

Chapter 10

1985 REPLACEMENT PART

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JURIES GENERALLY

10.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Clerk of court" means the trial court administrator, trial court clerk or any other non-judicial officer or employe of the circuit or district court for a county authorized by the presiding judge of the circuit court for the county.

(2) "Juror" means any juror or prospective juror.

(3) "Jury" means a body of persons temporarily selected from persons who live in a particular county or district, and invested with power to present or indict in respect to a crime or to try a question of fact. [Amended by 1985 c 703 §1]

10.020 Kinds of juries. A jury is of three kinds:

- (1) A grand jury.
- (2) A trial jury.
- (3) A jury of inquest.

10.030 Eligibility for jury service; discrimination prohibited. (1) Except as otherwise specifically provided by statute, the opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation or any other factor that discriminates against a cognizable group in this state.

(2) Any person is eligible to act as a juror unless the person:

- (a) Is not a citizen of the United States;
- (b) Does not live in the county in which summoned for jury service;
- (c) Is less than 18 years of age; or
- (d) Has had rights and privileges withdrawn and not restored under ORS 137.281.

(3) A person who is blind, hearing or speech impaired or physically handicapped shall not be ineligible to act as a juror or be excluded from a jury list or jury service on the basis of blindness, hearing or speech impairment or physical handicap alone.

(4) No person is eligible to act as a juror in any circuit or district court of this state within 24 months after being discharged from jury service in a federal court in this state or circuit or district court of this state unless that person's service as a juror is required because of a need for additional jurors. [Amended by 1971 c.630 §1, 1975 c 781 §4; 1977 c.262 §1, 1985 c.703 §2]

10.040 [Amended by 1961 c.454 §208; 1975 c.84 §1; repealed by 1979 c.728 §1]

10.050 Excuse from jury duty. (1) A judge of the court or clerk of court shall excuse a person from acting as a juror upon a showing of undue hardship or extreme inconvenience to the person, the person's family, the person's employer or the public served by the person. In applying this subsection the judge or clerk of court shall carefully consider and weigh both the public need for juries which are representative of the full community and the individual circumstances offered as a justification for excuse from jury service. A person may request and be granted excuse from jury service under this subsection by means of telephone communication or mail.

(2) Notwithstanding ORS 10.030 (3), a judge may, by own motion, excuse a juror whose presence on the jury would substantially impair the progress of the action on trial or prejudice the parties thereto. [Amended by 1967 c.389 §1; 1975 c.160 §3; 1977 c.262 §2; 1977 c.631 §2; 1979 c 728 §2; 1985 c.703 §5]

10.055 Deferment of jury service. A judge of the court or clerk of court may allow, for good cause shown, a person summoned to serve as a juror for a particular jury service term to defer jury service to any other term beginning within one year after the end of the term for which the person was summoned. The name of a person allowed to defer jury service shall be included with the names of persons to be summoned as jurors for the subsequent term to which jury service is deferred. [1967 c.473 §2; 1969 c.176 §1, 1971 c 207 §1; 1975 c.342 §13; 1985 c.703 §6]

10.060 Fees of jurors; mileage and other expenses. (1) The fees of jurors shall be as follows:

- (a) For each day's required attendance upon a court of record, \$10.
- (b) For each juror sworn in the justice court, or upon an inquest, \$10.

(2) In addition to the fees and mileage prescribed in subsection (1) of this section and ORS 10.065, the governing body of a county may provide by ordinance for reimbursement by the county of jurors for mileage and other expenses incurred in serving as jurors. [Amended by 1955 c.296 §1; 1971 c.358 §1; 1981 c.509 §1; 1985 c 703 §7]

10.065 Mileage fee. Every juror whose fees are prescribed in ORS 10.060 who is required to travel from the juror's usual place of abode in order to execute or perform service as a juror, in addition to the fees prescribed in ORS 10.060, shall be entitled to mileage at the rate of eight cents a mile for travel in going to and returning

from the place where the service is performed. Such juror shall be entitled to such mileage for each day's attendance upon court. [1957 c.676 §1; 1971 c 358 §2; 1981 c.509 §2]

10.070 [Repealed by 1957 c.676 §2]

10.075 Payment of per diem and mileage fees by state; payment of other expenses. (1) The per diem fees and mileage due to each grand juror and each trial juror in the circuit or district court shall be paid by the state from funds available for the purpose. Payment shall be made upon a certified statement, prepared by the clerk of court, showing the number of days each juror has served and the amount due each juror for mileage.

