



# GRAND JURIES & PETIT JURIES

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# GRAND JURY FAQs

- Clerk to issue at least 20 but not more than 125 summonses for the purpose of selecting the grand jurors. Art. 19.01, CCP
- Must be random selection process. Art. 19.26, CCP
- District Judge shall qualify those that show up. First 12 that qualify are grand jurors, 4 additional are designated as alternates. Art. 19.01, CCP
- Those summonsed who fail to show can be fined between \$100-\$500. Art. 19.16, CCP
- If less than 16 report for initial duty/qualification, sheriff to summonses additional jurors, but can only summons those who qualify. Art. 19.18 and Art. 19.20, CCP

- Qualifications different (Art. 19.08, CCP)
  - Must be citizen of state/county
  - Must be qualified to vote (does not have to be registered)
  - Must be of sound mind and good moral character
  - Must be able to read and write
  - Cannot have a conviction for misdemeanor theft or any felony
  - Cannot currently be under indictment or complaint for misdemeanor theft
  - Cannot be related to any other person selected to serve on the grand jury
  - Must not have served as a grand juror in the year preceding
  - Cannot be a complainant in any matter to be presented to the grand jury

- Judge can consider excuses: Art. 19.25, CCP
  - Older than 70 years
  - Children younger than 18
  - Secondary student
  - Student enrolled and actually attending institute of higher education
  - Any other reasonable excuse

- Those summonsed who fail to show can be fined between \$100-\$500. Art. 19.16, CCP
- All felony cases must go through the indictment process before a grand jury unless the defendant agrees to enter a plea prior to an indictment, in which case the DA's Office will file a complaint/information. This process is not frequently used as the defendant often balks when time to enter plea.
- Normally the process begins when law enforcement presents written reports to the DA's Office for consideration. Intake attorneys review that information and try to determine if the case should be filed as a misdemeanor or felony, and may also ask the law enforcement agency to obtain additional information prior to presentment to the grand jury.

- Most cases are filed as a direct present to the grand jury. The grand jury takes the information provide and decides whether the case is “no billed” or “true billed”. They can also ask that the case be passed until additional information is obtained. The prosecutor may also pass the presentment of a case – typically done when witness not available.
- Subpoenas for the purpose of obtaining additional information may be requested by either the defendant or prosecutor. Most typically to obtain medical or financial information.
- Everything that is discussed when the grand jury meets is confidential. Art. 20.02, CCP.

- Sealed indictments no longer a common practice because of language in Art. 20.22, CCP:
- If the defendant is not in custody or under bond at the time of the presentment of the indictment, the indictment may not be made public and the entry in the record of the court relating to the indictment must be delayed until the capias is served and the defendant is placed in custody or under bond.
- Unique to grand juries:
  - DA may offer to let the defendant testify, but is not required to.
  - Polygraphs are allowed (not frequently done).
  - Hearsay is admissible

- Challenges to a particular grand juror: Art. 19.31, CCP.
  - Juror is insane
  - Medical or mental defect or disease that renders the juror incapable of serving, or is legally blind
  - Juror is a witness or a target of an investigation to be presented to the grand jury
  - Juror served on petit jury in a former trial of the same offense
  - Juror has a bias in favor of or against the alleged offender
  - Juror has heard too much and can no longer be impartial
  - Juror is related to offender
  - Juror doesn't like the law and can't consider indictment
  - Juror cannot be the prosecutor upon an accusation against the person making the challenge



- Challenges to be made through in camera proceeding and decided by the Judge. All records on challenges are sealed. Art. 19.31, CCP.
- If a juror, after being impaneled, determines that they have cause not to be serving, they can ask to be recused until the reason no longer exists. Art. 19.315, CCP.

- Foreman appointed by the Judge. If absent or unable to serve, the Judge shall select another person from the same group to replace the initial foreperson. Art. 19.39, CCP.
- Nine members required for a quorum. Art. 19.40, CCP.
- Personal information about grand jurors cannot be disclosed: Art. 19.42, CCP.
  - Home address
  - Home telephone
  - SSN
  - DL
  - Other personal information
- On good cause showing, Court shall permit disclosure to PARTY TO THE PROCEEDING. Art. 19.42 (b), CCP.

