

## CHAPTER 40

## JURORS AND PAYMENT OF JURORS AND WITNESSES

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**140.01 Qualifications of jurors.**—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of this state and who are registered electors of their respective counties.

**History.**—s. 2, ch. 4015, 1891; ss. 1, 2, ch. 4122, 1893; GS 1570, 1571; s. 1, ch. 6531, 1913; RGS 2771, 2772; ss. 1, 2, ch. 12068, 1927; CGL 4443, 4444; s. 1, ch. 25126, 1949; ss. 1, chs. 26514, 26581, 26848, 1951; ss. 1, 2, ch. 67-154; s. 1, ch. 75-78; s. 1, ch. 79-235; s. 1, ch. 91-235; s. 1, ch. 91-424.

**Note.**—Section 1, ch. 91-424, amended s. 7, ch. 91-235, to provide that the amendment by s. 1, ch. 91-235, of s. 40.01 shall take effect January 1, 1998, to read:

**40.01 Qualifications of jurors.**—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of the United States and legal residents of this state and their respective counties and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to chapter 322 or who have executed the affidavit prescribed in s. 40.011.

**40.011 Jury lists.**—

(1) On or before January 1, 1993, and each year thereafter by January 1, the Department of Highway Safety and Motor Vehicles shall deliver to the clerk of the circuit court in each county a list of names, along with mailing addresses and dates of birth, of each person 18 years of age or older whose name appears in the department database and whose address is in that county. By January 1, 1992, the department shall begin the process of identifying persons whose names appear in the department database who are not citizens of the United States and legal residents of this state for the purpose of jury selection. By January 1, 1998, the department database list delivered to the clerk of the circuit court in each county may include only the names of persons who are citizens of the United States and legal residents of Florida and whose address is in that county and who are 18 years of age or older. The clerk of the circuit court

shall add to the list the name of any person who is 18 years of age or older and who is a citizen of the United States and a legal resident of Florida and who indicates a desire to serve as a juror, but whose name does not appear on the department database list, by requiring such person to execute an affidavit at the office of the clerk.

(2) The affidavit executed pursuant to subsection (1) must be in substantially the following form:

State of Florida

I, \_\_\_\_\_, do solemnly swear (or affirm) that I am \_\_\_\_\_ years of age; that I am a citizen of the United States and a legal resident of Florida and \_\_\_\_\_ County; that I personally make application for jury duty; that I am eligible to serve as a juror under the Constitution and laws of Florida; and that I reside at \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ County, Florida.

\_\_\_\_\_  
(Signature and title of officer administering oath)

**History.**—s. 2, ch. 91-235.

**40.013 Persons disqualified or excused from jury service.**—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2)(a) Neither the Governor, nor Lieutenant Governor, nor any Cabinet officer, nor clerk of court, or judge shall be qualified to be a juror.

(b) Any full-time federal, state, or local law enforcement officer or such entities' investigative personnel shall be excused from jury service unless such persons choose to serve.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Any expectant mother and any parent who is not employed full time and who has custody of a child under 6 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his or her discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service, except that no person shall be excused from service on

a civil trial jury solely on the basis that the person is deaf or hearing impaired, if that person wishes to serve, unless the presiding judge makes a finding that consideration of the evidence to be presented requires auditory discrimination or that the timely progression of the trial will be considerably affected thereby. However, nothing in this subsection shall affect a litigant's right to exercise a peremptory challenge.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who was summoned and who reported as a prospective juror in any court in that person's county of residence within 1 year before the first day for which the person is being considered for jury service is exempt from jury service for 1 year from the last day of service.

(8) A person 70 years of age or older shall be excused from jury service upon request.

(9) Any person who is responsible for the care of a person who, because of mental illness, mental retardation, senility, or other physical or mental incapacity, is incapable of caring for himself or herself shall be excused from jury service upon request.

**History.**—s. 3, ch. 3010, 1877; s. 1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; CGL 4451; s. 2, ch. 26848, 1951; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-235; s. 1, ch. 80-170; s. 1, ch. 83-210; s. 1, ch. 87-75; s. 1, ch. 92-8; s. 1, ch. 92-297; s. 1, ch. 93-125; s. 245, ch. 95-147.

**Note.**—Former s. 40.07.

#### 40.015 Jury districts; counties exceeding 50,000.

(1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each courthouse location, from which jury lists shall be selected in the manner presently provided by law.

(2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters.