(2) If a grand jury or a trial jury in the circuit or district court is provided food, drink, lodging or transportation by order of the circuit or district court, the cost thereof shall be paid by the state from funds available for the purpose.

(3) This section does not apply to mileage and other expenses of jurors reimbursed by a county as provided in ORS 10.060 (2). [1981 s.s c 3 §43; 1985 c.703 §8]

10.077 [Formerly 17.315, 1981 s.s c 30 §60, repealed by 1985 c 703 §28]

10.080 Seeking or offering to procure place on jury or list of jurors and selection of juror pursuant to request prohibited. (1) No person shall ask or request any sheriff, constable or any other person, whose duty it is under the law to select or summon any jury or juror, to select or put the person upon the jury; nor shall any person procure or offer to procure for the person or for another person a place upon any jury or seek to have the person or another placed upon the list of jurors that is required by law to be made.

(2) No sheriff, constable or other person whose duty it is under the law to select or summon a jury shall select, summon or place upon any jury any person whom the sheriff, constable or other person has been asked or requested to select or summon.

10.090 Prohibited acts by employers against jurors; notice to jurors by sheriff; remedy for violations. (1) An employer shall not discharge or threaten to discharge, intimidate, or coerce any employe by reason of the employe's service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.

(2) This section shall not be construed to alter or affect an employer's policies or agreements with employes concerning employes' wages during times when an employe serves or is scheduled to serve as a juror.

(3) When summoning jurors, the person whose duty it is under the law to summon shall notify each juror of the juror's rights under this section.

(4) Upon complaint filed by a prospective juror or a juror who has served or upon petition of the district attorney, the circuit court shall have jurisdiction to prevent and restrain violations of this section by issuing appropriate orders, including but not limited to, reinstatement of an employe discharged by reason of service as a juror, with back pay for the time the employe was discharged. [1975 c.160 §1; 1985 c 703 §11]

10.095 Duty of jury; instructions. The jury, subject to the control of the court, in the cases specified by statute, are the judges of the effect or value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

(1) That their power of judging of the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

(2) That they are not bound to find in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number, or against a presumption or other evidence satisfying their minds;

(3) That a witness false in one part of the testimony of the witness is to be distrusted in others;

(4) That the testimony of an accomplice ought to be viewed with distrust, and the oral admissions of a party with caution;

(5) That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory, the finding shall be according to the preponderance of evidence;

(6) That in criminal cases a person is innocent of a crime or wrong until the prosecution proves otherwise, and guilt shall be established beyond reasonable doubt;

(7) That evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

(8) That if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust. [Formerly 17.250]

10.100 View of premises by jury.

Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge or by a person appointed by the court for that purpose. While the jury are thus absent, no person, other than the judge or person so appointed, shall speak to them on any subject connected with the trial. [Formerly 17.230]

10.105 Jury service term. The length of a jury service term in a county shall be established by the presiding judge of the circuit court for the county, but no trial juror shall be required to serve more than 10 days unless necessary to complete the trial of an action. A day of service is each day during a jury service term on which a juror is required to attend and attends. [1985 c.703 §4]

10.110 [Amended by 1955 c.717 §1, 1957 c.393 §1; 1973 c.836 §312; 1981 s.s. c.3 §44; repealed by 1985 c.703 §28]

10.115 Hearing or speech impaired jurors. (1) As used in this section:

(a) "Handicapped juror" means a person who is hearing or speech impaired, who is summoned to serve as a juror and whose name is drawn for grand jury or trial jury service.

(b) "Qualified communicator" means a person who is readily able to communicate with a handicapped juror, accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(2) The court to which a handicapped juror is summoned, upon written request by the juror and upon a finding by the court that the juror requires the services of a qualified communicator in examination of the juror as to the juror's qualifications to act as a juror or in performance by the juror of the functions of a juror, shall appoint a qualified communicator for the juror and shall fix the compensation and expenses of the communicator. The compensation and expenses of a communicator so appointed shall be paid by the public authority required to pay the fees due to the juror.

(3) An oath or affirmation shall be administered to a qualified communicator appointed for a handicapped juror, in substance that the communicator will accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(4) A qualified communicator appointed for a handicapped juror may be present during deliber-

ations by the jury on which the juror serves. The communicator shall not participate in the jury deliberations in any manner except to facilitate communication between the handicapped juror and the other jurors or other persons with whom the jurors may communicate, and the court shall so instruct the jury and the communicator.