- Only the following may be present in the grand jury room: Grand jurors; bailiffs; prosecutor, witnesses, interpreters, stenographer or recorder, or videographer. Art. 20.011, CCP.
- Only grand jurors may be present when deliberating. Art. 20.011, CCP.
- Recording may be made of grand jury proceedings. DA's Office keeps all records, except stenographer's notes. Art. 20.012, CCP.
- Disclosure of grand jury proceedings – fine up to \$500, imprisonment not to exceed 30 days, or both. Art. 20.02, CCP.
- If grand jury still in session, the return of process shall be given to foreman. If not in session, shall be filed with District Clerk. Art. 20.13, CCP.

- Accused/defendant who wishes to appear before grand jury is given warnings orally – which includes the option of having an attorney present (outside jury room) to answer questions for the accused. Can get an attorney appointed for them at grand jury stage. Art. 20.17, CCP.
- At least 9 members of grand jury required to present indictment. The act of indictment shall be entered on the record of the court. Art. 19.40, CCP. Art. 20.19, CCP.
- Biggie – if defendant is not in custody or under bond at the time of presentment of indictment, the indictment cannot be made public or entered in the court's record until the capias is served and the defendant is in custody or has made bond. Art. 20.22, CCP.

- Indictments may be filed electronically IF the conditions listed in art. 21.011, CCP are met.
- Indictments have to be signed by the foreman and dated. Art. 21.02, CCP.
- Multiple counts may be included in the same indictment if the offenses arise out of the same criminal episode. Art. 21.24, CCP.
- If an indictment is lost – DA informs Court and asks the Court to recognize substituted indictment. Written statement of prosecutor required. Art. 21.25, CCP.

- Petit Juries:
- Jury Source, Reconstitution of Jury Wheel. Section 62.001.
- List is a compilation of county voter registration lists as submitted to SOS by voter registrar and all names on the DPS combined list of driver's license and personal identification cards.
- Voter registrar must submit current list to SOS by not later than the 3<sup>rd</sup> Tuesday in November or the date provided by Section 16.032, Election Code, whichever is earlier. The list should include:
  - The complete name, mailing address, date of birth ...
  - If available, the Texas DL number, personal identification card number, and SSN of each voter
  - Any other information included on county's voter registration list.
- The voter registration list does not have to include information on the persons maintained on their suspense list, but is required to send list of those excluded to SOS.

- DPS list will contain same information as the voter registrar lists, but DPS also required to furnish:
  - Citizenship status
  - County of residence
- DPS list excludes names of convicted felons, names of individuals who are not US citizens, and duplicate names of any registrants.
- SOS will combine both lists and eliminate duplicate names.
- SOS will send lists to each county by no later than December 31<sup>st</sup> of each year.
- Lists can be sent in written or electronic form and are free of charge to the counties.

- Counties with population of 250,000 or more – the names of summonsed jurors who appeared must be removed from the jury wheel every three years or until next day wheel is reconstituted.
- Clerks required to update addresses on jury wheel.
- Paper or manual jury wheels – Section 62.002 through 62.010.
- Electronic or Mechanical Method – Section 62.011.
  - On recommendation of majority of district judges, Commissioners Court may adopt a plan for the selection of jury names/jury wheel.
  - Plan must be proposed in writing to Commissioners Court by District Judges at a meeting called for that purpose.
  - Plan must specify the source of names and that the jury wheel will not contain names of exempt persons.
  - Plan must specify a fair, impartial and objective method of selecting names with the aid of electronic or mechanical equipment.
  - Plan must designate District Clerk as the officer in charge. If population of county is at least 1.7 million, bailiff may be appointed as the officer in charge.



- Plan must specify that the method of selection will use same record of names for jury selection until names are exhausted or specify length of time the names will be used. If using electronic or mechanical means to select juror names, provisions of jury wheel (card) selection do not apply.
- Plans may include provisions for jurors to respond by computer, automated telephone system, or appearing in person.
- Plan may allow for information to be stored electronically including qualification, exemption, postponement, or excuse information.

- Plans may allow for jury assignment, including information completed on juror questionnaire. Electronic data can include all information normally needed for reporting to jury duty in person.
- Email address of prospective juror shall be purged:
- If person served as juror – not later than the 30<sup>th</sup> day county sends payment for jury service or designated donation.
- If person did not serve as juror – not later than the 30<sup>th</sup> day after the date the court releases the person from jury service.