**History.**—s. 1, ch. 76-114; s. 2, ch. 79-235.

#### 40.02 Selection of jury lists.—

(1) The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, shall request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable. The chief judge or the chief judge's designee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors under the provisions of s. 40.01 and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected as aforesaid. A circuit judge in a county to which he or she has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted. When the annual jury list is prepared pursuant to the request of a chief judge or the

chief judge's designee, the lists prepared the previous year shall be withdrawn from further use. If, notwithstanding this provision, some names are not withdrawn, such error or irregularity shall not invalidate any subsequent proceeding or jury. The fact that any person so selected had been on a former jury list or had served as a juror in any court at any time shall not be grounds for challenge of such person as a juror. If any person so selected shall be ascertained to be disqualified or incompetent to serve as a juror, such disqualification shall not affect the legality of such list or be cause of challenge to the array of any jury chosen from such list, but any person ascertained to be disqualified to serve as a juror shall be subject to challenge for cause, as defined by law. The lists, although they may be defective or irregular in form or other formal requirement, or in the number or qualification of the persons so named, shall be the lists from which the names of persons for jury service are to be drawn as prescribed by law.

(2) The clerk of the court shall be responsible for preserving the security of the jury lists.

(3) The chief judge may designate the court administrator to perform the duties set forth in this section and in ss. 40.221, 40.23, and 40.231 in counties having an approved, computerized jury selection system, the provisions of any special law or general law of local application to the contrary notwithstanding.

**History.**—s. 2, ch. 4015, 1891; s. 2, ch. 4122, 1893; GS 1571; s. 1, ch. 6531, 1913; RGS 2772; s. 2, ch. 12068, 1927; CGL 4444; s. 1, ch. 28261, 1953; s. 3, ch. 67-154; s. 6, ch. 73-334; s. 3, ch. 79-235; s. 246, ch. 95-147.

#### 40.022 Clerk to purge jury selection lists; restoration.—

(1) Each clerk of the circuit court shall, upon receipt of the list of persons in the department database from the Department of Highway Safety and Motor Vehicles and at least once each month thereafter, purge the jury selection lists of the names of those persons:

- (a) Adjudicated mentally incompetent;
- (b) Convicted of a felony; or
- (c) Deceased.

(2) The Department of Health and Rehabilitative Services shall furnish monthly to each clerk of the circuit court a list containing the name, address, age, race, and sex of each person 18 years of age or older and a resident of such clerk's county who died during the preceding calendar month.

(3) A person who has had his or her mental competency or civil rights restored and who wants to serve as a juror must execute the affidavit under oath as provided in s. 40.011.

**History.**—s. 3, ch. 91-235; s. 1, ch. 91-424; s. 247, ch. 95-147.

**Note.**—Effective January 1, 1997, by s. 7, ch. 91-235, as amended by s. 1, ch. 91-424.

**40.221 Drawing jury venire.**—A clerk of the court, under supervision of a judge of any court of record, shall randomly select from the jury list such number of persons as he or she deems necessary or expedient for a jury venire, to be returnable at such time as the judge shall specify, from which such venire or venires any jury may be organized, including a grand jury when drawn by or upon order of a judge of the circuit court. The clerk of the court shall keep the list in a secure place.

**History.**—s. 5, ch. 79-235; s. 248, ch. 95-147.

**40.225 Drawing jury venire; alternative method.—**

(1) Whenever a majority of the judges authorized to conduct jury trials in a county consents, the names of prospective jurors and other data pertinent thereto may be fed into a mechanical, electronic, or electrical device and drawn therefrom as an alternative to other methods authorized by law for obtaining jury venires, if such drawing is by lot and at random and is approved by the Supreme Court as hereinafter provided.

(2) When a majority of the trial judges authorizes the alternative method of drawing a jury venire as provided in subsection (1), the chief judge of the judicial circuit in which the county is located shall make a certificate to that effect and transmit the same to the Chief Justice of the Supreme Court, together with a description of the equipment, methods, and mode of operation to be used.

(3) The Chief Justice shall cause the certificate and data accompanying it to be presented to the justices of the Supreme Court. If the court finds that the proposed method will produce venires selected by lot and at random, is in compliance with all constitutional requirements of jury selection, and is otherwise feasible and practicable, an order of approval of same shall be made and filed. Thereafter, the alternative method so approved may be used in the county so authorized.

(4) The chief judge of the judicial circuit in which the county is located shall supervise the use of such alternative method whenever approval of same has been made by order of the Supreme Court.

(5) Nothing herein shall be construed as requiring uniform equipment or methods throughout the state.