(5) When a handicapped juror serves on a trial jury each party to the proceeding shall stipulate to the presence of the qualified communicator appointed for the juror during jury deliberations, and shall prepare and deliver to the court proposed instructions in respect to the communicator. [1985 c.703 §9]

10.120 [Amended by 1965 c.387 §1; repealed by 1973 c.836 §358]

10.125 Security for jury sequestered or kept overnight. When a jury is kept overnight or otherwise sequestered and the sheriff is ordered to provide security for the jury by a judge or clerk of court of the court to which the jurors were summoned, the sheriff shall provide that security. The cost of providing the security shall be paid by the county. [1985 c.703 §10]

10.130 [Amended by 1979 c.728 §3; repealed by 1985 c.703 §28]

10.135 [1969 c.219 §1; 1973 c.836 §313; repealed by 1985 c.703 §28]

10.140 [Amended by 1955 c.717 §2; repealed by 1969 c.219 §2]

10.150 [Amended by 1955 c.717 §3; 1977 c.465 §1; 1981 s.s. c.3 §45; repealed by 1985 c.703 §28]

10.160 [Amended by 1955 c.717 §4; 1981 s.s. c.3 §46; repealed by 1985 c.703 §28]

SELECTION AND SUMMONING OF GRAND JURORS AND TRIAL JURORS IN CIRCUIT AND DISTRICT COURTS

10.205 Presiding judge to prescribe selection system; identification numbers.

(1) ORS 10.205 to 10.265 governs the selection and summoning of persons for service as grand jurors or trial jurors in the circuit and district courts in a county.

(2) The presiding judge of the circuit court for a county shall prescribe a selection system or device, which may include any electronic, mechanical or manual system or device or any combination thereof, for use in the performance of functions under ORS 10.215 to 10.265, 132.020 and ORCP 57 B. for the selection of jurors in the county, but the selection must be done randomly.

(3) The presiding judge of the circuit court for a county may authorize the use of juror identification numbers in place of juror names in the

performance of functions under ORS 10.215 to 10.265, 132.020 and ORCP 57 B. for the selection of jurors in the county, except for functions under ORS 10.215 (4) and 10.225 (3), when to do so would promote the efficiency of the selection process, but the selection must be done randomly. [1985 c.703 §12]

10.210 [Amended by 1957 c.594 §1; 1961 c.705 §4; 1965 c.510 §11; 1977 c.519 §1; repealed by 1981 s.s. c 3 §141]

10.215 Master jury list; sources; contents. (1) Upon written order of the presiding judge of the circuit court for a county, the clerk of court shall cause to be prepared at least once each year a master jury list containing names selected at random from the source lists. The source lists are the most recent list of electors of the county and any other sources that will furnish a fair cross section of the citizens of the county. Any source list obtained from a public or private entity and any jury list containing names selected from a source list shall not be used for any purpose other than the selection and summoning of persons for service as jurors and the drawing of names of jurors.

(2) A public entity having custody, possession or control of any list that may be used as a source list for preparation of a master jury list, upon written request by the presiding judge of the circuit court or clerk of court, shall make its list available at any reasonable time and without charge to the clerk of court for inspection or copying. The public entity, upon written request by the presiding judge of the circuit court or clerk of court, shall provide a copy of its list for the date and in the form requested without charge to the clerk of court. A public entity is any officer or agency of the state or of any city, county, school district or other special district in this state.

(3) The number of names placed on a master jury list shall be sufficient to meet the projected need for grand jurors and trial jurors in the circuit and district courts in the county, but the total number shall not be less than two percent of the population of the county according to the latest federal decennial census.

(4) A master jury list shall contain the first name, the surname, the place of residence and, if assigned, the juror identification number of each person whose name is placed thereon.

(5) A master jury list shall be certified by the clerk of court and placed on file in the circuit court as soon as possible after it is prepared.

(6) A newly filed master jury list shall be maintained separately from the previously filed master jury list. The presiding judge of the circuit court shall designate when a newly filed master

jury list becomes effective, after which time names of persons shall not be selected from the previously filed master jury list for a term jury list. When a newly filed master jury list becomes effective, all orders, records and papers prepared in connection with the selection process based on the previously filed master jury list shall be preserved by the clerk of court for the period prescribed by the Chief Justice of the Supreme Court. [1985 c.703 §13]

10.220 [Amended by 1955 c.717 §5; 1957 c.594 §2; 1959 c.462 §1, 1961 c.705 §5; 1965 c.510 §12, 1977 c.519 §2; 1981 s.s. c.3 §47; repealed by 1985 c.703 §28]

10.225 Term jury list; contents; notice to persons whose names appear on list. (1) Not less than 10 days before the commencement of a jury service term in a county, a term jury list containing names selected at random from the master jury list shall be prepared at the direction of the presiding judge of the circuit court for the county or clerk of court.