# Petit Jury FAQs:

- Jurors cannot be summonsed to require them to serve on a jury on the date of general election for state and county officers. Section 62.0125, Government Code.
- Jury summons must contain the time and place to appear, the purpose for which he is to appear, and penalty for failure to appear. Section 62.013.
- Form of written summons. Section 62.0131.
- OCA to develop model. Current found at <http://www.txcourts.gov/rules-forms/forms.aspx>.
- Model must include exemption/excuse information, duties of employers (Chapter 122, CPRC).

- Must include questionnaire. Section 62.0132, which includes:
  - Name
  - Sex
  - Race
  - Age
  - Residence address
  - Mailing address
  - Education level
  - Occupation
  - Place of employment
  - Marital status
  - Name, occupation and place of employment of spouse
- You can include additional elements to questionnaire, i.e., email address.

- Questionnaire must notify a person that if they claim they are not a US citizen, the person will no longer be eligible to vote until they proof of citizenship. Section 62.0132(h), Govt. Code.
- Summons must notify person that claiming disqualification or exemption based on non-residency or U.S. citizenship, person no longer eligible to vote or vote in county.
- Any written summons you use must conform with general model developed by OCA. Section 62.0131(c), Govt Code.
- Questionnaire information confidential and not subject to Public Information Act requests. Section 62.0132(f), Govt. Code.
- Questionnaire information can be disclosed to judge, court personnel, litigant and litigant's attorney. Section 62.0132(g), Govt. Code.

- Prospective juror can request postponement if before the date on which juror was supposed to report. Section 62.0143, Govt. Code.
- Clerk can approve postponement if not already granted in year preceding and the person agrees to serve on another date not later than 6 months after date he was supposed to report. Section 62.0143, Govt. Code.
- After first postponement, person cannot get another postponement unless extreme emergency. Section 62.0143 (c), Govt. Code.
- Specific postponement procedures allowed for certain counties with Board of Judges and/or jury duty court. Section 62.0147, Govt Code.

- If summons is returned undeliverable, name is removed from jury wheel. Section 62.0145, Govt. Code.
- If summons returned with forwarding address, information should be updated on jury wheel. Section 62.0146, Govt. Code.
- Jury panels are selected from those that report timely. Section 62.015, Govt. Code.
- If not sufficient number report, judge shall order sheriff or constable to summonses additional jurors from the jury wheel. Section 62.015, Govt. Code.

- In counties with at least three district courts, the judges shall determine approximate number of jurors that are necessary for each week of the year. Section 62.016, Govt. Code, and shall order the summonses be sent specific number of weeks in advance or may increase/decrease the number to be ordered. Section 62.016, Govt. Code.
- District Judges set schedule of which District Judge is to supervise each week the jury selection process. That District Judge will hear requests for exemptions and excuses and shall administer oath for the week they are to serve. Those jurors can be used interchangeably in all courts of that county. If not enough jurors to satisfy requirements of those courts, the judge shall order a sufficient number of additional names drawn to meet the needs. Those jurors are only to serve if necessary and to be discharged immediately if not needed. Section 62.016, Govt. Code.



- Section 62.016 does not apply to a selection of jurors in a capital case or a mental health proceeding.
- Interchangeable panels for counties with two district courts – similar language, but found at Section 62.017, Govt. Code.
- Interchangeable panels for counties with one district court – similar language, but found at Section 62.0175, Govt. Code.

- In counties that use interchangeable jury panels, the sheriff shall appoint a bailiff for each court that takes care of the panel and maintains general control of the persons on panel when they are not in actual service. They can also notify prospective jurors to appear or serve notices on absent jurors. Section 62.019, Govt. Code.
- A deputy or bailiff can be assigned to Central Jury Room. Section 62.019, Govt. Code.
- The courtroom deputies or bailiffs serve a two-year term beginning January 1 of each odd-numbered year. Salaries set by Commissioners Court upon recommendation by district judges. Section 62.019, Govt. Code.

- Alternate Jurors:
- District Court – 4 alternates max. Section 62.020, Govt. Code.
- County Court – 2 alternates max. Section 62.020, Govt. Code.
- Alternates selected same as regular jurors. Must meet same qualifications, same functions, same oath as regular jurors. Section 62.020, Govt. Code.
- In the order called, alternates will replace regular jurors prior to beginning of deliberations. Alternates discharged, if not selected to replace a regular juror, prior to the commencement of deliberations. Section 62.020, Govt. Code.
- One additional peremptory challenge allocated when one or two alternates are to be impaneled. Two additional peremptory challenges allocated when three or four alternates to be impaneled. These peremptory challenges cannot be combined with regular jury peremptory challenges and can be used for purposes of challenging an alternate juror only. Section 62.020, Govt. Code.