**History.**—s. 1, ch. 71-52; s. 6, ch. 79-235.

**Note.**—Former s. 40.371.

**40.23 Summoning jurors.—**

(1) The clerk of the court shall generate a venire as prescribed in s. 40.221 and shall summon the persons named in such venire to attend court as jurors at least 14 days prior to the sitting of such court by mailing to each person so named in the venire a written notice, addressed to his or her place of residence, and placing such notice in the United States mail with sufficient postage to carry the same. Upon order of the court, jurors may be summoned with less than 14 days' notice.

(2) The jury service of any person who has been summoned may be postponed for a period not to exceed 6 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

(3) Any person who is duly summoned to attend as a juror in any court and who fails to attend without any sufficient excuse shall pay a fine not to exceed \$100, which fine shall be imposed by the court to which the juror was summoned, and, in addition, such failure may be considered a contempt of court.

**History.**—s. 8, ch. 1628, 1868; RS 1155; GS 1585; RGS 2787; s. 1, ch. 9167, 1923; CGL 4464; s. 2, ch. 16410, 1933; s. 1, ch. 22766, 1945; s. 3, ch. 71-67; s. 7, ch. 79-235; s. 249, ch. 95-147.

**40.231 Jury pools.**—When persons named in a jury venire generated by the clerk are summoned to attend a court as jurors, they may be placed in a jury pool from

which the court may draw persons to serve as jurors. Persons placed in said jury pool may, when authorized by the court as an alternative to attending court, list a telephone number with the clerk of the court to which summoned, to be on call on an hour's notice.

**History.**—s. 2, ch. 72-308; s. 1, ch. 76-118; s. 8, ch. 79-235.

**40.235 Juror accommodations.**—Whenever jurors are required by law or by order of court to be kept together during the conduct of a trial or while considering their verdict, or whenever by order of court lodging is required to be furnished juries, separate lodging and restroom facilities shall be provided for jurors of different sexes; and, under contemplation of law, jurors shall be deemed to have been kept together whenever the jurors of different sexes occupy the accommodations provided for their respective sexes.

**History.**—s. 9, ch. 79-235.

**40.24 Compensation and reimbursement policy.—**

(1) The compensation policy of this chapter shall be to prevent financial hardship being imposed upon any juror because of performance of juror service.

(2) Juror service constitutes being summoned and reporting for jury service as well as actual service on a jury. Juror service does not include days for which the juror was notified before reporting that his or her presence was not required. Regular employment includes full-time employment and part-time, temporary, and casual employment, as long as the employment hours of a juror can be reasonably determined by a schedule or by custom and practice established during the 3-month period preceding the term of service as a juror.

(3)(a) Jurors who are regularly employed and who continue to receive regular wages while serving as a juror are not entitled to receive compensation from the state for the first 3 days of juror service.

(b) Jurors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive \$15 per day for the first 3 days of juror service.

(4) Each juror who serves more than 3 days is entitled to be paid by the state for the fourth day of service and each day thereafter at the rate of \$30 per day of service.

(5) Jurors are not entitled to additional reimbursement by the state for travel or other out-of-pocket expenses.

(6) A juror who receives unemployment benefits does not lose such benefits because he or she receives compensation for juror service.

(7) Any juror who is excused from jury service at his or her own request is not entitled to receive any compensation under subsection (3).

**History.**—s. 1, ch. 3853, 1889; RS 1161; s. 1, ch. 4385, 1895; GS 1586; s. 1, ch. 5647, 1907; s. 1, ch. 5900, 1909; s. 1, ch. 6219, 1911; RGS 2788; CGL 4473; s. 7, ch. 22858, 1945; s. 1, ch. 26868, 1951; s. 1, ch. 28247, 1953; s. 1, ch. 72-308; s. 1, ch. 73-264; s. 1, ch. 76-118; s. 3, ch. 77-431; s. 10, ch. 79-235; s. 2, ch. 92-297; s. 250, ch. 95-147.

**40.26 Meals and lodging for jurors.**—The sheriff, when required by order of the court, shall provide juries with meals and lodging, the expense to be taxed against and paid by the state.

**History.**—s. 1, ch. 3860, 1889; RS 1162; GS 1587; s. 10, ch. 7838, 1919; RGS 2789; CGL 4475.

**40.271 Jury service.—**

(1) No person summoned to serve on any grand or petit jury in this state, or accepted to serve on any grand or petit jury in this state, shall be dismissed from employment for any cause because of the nature or length of service upon such jury.

(2) Threats of dismissal from employment for any cause, by an employer or his or her agent to any person summoned for jury service in this state, because of the nature or length of service upon such jury may be deemed a contempt of the court from which the summons issued.