(2) The number of names placed on a term jury list shall be determined by the presiding judge of the circuit court or clerk of court according to the projected need for grand jurors and trial jurors in the circuit and district courts in the county for the term.

(3) A term jury list shall contain the first name, the surname, the place of residence and, if assigned, the juror identification number of each person whose name is placed thereon.

(4) A term jury list shall be certified by the clerk of court and placed on file in the circuit court as soon as possible after it is prepared.

(5) Not less than 10 days before the commencement of a jury service term, the clerk of court shall summon the persons whose names are placed on the term jury list by giving written notice to each of them by mail. [1985 c.703 §14]

10.230 [Amended by 1981 s.s. c.3 §48, repealed by 1985 c 703 §28]

10.235 Additional jurors; selection; notice. (1) When an additional number of jurors is needed for a jury service term in a county because the term jury list for the term becomes exhausted, or in the opinion of the presiding judge of the circuit court for the county is likely to become exhausted, before the end of the term, additional jurors may be selected and summoned as provided in this section.

(2) The presiding judge of the circuit court may order an additional number of names selected from the master jury list and added to the term jury list in the same manner as the original term jury list is prepared. As directed by the

presiding judge of the circuit court, the persons whose names are added to the term jury list shall be summoned by the clerk of court giving written notice to each of them by mail or by the sheriff or other officer giving written notice to each of them personally or by leaving written notice at the person's place of residence with some person of suitable age and discretion. The notice need be given only a reasonable time before the day on which the persons summoned are required to attend.

(3) If the master jury list becomes exhausted or in the opinion of the presiding judge of the circuit court is likely to become exhausted, the presiding judge of the circuit court may order that the clerk of court select an additional number of names from the source lists described in ORS 10.215 (1) and that the persons whose names are so selected be summoned as provided in subsection (2) of this section.

(4) If there is an immediate need for additional jurors, a judge of the circuit or district court for the county may direct the clerk of court, sheriff or other officer to summon a sufficient number of eligible persons to meet that need. Those persons shall be summoned as directed by the judge. [1985 c.703 §15]

10.240 [Amended by 1981 s.s. c.3 §49; repealed by 1985 c.703 §28]

10.245 Determining eligibility of jurors; eligibility form; effect of false statements or failure to respond. (1) Before or at the time a person summoned to serve as a juror reports for jury service in a county, a judge of the circuit or district court for the county or clerk of court shall question the person as to the eligibility of the person to act as a juror under ORS 10.030. If a judge or clerk of court determines that a person so questioned is not eligible to act as a juror, the person shall be discharged.

(2) The presiding judge of the circuit court for a county may cause to be mailed or delivered with a juror's summons a juror eligibility form and instructions for completion of the form and return of the completed form by mail or personal delivery to the clerk of court by a specified date. The form shall set forth the eligibility requirements prescribed in ORS 10.030.

(3) A person who knowingly makes a false statement of material fact in response to a question on a juror eligibility form may be punished for contempt.

(4) A completed juror eligibility form shall contain the summoned person's signed declaration that the responses to questions on the form are true to the best of the person's knowledge and

an acknowledgment that a knowingly made false statement of material fact may be punished by a fine or imprisonment or both. Notarization of a completed form shall not be required.

(5) If a person summoned is unable to complete a juror eligibility form, another person may do it for the person summoned. Another person completing a form shall indicate on the form that the person did so and the reason therefor.

(6) If a person summoned fails to return a properly completed juror eligibility form as instructed, a judge of the circuit or district court may direct the person to appear forthwith and properly complete a form. If the person fails to appear as directed, a judge of the circuit or district court shall order the person to appear and show cause for that failure. If the person fails to appear pursuant to the order or appears and fails to show good cause, the person may be punished for contempt.

(7) Before or at the time a person summoned reports for jury service, a judge of the circuit or district court or clerk of court may question the person as to responses to questions on a completed jury eligibility form returned by the person and grounds for any ineligibility of the person to act as a juror. Any pertinent information so acquired shall be noted on the form.

(8) Review by a judge of the circuit or district court or clerk of court of a completed juror eligibility form returned by a person summoned satisfies the requirement prescribed in subsection (1) of this section that a person summoned be questioned. If a judge or clerk of court determines that a person is not eligible to act as a juror based on a completed form, the person shall be discharged. [1985 c.703 §16]

10.250 [Amended by 1981 s.s. c.3 §50, repealed by 1985 c.703 §28]

10.255 Record of persons summoned to serve as jurors. The clerk of court shall cause to be prepared a record on all persons summoned to serve as jurors for a jury service term in a county, specifying:

(1) Those who did not attend.