# Juror Qualifications:

- All jurors are considered competent unless otherwise disqualified. Section 62.101, Govt. Code. Section 62.101, Govt. Code
- Juror is qualified to serve as petit juror: Section 62.102, Govt. Code.
  - At least 18 years of age
  - Citizen of US
  - Resident of Texas and your county
  - Qualified to vote (doesn't have to be registered – Section 62.1031)
  - Sound mind and good moral character
  - Able to read and write
  - Not served as a petit juror for six days during the preceding 3 months in county court or during preceding 6 months in district court
  - Has not been convicted of misdemeanor theft or a felony
  - Is not under indictment or other legal accusation for misdemeanor theft or a felony.

- Suspension of qualifications. Judge may suspend read/write qualification or prior service if not enough jurors to serve. Section 62.103, Govt. Code.
- Legally blind is not an automatic disqualification. Court can determine that he is fit to serve as a juror. Section 62.104, Govt. Code.
- Deafness or hardness of hearing not automatic disqualification. Has to be determined unfit to serve. Reasonable accommodations under ADA by providing interpreter who accompanies juror during all proceedings and deliberations. Cost is paid by County. Section 62.1041, Govt. Code.

# • Exemptions. Section 62.106, Govt. Code.

- Over 70 years of age
- Has legal custody of child younger than 12 years of age and service on the jury would leave child unattended
- Student of public or private secondary school
- Student enrolled and in actual attendance at an institution of higher education
- An officer or employee of the senate, house, or any department, commission, board, office, or other agency in the legislative branch of state government
- Is summoned for service in a county with a population of at least 200,000 unless that county has a jury plan and the period exceeds two years, and the person has served as a petit juror in the county during the 24-month period preceding the appearance date

- Primary caretaker of a person who is unable to care for himself/herself
- Is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror during the 3-year period preceding the appearance date UNLESS the jury wheel has been reconstituted after the date the juror served as petit juror.
- Is a member of the united states military forces serving on active duty and deployed to a location away from the person's home station and out of the county of residence

## Claiming an Exemption: Section 62.107, Govt. Code.

- Filing written/signed statement before appearance date
- Filing with the sheriff, voter registrar or district/county clerk a sworn statement that sets forth the exemption he is claiming. If filed under this subsection, name of juror cannot be placed in the jury wheel for the ensuing year.
- Permanent exemption for over 70 – must file statement declaring request for permanent exemption. Copy of the permanent exemption is sent to voter registrar.



## Permanent Exemption for Elderly. Section 62.108, Govt. Code.

- Procedure outlined in Section 62.107.
- Voter registrar maintain a register of those claiming permanent exemption for over 70.
- Name of person claiming cannot be put on the jury wheel.
- Juror may rescind the permanent exemption.

## Exemption for Physical or Mental Impairment or Inability to Comprehend English – Section 62.109, Govt. Code.

- Judge grants exemptions, not clerk.
- Person requesting must submit affidavit stating name, address, reason for exemption and the duration exemption needed. Affidavit may be submitted by friend or family member of the person summoned. Affidavit must be sworn to before clerk or notary.
- Physical or mental impairment exemption requires physician's statement.
- Clerk shall notify voter registrar of exemptions and voter registrar shall maintain register of those claiming physical or mental impairment exemption.
- Jurors may not be summoned during the period of exemption or placed on the jury wheel.
- Juror may request the exemption be rescinded.

Excuses. Section 62.110, Govt. Code.

- Court may hear any reasonable sworn excuse of prospective juror, and shall decide if excuse is sufficient to release the juror – can be released entirely or until another day of the term, as appropriate.
- If included in the plan approved by Commissioners Court, the court may designate a clerk to grant additional exemptions or qualifications if the prospective juror submit a statement of the ground of exemption or lack of qualification or other excuse, but cannot excuse for economic reasons.

## Penalty for Defaulting Jurors. Section 62.111, Govt. Code

- If properly notified, can be fined \$100-\$500 if juror
- Fails to show
- Files false claim of exemption

## Excuse of Juror for Religious Holy Day. Section 62.112.

- Religious Holy Day means a day on which the tenets of a religious organization prohibits its members from participating in secular activities, such as court proceedings.
- Court may release juror entirely or until another day of that term.
- Court may require juror to file affidavit stating grounds for release and that the juror holds religious beliefs that prohibit him from taking part in court proceedings on appearance dates.

