), which is a new division created by the bill, authorizes commissioners and deputy commissioners to administer oaths and affirmations. This authorization appears in virtually identical form in existing R.C. 2313.04. Where a provision has been moved but remains essentially the same as in current law, it is not discussed in this analysis. The table of corresponding sections at the end of this analysis shows where existing provisions of law may be found in the bill, if they have not been repealed altogether.

All citations to Revised Code sections, unless indicated otherwise, are to sections as they appear in the bill.

Commissioners of jurors

The bill requires the judges of the general division of the court of common pleas of each county to appoint two persons, rather than two "suitable" persons, as commissioners of jurors (hereafter "commissioners"), expressly permits the appointment of court employees as commissioners, and eliminates the requirement that the judges show good cause before removing a commissioner from office. The bill makes the commissioners officers of the court of common pleas and authorizes the commissioners to examine under oath any juror called for trial as to that person's qualifications to serve as a juror.[1]

The bill removes a requirement that commissioners and deputy commissioners be paid monthly and a requirement that deputies be appointed on the basis of ascertained merit and fitness alone and eliminates the commissioners' authority to appoint, with the written consent of the court, clerks and messengers. It authorizes the commissioners to delegate in writing to deputy commissioners any duties that the commissioners may perform, modifies the commissioners' oath of office, and requires deputy commissioners to take the oath. It also updates and broadens the specific list of

[1] R.C. 2313.01.

equipment and supplies that a board of county commissioners must provide to the commissioners of jurors by requiring the board to supply all equipment, stationery, postage, advertisement expenses, computer software, and other supplies as are necessary for the proper and convenient conduct of the commissioners in discharging their duties imposed under R.C. Ch. 2313.[2]

The bill gives to commissioners certain powers and responsibilities relating to jurors that now, if the statutes are read literally, belong exclusively to other officials. The bill authorizes the commissioners as well as the sheriff to serve a jury summons on a juror and to summon additional jurors if there are not enough to make up a grand or petit jury panel or if an array is set aside. The bill allows the commissioners as well as the court of common pleas to excuse jurors and to grant initial postponements of their service. Under existing law, if a civil case in which a board of county commissioners is a party is moved to another county, the clerk of that other county draws the jurors' names and the sheriff summons the jurors. The bill requires the clerk and commissioners of the other county to draw the names and permits either the sheriff or commissioners to summon the jurors.[3]

Annual jury source list

The bill replaces certain references to terms or parts of terms of court with "jury year." It requires each court of common pleas to establish the date on which the jury year begins, and it allows the court to divide the jury year into parts.[4]

Annually, the commissioners must compile a new and complete jury source list. The bill distinguishes between this annual jury source list (the complete set of names compiled from information provided by the Board of Elections and, if the commissioners so require, by the Registrar of Motor Vehicles) and the annual jury list, which is the set of potential jurors drawn from the annual jury source list. Under existing law, the equivalent of the annual jury source list is the complete set of ballots placed in the jury wheel or the punch cards placed in a metal storage drawer. The names on the ballots or punch cards are obtained from the Board of Elections and the Registrar of Motor Vehicles, in much the same manner as under the bill, but existing law does not use the term "annual jury source list."[5]

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[2] R.C. 2313.02, 2313.03, and 2313.04.

[3] R.C. 2313.10(D), 2313.11(A), 2313.14, 2313.15, and 2313.42.

[4] R.C. 2313.05.

[5] See existing R.C. 2313.06, 2313.07, 2313.08, and 2313.35, which are repealed by the bill.

Under the bill, the commissioners, unless ordered otherwise by the court of common pleas, must use voter registration information provided by the Board of Elections to compile the annual jury source list. The Board must remove from the list all electors who have failed to vote at least once during the preceding four consecutive years. The commissioners may in addition use licensed driver information provided by the Registrar of Motor Vehicles (not changed by the bill) or information relating to persons to whom the Registrar or a deputy registrar has issued an identification card in compiling the source list. The bill deletes Social Security numbers from the information that the Board and the Registrar must furnish.[6]

If the commissioners use names from both sources, they must eliminate duplications and exclude from the list anyone who is permanently excused from jury service or who has been discharged after serving. The commissioners must certify and file in their office the annual jury source list before the beginning of each jury year. The list must contain identifying information about potential jurors and must be arranged alphabetically. The commissioners must file a certified duplicate of the list with the clerk of the court of common pleas. If new persons are found to be qualified for jury service after the annual list is filed, the commissioners, by court order, may supplement the list with those persons. The commissioners must certify and file the supplemental jury source list in the same manner as the original list.[7]

Drawing of jurors

Under the bill, each court orders the number of jurors to be drawn for a jury year, part of a jury year, or special term of court at which issues of fact may be tried by a jury. If the court fails to fix the number by the time of the drawing, the commissioners must do so. The court may at any time order that a specific number of additional jurors be drawn as necessary for the jury year, part of a jury year, or immediate service in a particular case. The commissioners designate a day for the public drawing of jurors. A commissioner, a judge of the court of common pleas, and the clerk of that court, or designated representatives of those officials, supervise the list selection process. The bill eliminates the requirement that the sheriff attend the drawing, the penalty for failure of an official to attend the drawing, and the procedure to be followed if an official fails to attend.[8]

In drawing jurors, commissioners may use any manual, electronic, or automated method that provides each person on the annual or supplemental jury source list with

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[6] R.C. 2313.06(A) and (B).