(2) Those who were discharged for ineligibility to act as jurors.

(3) Those who were discharged for any other reason.

(4) Those whose jury service was deferred and the term to which jury service of each was deferred.

(5) Those who attended and were not discharged or deferred.

(6) The per diem fees and mileage due to each entitled thereto. [1985 c.703 §17]

10.260 [Repealed by 1985 c.703 §28]

10.265 Preservation of jury orders, records and papers. After the end of a jury service term in a county, all orders, records and papers prepared in connection with the selection and summoning of persons to serve as jurors for the term as provided in ORS 10.225 to 10.255 shall be preserved by the clerk of court for the period prescribed by the Chief Justice of the Supreme Court. [1985 c.703 §18]

10.270 [Amended by 1967 c.532 §7; 1967 c.533 §17; repealed by 1985 c.703 §28]

10.280 [Repealed by 1985 c.703 §28]

10.290 [Amended by 1965 c.387 §2; repealed by 1975 c.342 §1]

10.300 [Amended by 1963 c 519 §4, 1973 c 836 §314; repealed by 1985 c.703 §28]

10.310 [Repealed by 1985 c 703 §28]

10.320 [Amended by 1979 c.728 §4, 1981 s.s. c 3 §51; repealed by 1985 c.703 §28]

10.330 [Amended by 1981 s.s. c 3 §52; repealed by 1985 c.703 §28]

10.340 [Amended by 1963 c.519 §5; repealed by 1975 c.342 §1]

10.350 [Repealed by 1975 c.342 §1]

10.400 [1975 c 342 §3, 1977 c.631 §3, 1981 s.s. c 3 §53; repealed by 1985 c.703 §28]

10.410 [1975 c 342 §4, 1977 c 631 §4, 1981 s.s. c.3 §54, repealed by 1985 c 703 §28]

10.420 [1975 c 342 §5, 1977 c 631 §5, repealed by 1985 c 703 §28]

10.430 [1975 c.342 §6, 1977 c.631 §6, 1981 s.s. c.3 §55; repealed by 1985 c 703 §28]

10.440 [1975 c.342 §7; 1977 c.631 §7; 1981 s.s. c.3 §56; repealed by 1985 c.703 §28]

10.450 [1975 c 342 §8; 1977 c.631 §8; 1981 s.s. c 3 §57; repealed by 1985 c 703 §28]

10.460 [1975 c 342 §9; 1977 c 631 §9; 1981 s.s. c.3 §58; repealed by 1985 c 703 §28]

10.470 [1975 c 342 §10; 1977 c.631 §10, repealed by 1985 c 703 §28]

10.480 [1975 c.342 §11; 1977 c.631 §11; 1981 s.s. c.3 §59; repealed by 1985 c.703 §28]

10.490 [1975 c.342 §12; repealed by 1981 s.s. c:3 §141]

JURY OF INQUEST

10.810 Definition. A jury of inquest is a body of six persons, legally qualified to serve as jurors, summoned from the inhabitants of a particular district before the district attorney, sheriff or other ministerial officer, to inquire of particular facts. [Formerly 146.010; 1965 c 221 §9]

10.820 Number of jurors required to concur. The verdict of a jury of inquest is sufficient if two-thirds of the jurors concur therein. [Formerly 146.020]

PENALTIES

10.990 Penalties. (1) Violation of ORS 10.080 is punishable upon conviction by a fine not exceeding \$300.

(2) If a person summoned to serve as a juror in a circuit or district court fails to attend as required, the court shall order the person to appear forthwith and show cause for that failure. If the person fails to appear pursuant to the order or appears and fails to show good cause, the person may be punished for contempt.

(3) A juror summoned to a court who fails to give attention in court, or who leaves without permission while the court is in session or otherwise fails to complete required jury service without permission, may be punished for contempt of the court. [Amended by 1985 c 703 §19]

10.992 Penalty for violation of ORS 10.090. Any employer who violates ORS 10.090 shall be subject to a civil penalty of not more than \$500 for each violation as to each juror. The district attorney, upon receipt of a sworn complaint in writing signed by a prospective juror or signed by a juror who has served, alleging a violation of ORS 10.090, may bring an action to enforce the civil penalty in the circuit court. [1975 c.160 §2]