

Chapter 9.

Jurors.

Article 1.

Jury Commissions, Preparation of Jury Lists, and Drawing of Panels.

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ARTICLE 1.

Jury Commissions, Preparation of Jury Lists, and Drawing of Panels.

§ 9-1. Jury commission in each county; membership; selection; oath; terms.

Not later than July 1, 1967, there shall be appointed in each county a jury commission of three members. One member of the commission shall be appointed by the senior regular resident superior court judge, one member by the clerk of superior court, and one member by the board of county commissioners. The appointees shall be qualified voters of the county, and shall serve for terms of two years. Appointees may be reappointed to successive terms. A vacancy in the commission shall be filled in the same manner as the original appointment, for the unexpired term. Each commissioner shall take an oath or affirmation that, without favor or prejudice, he will honestly perform the duties of a member of the jury commission during his term of service. The compensation of commissioners shall be fixed by the board of county commissioners, and

shall be paid from the general fund of the county. The clerk of superior court shall furnish clerical assistance to the commission, as necessary. (1967, c. 218, s. 1; 1981, c. 720, s. 3.)

Legal Periodicals. — For case law survey as to jury composition and unfair tribunal, see 45 N.C.L. Rev. 927 (1967). For comment discussing the constitutionality of North Carolina's nuisance abatement statute, see 61 N.C.L. Rev. 685 (1983).

CASE NOTES

Stated in *State v. Harbison*, 293 N.C. 474, 238 S.E.2d 449 (1977); *State v. Vaughn*, 296 N.C. 167, 250 S.E.2d 210 (1978). Cited in *State v. Williams*, 305 N.C. 656, 292 S.E.2d 243 (1982).

§ 9-2. Preparation of jury list; sources of names.

(a) It shall be the duty of the jury commission beginning July 1, 1981, (and each biennium thereafter) to prepare a list of prospective jurors qualified under this Chapter to serve in the biennium beginning January 1, 1982, (and each biennium thereafter). Instead of providing a list for an entire biennium, the commission may prepare a list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the list, the jury commission shall use the voter registration records of the county. The commission may use fewer than all the names from the voter list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c) Effective July 1, 1983, the list of licensed drivers residing in each county, as supplied to the county by the Division of Motor Vehicles pursuant to G.S. 20-43.4, shall also be required as a source of names for use by the commission in preparing the jury list.

(d) When more than one source is used to prepare the jury list the jury commission shall take randomly a sample of names from the list of registered voters and each additional source used. The same percentage of names must be selected from each list. The names selected from the voter registration list shall be compared with the entire list of names, from the second source. Duplicate names shall be removed from the voter registration sample, and the remaining names shall then be combined with the sample of names selected from the second source to form the jury list. If more than two source lists are used, the same procedure must be used to remove duplicates.

(e) As an alternative to the procedure set forth in subsection (d), the jury commission may merge the entire list of names of each source used, remove the duplicate names, and randomly select the desired number of names to form the jury list.

(f) The jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the jury list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county

during the previous year but in no event shall the number of names be more than 500 names, except that in counties in which a greater number of jurors is selected for each day of the week, there shall be the same number of names that may be placed on the list.

(g) The custodian of the appropriate election registration records in each county shall cooperate with the jury commissioners in the duty of compiling the list required by this section.

(h) As used in this section "random" or "randomly" refers to a method of selection that results in each name on a list having an equal opportunity to be selected. (1806, c. 694, P.R.; Code, ss. 1722, 1723; 1889, c. 559; 1897, cc. 117, 539; 1899, c. 729; Rev., s. 1957; C.S., s. 2312; 1947, c. 1007, s. 1; 1967, c. 218, s. 1; 1969, c. 205, s. 1; c. 1190, s. 49 $\frac{1}{2}$; 1973, c. 83, ss. 1, 2; 1981, c. 430, s. 1; c. 720, s. 1; 1981 (Reg. Sess., 1982), c. 1226, s. 1; 1983, c. 197, s. 2.)

Legal Periodicals. — As to racial discrimination in selection of jury, see 26 N.C.L. Rev. 185.

CASE NOTES

- I. General Consideration.
- II. Sources of List.
- III. Proof of Discrimination.

I. GENERAL CONSIDERATION.

Editor's Note. — Many of the annotations under this section are from cases decided prior to the 1981 amendments.

The plan in this section for the selection and drawing of jurors is constitutional and provides a jury system completely free of discrimination to any cognizable group. *State v. Cornell*, 281 N.C. 20, 187 S.E.2d 768 (1972); *State v. Foddrell*, 291 N.C. 546, 231 S.E.2d 618 (1977); *State v. Hardy*, 293 N.C. 105, 235 S.E.2d 828 (1977).

Constitutionality of Former Chapter. — See *State v. Wilson*, 262 N.C. 419, 137 S.E.2d 109 (1964).

Power of State to Prescribe Qualifications of Jurors. — Absent discrimination by race or other identifiable group or class, a state is at liberty to prescribe such qualifications for jurors as it deems proper without offending the Fourteenth Amendment. *State v. Rogers*, 275 N.C. 411, 168 S.E.2d 345, cert. denied, 396 U.S. 1024, 90 S.Ct. 599, 24 L. Ed. 2d 518 (1970).

The legislative intent of this section is to provide a system for objective selection of veniremen. *State v. Avery*, 299 N.C. 126, 261 S.E.2d 803 (1980).

The procedure set forth in this Article is objective and systematic. *State v. Hough*, 299 N.C. 245, 262 S.E.2d 268 (1980).

Technical and insubstantial violations of the statutes regulating jury selection in this chapter are not sufficient to vitiate a jury list or afford a challenge to the array. *State v. Massey*, — N.C. —, 342 S.E.2d 811 (1986).

Provisions of Former § 9-1 as to Jury List Directory and Not Mandatory. — See *State v. Smarr*, 121 N.C. 669, 28 S.E. 549 (1897); *State v. Perry*, 122 N.C. 1018, 29 S.E. 384 (1898); *State v. Bonner*, 149 N.C. 519, 63 S.E. 84 (1908); *State v. Brown*, 233 N.C. 202, 63 S.E.2d 99, cert. denied, 341 U.S. 943, 71 S.Ct. 997, 95 L.Ed. 1369 (1951); *State v. Yoes*, 271 N.C. 616, 157 S.E.2d 386 (1967).

Special Statute Allowing Other Method. — Where a statute creating a special criminal court for certain counties allows every facility to the accused for getting a fair and impartial jury, it is not unconstitutional because it does not follow the same methods of drawing the jury which are provided for by the superior courts. *State v. Jones*, 97 N.C. 469, 1 S.E. 680 (1887).

The trial judge in a murder trial did not err in denying defendant's motion for funds to employ a statistician to review the jury venire in the county over a substantial period of time to determine whether the jury commission failed to perform its statutory duty