(3) A civil action by the individual who has been dismissed may be brought in the courts of this state for any violation of this section, and said individual shall be entitled to collect not only compensatory damages, but, in addition thereto, punitive damages and reasonable attorney fees for violation of this act.

**History.**—s. 2, ch. 74-379; s. 11, ch. 79-235; s. 251, ch. 95-147.

**140.29 Clerks to estimate amount for pay of jurors and witnesses and make requisition.—**

(1) The clerk of the court in and for any county shall make an estimate of the amount necessary during any quarterly fiscal period beginning July 1 and during each succeeding quarterly fiscal period for the payment by the state of:

- (a) Jurors in the circuit court and the county court;
- (b) Witnesses before the grand jury;
- (c) Witnesses summoned to appear for an investigation, preliminary hearing, or trial in a criminal case when the witnesses are summoned by a state attorney or on behalf of an indigent defendant;
- (d) Mental health professionals who are appointed pursuant to s. 394.473 and required in a court hearing involving an indigent; and

(e) Expert witnesses who are appointed pursuant to s. 916.11(3) and required in a court hearing involving an indigent;

and shall forward each such estimate to the State Courts Administrator no later than the date scheduled by the State Courts Administrator. At the time of any forwarding of such estimate, the clerk of such court shall make a requisition upon the State Courts Administrator for the amount of such estimate; and the State Courts Administrator may reduce the amount if in his or her judgment the requisition is excessive.

(2) The provisions of chapter 82-176, Laws of Florida, shall take effect July 1, 1982, except that those provisions which provide for the state assumption of witness fees which are currently paid by the counties shall take effect on a date determined by the appropriation of funds for this purpose.

**History.**—s. 1, ch. 4121, 1893; GS 1591; s. 1, ch. 7262, 1917; RGS 2793; CGL 4479; s. 1, ch. 65-483; s. 2, ch. 68-7; s. 6, ch. 69-353; s. 9, ch. 73-334; s. 12, ch. 79-235; ss. 2, 7, ch. 82-176; s. 252, ch. 95-147; s. 17, ch. 95-312.

**Note.**—Section 7, ch. 82-176, provides that, "[t]he provisions of this act shall take effect July 1, 1982, except that those provisions which provide for state assumption of witness fees which are currently paid by the counties shall take effect on a date determined by the appropriations for this purpose."

Line item 859 of ch. 82-215, and line item 972 of ch. 83-300, appropriate funds for the purposes set out in s. 40.29 contingent upon the matching contribution by each county of sufficient personnel and funds to establish a witness coordination office for all witnesses.

**Note.**—Subsection (3) was renumbered as subsection (2) by the reviser incident to compiling the Florida Statutes 1983.

**40.30 Requisition endorsed by State Courts Administrator and countersigned by Governor.—**

Upon receipt of such estimate and the requisition from the clerk of the court, the State Courts Administrator shall endorse the amount that he or she may deem necessary for the pay of jurors and witnesses during the quarterly fiscal period and shall submit a request for payment to the Comptroller.

**History.**—s. 2, ch. 4121, 1893; GS 1592; s. 2, ch. 7262, 1917; RGS 2794; CGL 4480; s. 7, ch. 57-1; s. 8, ch. 59-1; s. 2, ch. 65-483; s. 3, ch. 68-7; s. 9, ch. 73-334; s. 13, ch. 79-235; s. 253, ch. 95-147; s. 18, ch. 95-312.

**40.31 State Courts Administrator may apportion appropriation.—**

If the State Courts Administrator shall have reason to believe that the amount appropriated by the Legislature is insufficient to meet the expenses of jurors and witnesses during the remaining part of the state fiscal year, he or she may apportion the money in the treasury for that purpose among the several counties, basing such apportionment upon the amount expended for the payment of jurors and witnesses in each county during the prior fiscal year. In such case, each county shall be paid by warrant, issued by the Comptroller, only the amount so apportioned to each county, and, when the amount so apportioned is insufficient to pay in full all the jurors and witnesses during a quarterly fiscal period, the clerk of the court shall apportion the money received pro rata among the jurors and witnesses entitled to pay and shall give to each juror or witness a certificate of the amount of compensation still due, which certificate shall be held by the State Courts Administrator as other demands against the state.

**History.**—s. 3, ch. 4121, 1893; GS 1593; s. 3, ch. 7262, 1917; RGS 2795; CGL 4481; s. 3, ch. 65-483; s. 4, ch. 68-7; s. 9, ch. 73-334; s. 14, ch. 79-235; s. 254, ch. 95-147; s. 19, ch. 95-312.