[7] R.C. 2313.06(B), (C), and (D).

[8] R.C. 2313.07 and 2313.08.

an equal, random probability of selection and must document the method used. The list drawn becomes the annual or supplemental annual jury list. The commissioners must certify and file the jury list, with identifying information about each juror, in the commissioners' office and file a duplicate with the clerk of the court of common pleas.[9]

Summoning of jurors

The bill permits the commissioners or clerk of the court of common pleas (both added by the bill) or the sheriff (existing law) to serve the summons to jury duty (called a notice in existing law) in substantially the same manner as in existing law. It eliminates a requirement that the sheriff return the "venires" (list of drawn jurors) to the clerk and provisions that the summons may be served personally on the juror and that the return and service is presumptive evidence of service. The bill deletes a requirement that the court, in a case in which the sheriff has a legal interest, grant the application of a party whose interest opposes that of the sheriff to have the coroner summon the jurors. The deleted provision also allows the court, when both the sheriff and coroner have an interest in the case or both are unavailable due to death, resignation, or absence from the county, to name any "discreet, disinterested person" to summon the jurors. Instead, the bill states that when the sheriff is interested in the case, only the commissioners may summon the jurors.[10]

The bill modifies the nondiscrimination provision of the jury service law. The current provision prohibits excluding or failing to summon citizens for jury duty because of race or color. The bill deletes "color" and adds "national origin, gender, age, religious belief, income, occupation, disability, or any other factor that forms the basis of a cognizable group of citizens" as a prohibited reason for excluding or failing to summon a citizen for jury duty.[11]

Postponement or excuse of jury service

The bill modifies the existing provision that requires automatic postponement of jury service of an employee of a business that has 25 or fewer full-time employees or their equivalent. The bill requires automatic postponement only if a fellow employee has not only been summoned for jury duty, but has actually served as a juror within 30 days before the date on which the second employee was summoned. The bill also

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[9] R.C. 2313.09.

[10] R.C. 2313.10(D) and (E).

[11] R.C. 2313.13.

specifies that the postponement must be to a mutually agreeable date not more than six months from the date the summons was served.[12]

The bill authorizes the court (after the juror has appeared for jury duty rather than after the juror has been summoned as in existing law) to postpone a juror's service for up to three days at a time if the exigencies of the juror's business require a temporary excuse.[13]

Existing law authorizes one postponement at a prospective juror's request prior to the juror's initial appearance if the juror agrees to appear on a date when the court is in session within six months after the date for which the juror was originally called to serve. The bill specifies that the postponed date must also be within the jury year.[14]

The bill permits the temporary excuse of a prospective juror who has a physical or mental condition that makes the prospective juror unable to perform jury service, but it reduces the period for which the excuse is granted from a maximum of 24 months to the remainder of the jury year. It also authorizes the court or commissioners to require the prospective juror to provide the court with documentation to verify the condition instead of requiring such documentation in all cases. It removes the authority of the prospective juror's personal representative to supply such documentation.[15]

The bill eliminates a requirement that the commissioners, upon request, issue a certificate to a person who has received an excuse or postponement that specifies the time for which the excuse or postponement has been granted. The bill also removes a provision by which a juror who has received a postponement until a specified date may, without an additional summons, be required to attend the opening of court on that day and every day thereafter until he or she is discharged.[16]

The bill retains a requirement that the commissioners keep a record of the time of and reasons for each excuse they grant, but it eliminates that requirement for postponements.[17]

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[12] R.C. 2313.15(E).

[13] R.C. 2313.15(C).

[14] R.C. 2313.15(A)(2).

[15] R.C. 2313.14(A)(4).

[16] R.C. 2313.12 and 2313.15(B).

[17] R.C. 2313.14(G).