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## District Court Juries. Section 62, Govt. Code.

- Twelve jurors will serve in district court, except that the parties may agree to try a particular case with fewer than 12 jurors. Section 62.201, Govt. Code.
- If Commissioners Court has approved payment for meals for jurors in a civil case, a district court may keep the jurors together for deliberation to expedite the final disposition. Section 62.202(a), Govt. Code.
- Can be paid for out of jury fund or other appropriate fund. NOT MORE THAN \$3 PER MEAL may be spent. Not amended since 1985. Section 62.202(b), Govt. Code.

## County Court and JP Juries. Section 62, Govt. Code.

- JP and County Court juries are made up of six jurors. Section 62.301, Govt. Code.
- County Judge or County-Court-at-Law Judge may order more names if judge considers number available insufficient.
- Additional jurors serve for the time required for trial.



## Summoning Jurors Directly to JP Court. Section 62.412, Govt. Code.

- Counties with interchangeable juries may summon a prospective juror to report directly to the JP in the precinct in which that person resides.
- Counties of 3.3 million or more population may summons for adjacent precincts.
- JPs shall hear excuses and administer oath.
- JP may command sheriff or constable to immediately summon additional persons for jury service if number available not sufficient.

## Reports/Lists:

- Non-citizen to include name and address. Section 62.113, Govt. Code.
- List to be sent on the 3<sup>rd</sup> business day of each month to voter registrar, SOS, and county or district attorney.
- List cannot be used for any other purpose. If list released in violation, the person releasing commits a Class C misdemeanor.
- List must be filed electronically to SOS, or clerk needs to request waiver to file paper list.

Non-resident list to include name and address. Section 62.114, Govt. Code.

- List to be sent on the 3<sup>rd</sup> business day of each month to voter registrar of those claiming non-resident the previous month.
- List cannot be used for any other purpose.
- Voter registrar will notify all persons on the list that they are being placed on suspense list with instructions on how the person can be removed from the suspense list and restored to voting in your county.

- It is the Clerk's responsibility to promptly deliver a copy of a claim for permanent exemption based on age to the voter registrar. Section 62.107, Govt. Code.
- It is the Clerk's responsibility to provide name and address of every person claiming a permanent exemption based on physical or mental impairment or inability to comprehend English language. The list should include should also designate temporary exemptions and designate the specified period of exemption. Section 62.108, Govt. Code.

## IS THERE A FIX TO THE NO-SHOW RATE PROBLEM?

- Most Counties have a 25-30% show rate, but how is that rate determined?
- If you consider that a 100% show rate would start with every summons getting in the hands of a juror and that juror showing up, you must eliminate:
  - a. returned mail without forwarding addresses
  - b. mail returned with forwarding addresses – juror moved out of county or out of state
  - c. juror ignoring summons
  - d. juror forgetting to show up
  - e. towns that require PO Box delivery with no delivery to a street address

- f. excuses
- g. postponements
- h. exemptions

- Removing those percentages out, you are now down to your realistic no-show rate.
- Interview with returned mail department at main office of USPS revealed:
  - a. Increased rate of transient residents
  - b. The address listed is actually correct, resident won't pick up mail.

- c. After mailbox becomes full and the resident has not filed a forwarding order with USPS, they consider the property abandoned and no longer deliver mail to that address.
- d. Person summonsed resides with another person with different last name, if post office is not notified that mail should be addressed to additional last names, they will not deliver the mail and will return as unknown party.

## POSSIBLE SOLUTIONS FOR IMPROVEMENT:

- National Change of Address updates through vendors working with U.S. Postal Service. They will take your data and run it through their program to update addresses and return your data. This is only effective as to addresses that the post office has received a change of address order.
- Order more summonses to meet quota of jurors needed by the courts.
- Encourage Courts to hold show cause hearings and notify media the Courts will be fining no-shows. This works well for a few months, then no-show rates go up again.
- Consider prequalifying a large number of prospective jurors and select panels from those that prequalify.



- Prequalifying can be handled in several ways. The federal courts send out large numbers of questionnaires. From those that complete the questionnaire, they look at qualifications and eliminate non-qualifiers. Revised list is used to select panels.
- Downside to federal form of prequalifying is cost. Duplicate mailings will increase postage and printing costs.
- Upside to prequalifying is that you most likely will never have a shortage of jurors to meet the needs of your courts and your no-show rate in theory is very low.