**40.32 Clerks to disburse money.—**

All moneys drawn from the treasury under the provisions of this chapter by the clerk of the court shall be disbursed by the clerk of the court as far as needed in payment of jurors and witnesses for the legal compensation for service during the quarterly fiscal period for which said moneys were drawn and for no other purposes. Jurors and witnesses shall be paid by the clerk of the court either in cash or by warrant within 10 days of completion of jury service or of completion of service as a witness. Whenever the clerk of the court pays a juror or witness by cash, said juror or witness shall sign the payroll in the presence of the clerk, a deputy clerk, or some other person designated by the clerk. Whenever the clerk pays a juror or witness by warrant, he or she shall endorse on the payroll opposite the juror's or witness's name the words "Paid by warrant," giving the number and date of the warrant.

**History.**—s. 4, ch. 4121, 1893; GS 1594; s. 4, ch. 7262, 1917; RGS 2796; CGL 4482; s. 1, ch. 59-88; s. 1, ch. 61-494; s. 4, ch. 65-483; s. 5, ch. 68-7; s. 9, ch. 73-334; s. 15, ch. 79-235; s. 255, ch. 95-147.

**40.33 Deficiency.—**If the compensation of jurors and witnesses during a quarterly fiscal period exceeds the amount estimated by the clerk of the court and therefore is insufficient to pay in full the jurors and witnesses, the clerk of the court shall make a further requisition upon the State Courts Administrator for the amount necessary to pay such default, and the amount required shall be transmitted to the clerk of the court by

warrant issued by the Comptroller in the same manner as the original requisition or order.

**History.**—s. 5, ch. 4121, 1893; GS 1595; s. 5, ch. 7262, 1917; RGS 2797; CGL 4483; s. 5, ch. 66-483; s. 6, ch. 68-7; s. 9, ch. 73-334; s. 16, ch. 79-235; s. 256, ch. 95-147; s. 20, ch. 95-312.

#### **40.34 Clerks to make triplicate payroll.—**

(1) The clerk of the court shall make out a payroll in triplicate for the payment of jurors and witnesses, which payroll shall contain:

(a) The name of each juror and witness entitled to be paid with state funds;

(b) The number of days for which such jurors and witnesses are entitled to be paid;

(c) The number of miles traveled by each; and

(d) The total compensation each such juror or witness is entitled to receive.

(2) The form of such payroll shall be prescribed by the Comptroller.

(3) Compensation paid a witness or juror shall be attested as provided in s. 40.32. The payroll shall be approved by the signature of the clerk, or his or her deputy, except for the payroll as to witnesses appearing before the state attorney, which payroll shall be approved by the signature of the state attorney or an assistant state attorney.

(4) The clerks of the courts shall forward two copies of such payrolls to the State Courts Administrator, within 2 weeks after the last day of the quarterly fiscal period, and the State Courts Administrator shall audit such payrolls.

**History.**—s. 6, ch. 4121, 1893; GS 1596; s. 6, ch. 7262, 1917; RGS 2798; CGL 4484; s. 1, ch. 25091, 1949; s. 1, ch. 61-494; s. 17, ch. 79-235; s. 257, ch. 95-147; s. 21, ch. 95-312.

#### **40.35 Accounting and payment to the State Courts Administrator.—**

(1) The clerk of the court shall, within 2 weeks after the last day of the quarterly fiscal period, render to the State Courts Administrator a full statement of accounts for moneys received and disbursed under the provisions of this chapter and refund to the State Courts Administrator any balance in the clerk's hands. If upon audit the State Courts Administrator shall determine a balance due the clerk of the court, the State Courts Administrator shall submit a request for payment to the Comptroller.

(2) If any such clerk of the court fails to account for and pay over promptly the balance of all moneys so paid him or her, the sureties on the clerk's official bond shall be held liable and responsible for same; and the State Courts Administrator shall report to the Governor and the Comptroller any failure on the part of the clerk of the court to report and faithfully account for any such moneys.

**History.**—s. 8, ch. 3108, 1879; FS 1170; GS 1597; s. 7, ch. 7262, 1917; RGS 2799; CGL 4485; s. 7, ch. 22858, 1945; s. 18, ch. 79-235; s. 258, ch. 95-147; s. 22, ch. 95-312.

**40.41 Petit jurors; length of service.—**The length of the term of service for a petit juror shall not exceed 1 day unless the juror is assigned to or impaneled on a trial that is not completed in 1 day or unless the court orders otherwise. Petit jurors awaiting assignment to a trial must be discharged as early as possible after it has been determined that their services will not be needed.

**History.**—s. 6, ch. 21973, 1943; s. 3, ch. 92-297.