Juror qualifications and challenges

The bill eliminates the requirement that a person who is not registered to vote have a valid driver's license or commercial driver's license to qualify for jury service and eliminates the requirement that electors must be certified by the board of elections in order to qualify to be a juror.[18]

The bill eliminates language that allows a challenge before the jury is impaneled and sworn to an individual juror based on a mistake in a juror's name but prohibits a challenge to an entire array (jury panel) based on a mistake in a juror's name. It allows a challenge to an entire array if any group protected by the nondiscrimination provision of the jury service law is systematically excluded from the jury selection process but prohibits quashing an indictment or setting aside a verdict for any irregularity in the selection of jurors if the jurors possessed the requisite juror qualifications.[19]

It may happen that, because of a challenge or other cause, there are not enough jurors to make up a panel or an array is set aside. Under existing law, the sheriff must summon talesmen (bystanders) until the deficiency is made up or, in the case of a grand jury, summon persons named in a special venire ordered by the court. The bill deletes this provision and instead requires that the sheriff or commissioners, on the court's order, immediately summon as many persons having the qualifications of jurors as the court thinks necessary.[20]

Juror privacy

The bill modifies the provision that allows a prospective juror to request an in-camera (closed to the public) hearing regarding questions presented to the juror. Under existing law, the court must inform the prospective juror of the right to request an in-camera hearing regarding any *legal and pertinent question put by the court*. The court is not required to hold an in-camera hearing unless someone asks for the information contained in the response and the prospective juror requests that the information not be released. The bill requires the court to inform the prospective juror of the right to have an in-camera hearing if a question put to the prospective juror (not necessarily by the court) *involves a legitimate privacy interest* of the prospective juror. The bill also provides that if a prospective juror is required to answer written questions during voir dire, the questionnaire must include a prominent notice advising the juror of the right to request

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[18] R.C. 2313.17(A).

[19] R.C. 2313.16.

[20] R.C. 2313.11(A).

and have an in-camera (closed to the public) hearing with counsel for the parties present regarding any legitimate privacy interest the prospective juror might have.[21]

Penalties

The bill eliminates the fine, and a provision allowing the court to remit the fine, for a prospective juror's failure to attend at the time specified to appear and eliminates the fine for a prospective juror's failure to answer questions from a commissioner of jurors (added by the bill) or the court. The failure still subjects the prospective juror to punishment for contempt, which could result in a fine. The bill penalizes failure to appear for jury duty following a postponement in the same manner as failure to appear initially. The bill also eliminates the fine for an employer who discharges, threatens to discharge, or disciplines a permanent employee who is summoned to juror service and gives the employer reasonable notice or requires or requests the employee to use leave time for juror-related time. The employer is still subject to punishment for contempt.[22]

Records retention

The bill requires the court of common pleas of each county to determine the retention period for all documents and electronic media filed with the commissioners of jurors, in compliance with the applicable rules of the Rules of Superintendence of the Supreme Court.[23]

Juror fees

The bill strikes a provision that jurors in municipal court receive the same fees as jurors in the court of common pleas and authorizes each municipal court to establish the fees of jurors in that court. The bill also provides that in a civil case in the court of common pleas in which the board of county commissioners is a party, the compensation of jurors, if drawn from an adjoining county, is the greater of $3 per day or the amount fixed as juror compensation in the adjoining county.[24]

Taxation of juror fees as court costs

The bill requires that juror fees in civil actions *must* be taxed only in cases in which jury is sworn and a verdict is returned, unless the court finds that taxation of juror fees would not be in the interest of justice. Under existing law, the court must tax

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[21] R.C. 2313.18(B).

[22] R.C. 2313.18(A), 2313.19(A) and (B), 2313.20, and 2313.99(A).

[23] R.C. 2313.23.

[24] R.C. 1901.25 and 2311.42.

juror fees if a jury is sworn unless taxation would cause significant financial hardship. The bill gives the court discretion to tax juror fees as costs in a civil action in which a jury is summoned but not sworn because the case is settled or does not otherwise go forward and in a case that is settled after a jury is sworn but in which the settlement agreement does not provide for the payment of juror fees.[25]

The bill provides that, if a jury is not sworn in a criminal case because the defendant pleads guilty or no contest less than 24 hours before the scheduled start of the trial, the court may include the costs of summoning jurors for the case in the costs of prosecution that the defendant must pay.[26]

Technical and conforming amendments and repeals

The bill amends various Revised Code sections that are not in Chapter 2313. to correct cross-references necessitated by the reorganization of that chapter[27] or to alter or strike references to venires, jury wheels, or data processing drawers or devices that the bill renders obsolete or redundant.[28] The bill further amends several of these sections to make them gender-neutral[29] and amends one of them to make it consistent with a companion section.[30]

Besides renumbering 15 existing sections and enacting five new sections of Chapter 2313., the bill repeals 24 sections of that chapter. The bill retains much of the subject matter of those sections, in some cases with little or no change except for a section's location and at other times with substantive amendments, as indicated in this analysis. The bill repeals the 11 sections that the table below shows are not in the bill without retaining the language of the sections in its original or an amended form.

Table of corresponding provisions

The following table lists in numerical order every section of existing Chapter 2313., plus three additional sections that are substantively amended by the bill, and indicates the part of the bill, if any, that deals with the subject matter of the existing

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[25] R.C. 2335.28.

