

the exclusion of any citizen from juror service on account of race or color.

Subsec. (d). Pub. L. 90-274 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

REFILLING OF MASTER JURY WHEEL NOT LATER THAN SEPTEMBER 1, 1973; REFILLING OF QUALIFIED JURY WHEEL NOT LATER THAN OCTOBER 1, 1973; RETROACTIVE EFFECT

Pub. L. 92-269, §§ 3, 4, Apr. 6, 1972, 86 Stat. 117, provided that:

“SEC. 3. (a) Each judicial district and each division or combination of divisions within a judicial district, for which a separate plan for random selection of jurors has been adopted pursuant to section 1863 of title 28, United States Code, other than the District of Columbia and the districts of Puerto Rico and the Canal Zone, shall not later than September 1, 1973, refill its master jury wheel with names obtained from the voter registration lists for, or the lists of actual voters in, the 1972 general election.

“(b) The District of Columbia and the judicial districts of Puerto Rico and the Canal Zone shall not later than September 1, 1973, refill their master jury wheels from sources which include the names of persons eighteen years of age or older.

“(c) The qualified jury wheel in each judicial district, and in each division or combination of divisions in a judicial district for which a separate plan for random selection of jurors has been adopted, shall be refilled from the master jury wheel not later than October 1, 1973.

“SEC. 4. (a) Nothing in this Act amending this section and section 1865 of this title shall affect the composition of any master jury wheel or qualified jury wheel prior to the date on which it is first refilled in compliance with the terms of section 3.

“(b) Nothing in this Act shall affect the composition or preclude the service of any jury empaneled on or before the date on which the qualified jury wheel from which the jurors' names were drawn is refilled in compliance with the provisions of section 3.”

**§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form**

(a) From time to time as directed by the district court, the clerk or a district judge shall draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pur-

suant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 57; Pub. L. 100-702, title VIII, § 803(a), Nov. 19, 1988, 102 Stat. 4658; Pub. L. 110-406, §§ 5(a), 17(a), Oct. 13, 2008, 122 Stat. 4292, 4295.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 412, 412a (Mar. 3, 1911, ch. 231, § 276, 36 Stat. 1164; Feb. 3, 1917, ch. 27, 39 Stat. 873; May 21, 1945, ch. 129, title IV, 59 Stat. 198; July 5, 1946, ch. 541, title IV, 60 Stat. 478).

The words “The district court” were substituted for the phrase “the judge thereof, or by the judge senior in commission in districts having more than one judge” to conform to other sections authorizing appointment of court officers. See section 751 of this title relating to appointment of district court clerk.

The limitation in section 412a of title 28, U.S.C., 1940 ed., that jury commissioners shall serve no more than three days in any one term of court was omitted as unnecessary. This is a matter that may safely be left to the discretion of the court.

The last paragraph was added in conformity with section 11-1401 of the District of Columbia Code, 1940 ed., providing for three jury commissioners.

Changes were made in phraseology.

#### SENATE REVISION AMENDMENT

As finally enacted, act July 9, 1947, ch. 211, title IV, 61 Stat. 304, which was classified to Title 28, U.S.C., 1946 ed., §412a, was also a source of this section. Accordingly such act was included by Senate amendment in the schedule of repeals. See 80th Congress Senate Report No. 1559.

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-406, §5(a), struck out “publicly” after “judge shall” in first sentence and inserted “The clerk or jury commission shall post a general notice for public review in the clerk’s office and on the court’s website explaining the process by which names are periodically and randomly drawn.” after first sentence.

Subsec. (b). Pub. L. 110-406, §17(a), substituted “\$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.” for “\$100 or imprisoned not more than three days, or both.” in two places.

1988—Subsec. (a). Pub. L. 100-702 amended second sentence generally. Prior to amendment, second sentence read as follows: “The clerk or jury commission shall prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to the district court plan and to sections 1867 and 1868 of this title.”

1968—Pub. L. 90-274 substituted provisions for the public drawing of names from the master jury wheel, the completion of the jury qualification form, and the penalties for failure to appear and for misrepresentation of material facts for provisions requiring the drawing of names from a jury box, the refilling of the box by the clerk and a jury commissioner, the requirements and compensation of the commissioner, and the alternate placement of names by the clerk and the commissioner.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

### § 1865. Qualifications for jury service

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, or the clerk under supervision of the court if the court’s jury selection plan so authorizes, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If

a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk if the court’s jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(June 25, 1948, ch. 646, 62 Stat. 952; Pub. L. 90-274, §101, Mar. 27, 1968, 82 Stat. 58; Pub. L. 92-269, §1, Apr. 6, 1972, 86 Stat. 117; Pub. L. 95-572, §3(a), Nov. 2, 1978, 92 Stat. 2453; Pub. L. 100-702, title VIII, §803(b), Nov. 19, 1988, 102 Stat. 4658; Pub. L. 106-518, title III, §305, Nov. 13, 2000, 114 Stat. 2418.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§181, 413 (Mar. 3, 1911, ch. 231, §§100, 277, 36 Stat. 1121, 1164).

Section consolidates a part of section 181 with section 413 of title 28, U.S.C., 1940 ed. Other provisions of said section 181 are incorporated in section 115 of this title.

Word “jurors” was changed to “grand and petit jurors” upon authority of *Agnew v. United States*, 1897, 17 S.Ct. 235, 165 U.S. 36, 41 L.Ed. 624, construing such term to include both types of jurors.

The last sentence of subsection (a) was added to conform with existing practice in many districts. Subsection (b) extends to all districts a provision of section 181 of title 28, U.S.C., 1940 ed., which was designed for the convenience of the districts in Ohio and permitted jurors drawn for service at Cleveland, Toledo, and Columbus to serve at Youngstown, Lima, and Steubenville, respectively.

Changes were made in phraseology.

#### AMENDMENTS

2000—Subsec. (a). Pub. L. 106-518, §305(1), inserted “or the clerk under supervision of the court if the court’s jury selection plan so authorizes,” after “jury commission.”

Subsec. (b). Pub. L. 106-518, §305(2), inserted “or the clerk if the court’s jury selection plan so provides,” after “may provide,” in introductory provisions.

1988—Subsec. (a). Pub. L. 100-702 substituted “in any alphabetical” for “the alphabetical”.

1978—Subsec. (b)(5). Pub. L. 95-572 struck out “by pardon or amnesty” after “civil rights have not been restored”.

1972—Subsec. (b)(1). Pub. L. 92-269 substituted “eighteen years old” for “twenty-one years old”.

1968—Subsec. (a). Pub. L. 90-274 substituted provisions for the excusing of persons from jury service by the chief judge of the district court or by other district court judge for provisions requiring the selection of jurors so as to be most favorable to an impartial trial and so as to minimize the expense and burden of jury service.