[26] R.C. 2947.23(A)(2)(b).

[27] R.C. 3.08, 163.10, 733.73, 1901.25, 2939.02, 2939.03, 2945.24, 3314.03, 3326.11, 5155.12, and 5563.05.

[28] R.C. 311.17(A)(9) and (10), 509.15(A)(8), 733.74, 1901.25, 1907.28, 2101.30, 2311.42, 2938.05, 2938.14, 2939.02, and 2939.03.

[29] R.C. 733.73, 733.74, 2101.30, 2939.02, and 5563.05.

[30] R.C. 2939.03.

section or division of a section. The table does not indicate the extent to which any provision has been amended.

Existing Law	Bill	Subject
1901.25	1901.25	Juror fees in municipal court
2313.01	2313.01(A)	Office of commissioner of jurors
2313.02	2313.02(A)	Compensation of commissioners and deputies
2313.03	2313.03	Commissioner's oath of office
2313.04	2313.02(B)	Deputy commissioner's authority
2313.05	2313.04	Commissioners' office and supplies
2313.06	2313.06(A)	Sources of jury list (registered voters, licensed drivers, holders of state ID cards)
2313.07	Not in bill	Jury wheel, data processing equipment
2313.08(A)	2313.05	Start of jury year
2313.08(A)	2313.06(A), (B), and (C); 2313.09(B)	Compilation, certification, and filing of jury list
2313.08(B)	2313.06(B)	Compilation of and exclusions from jury list
2313.09	2313.06(D)	Supplemental jury list
2313.10	2313.01(B)	Appearance before commissioners
2313.11(A) and (B)	2313.18(A); 2313.20	Failure to appear before commissioners or answer questions
2313.11(C)	2313.18(B) and (C)	Juror privacy
2313.12	2313.12	Obligation to serve, excuse or postponement
2313.12	2313.14(G)	Record of postponements, excuses
2313.13	2313.15(A), (B), (C), and (D)	Postponement of initial appearance or subsequent appearance; excuse from day to day or for business exigency

Existing Law	Bill	Subject
2313.14	Not in bill	Failure to attend after postponement
2313.15	Not in bill	Reporting and use of names of jurors granted postponement or temporary excuse
2313.16	2313.14(A), (B), (C), (D), and (E)	Grounds for excuse, procedure
2313.18(A), (B), and (D)	2313.19	Retaliatory action by employer
2313.18(C)	2313.15(E)	Automatic postponement for small-business employee
2313.19	2313.07(A)	Number of jurors drawn
2313.20	2313.08(A)	Notice of drawing, attendance by officers
2313.21	2313.09(A)	Method of drawing (jury wheel, data processing equipment)
2313.22	Not in bill	Sealing of jury wheel, data processing storage drawer
2313.23	2313.08(B)	Public drawings, attendance by officers
2313.24(A), (B), and (C)	Not in bill	Number of jurors to be drawn; division of jurors by term of court
2313.24(D)	2313.10(A)	Notice of name drawn
2313.25(A)	2313.10(D)	Summoning jurors
2313.25(B)	2313.10(C)	Procedure for electronic notification of juror
2313.251	2313.10(B)	Electronic notification of juror
2313.26	2313.07(B)	Additional jurors
2313.29	2313.20	Failure to attend
2313.30	Not in bill	Unexcused failure to attend
2313.32	Not in bill	Disposition of ballots used with jury wheel or data processing equipment
2313.33	Not in bill	Commissioner's and sheriff's fees; sheriff's service of papers
2313.34(A), (C), and (D)	2313.21(A), (B), and (C)	Discharge after service

Existing Law	Bill	Subject
2313.34(B)	2313.22	Juror compensation
2313.34(E)	2313.14(F)	Excuse for financial contribution
2313.35	Not in bill	Ballots for jury wheel or data processing equipment
2313.36	Not in bill	Excuse when serving not in a court of record
2313.37	Not in bill (see Civil Rule 47)	Additional and alternate jurors
2313.38	2313.11(A)	Insufficient jurors
2313.39	2313.11(B)	Insufficient jurors, bystander jurors
2313.40	2313.10(E)	Sheriff's or coroner's interest in cause
2313.41	2313.16	Challenge to array
2313.42	2313.17(A), (B), and (C)	Examination and challenge of juror
2313.43	2313.17(D)	Challenge based on prejudice or lack of English
2313.45	2313.99(C)	Disposition of fines for contempt
2313.46	2313.24	Jurors in inferior courts
2313.47	2313.13	Nondiscrimination
2313.99	2313.99	Penalties
2335.28	2313.42	Taxation of juror fees as costs
2947.23(A)(2)(b)	2313.02	Juror fees as costs of prosecution

HISTORY

ACTION	DATE
Introduced	06-15-11
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