

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 243**

Introduced By: Flood, 19

Read first time: January 10, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to juries; to amend sections 25-1607,  
2 25-1612, 25-1627.01, 25-1629, 25-1629.01, 25-1629.04,  
3 25-1630, 25-1637, and 25-1641, Reissue Revised Statutes of  
4 Nebraska, and sections 25-1601, 25-1628, 25-1633, and  
5 25-1635, Revised Statutes Cumulative Supplement, 2006; to  
6 define terms; to change provisions relating to juror  
7 disqualification, selection, and procedures; to harmonize  
8 provisions; to provide an operative date; and to repeal the  
9 original sections.

10 Be it enacted by the people of the State of Nebraska,

1           Section 1. For purposes of sections 25-1601 to 25-1643:

2           (1) Grand jury means a body of people who are chosen to sit  
3 permanently for at least a month and up to a year and who, in ex parte  
4 proceedings, decide whether to issue indictments in criminal cases;

5           (2) Jury panel list means the list of qualified individuals  
6 summoned to serve as jurors for a specific trial term;

7           (3) Master jury list means the complete list of names  
8 compiled from merging the names of all registered voters and all  
9 licensed motor vehicle operators in the county who are nineteen years  
10 of age or older;

11           (4) Proposed jury list means the list of names remaining  
12 after the master jury list has been reduced by the key number  
13 selection made in accordance with sections 25-1627 to 25-1628;

14           (5) Revised jury list means the list of qualified jurors  
15 remaining after the jury commissioner has stricken from the proposed  
16 jury list those individuals disqualified by section 25-1601; and

17           (6) Talesman means a person selected from among the  
18 bystanders in court to serve as a juror when the original jury panel  
19 has become deficient in number.

20           Sec. 2. Section 25-1601, Revised Statutes Cumulative  
21 Supplement, 2006, is amended to read:

22           25-1601. (1) All citizens of the United States residing in  
23 any of the counties of this state who are over the age of nineteen  
24 years, able to read, speak, and understand the English language, and  
25 free from all disqualifications set forth under this section and from  
26 all other legal exceptions are and shall be competent persons to serve  
27 on all grand and petit juries in their respective counties. Persons

1 disqualified from the master jury list to serve as either grand or  
 2 petit jurors are: (a) Judges of any court, (b) clerks of the Supreme  
 3 or district courts, (c) sheriffs, (d) jailers, (e) persons, or the  
 4 wife or husband of any such person, who are parties to suits pending  
 5 ~~in the district court of the county of his, her, or their then~~  
 6 ~~residence~~ for trial ~~at~~ to that jury panel, (f) persons who have  
 7 been convicted of a ~~criminal offense punishable by imprisonment in a~~  
 8 ~~Department of Correctional Services adult correctional facility, an~~  
 9 offense punishable as a felony under Nebraska law, when such  
 10 conviction has not been set aside or a pardon issued, ~~and~~ (g)  
 11 persons who are subject to liability for the commission of any offense  
 12 which by special provision of law does and shall disqualify them, (h)  
 13 persons ~~. Persons~~ who are husband and wife shall not ~~be summoned~~  
 14 serve as jurors on the same jury panel, (i) persons ~~. Persons~~  
 15 who are incapable, by reason of physical or mental disability, of  
 16 rendering satisfactory jury service, ~~shall not be qualified to~~  
 17 ~~serve on a jury~~, but a person claiming this disqualification may be  
 18 required to submit a physician's certificate as to the disability and  
 19 the certifying physician is subject to inquiry by the court at its  
 20 discretion, and (j) a ~~. A~~ nursing mother who requests to be  
 21 excused ~~shall be excused from jury service~~ until she is no longer  
 22 nursing her child, but the mother may be required to submit a  
 23 physician's certificate in support of her request. The jury  
 24 commissioner shall mail the mother a notification form to be completed  
 25 and returned to the jury commissioner by the mother when she is no  
 26 longer nursing the child.

27 (2) The district court or any judge thereof may exercise the

1 power of excusing any grand or petit juror or any person summoned for  
2 grand or petit jury service upon a showing of undue hardship, extreme  
3 inconvenience, or public necessity for such period as the court deems  
4 necessary. At the conclusion of such period the person shall reappear  
5 for jury service in accordance with the court's direction. All excuses  
6 and the grounds for such excuses shall be entered upon the record of  
7 the court and shall be considered as a public record. In districts  
8 having more than one judge of the district court, the court may by  
9 rule or order assign or delegate to the presiding judge or any one or  
10 more judges the sole authority to grant such excuses.

11 (3) No qualified prospective juror is exempt from jury  
12 service, except that any person sixty-five years of age or older who  
13 shall make such request to the court ~~at the time the juror~~  
14 ~~qualification form is filed with the jury commissioner~~ shall be  
15 exempt from serving on grand and petit juries.

16 ~~(4) A nursing mother shall be excused from jury service~~  
17 ~~until she is no longer nursing her child by making such request to the~~  
18 ~~court at the time the juror qualification form is filed with the jury~~  
19 ~~commissioner and including with the request a physician's certificate~~  
20 ~~in support of her request. The jury commissioner shall mail the~~  
21 ~~mother a notification form to be completed and returned to the jury~~  
22 ~~commissioner by the mother when she is no longer nursing the child.~~

23 Sec. 3. Section 25-1607, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 25-1607. Each grand juror and petit juror summoned shall  
26 appear before the court on the day and at the hour specified in the  
27 summons, ~~and shall not depart without leave of court. or as further~~

1       directed by the court.

2               Sec. 4. Section 25-1612, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4               25-1612. If a sheriff or other officer corruptly or through  
5 favor or ill will, summons a juror with the intent that such juror  
6 shall find a verdict for or against either party, or shall summon a  
7 grand juror from like motives with the intent that such grand juror  
8 shall or shall not find an indictment or presentment against any  
9 particular individual, he or she shall be fined not exceeding five  
10 hundred dollars, and forfeit his or her office and be forever  
11 disqualified from holding any office in this state. Any person who  
12 shall seek the position of juror, or who shall ask any attorney or  
13 other officer of the court or any other person or officer in any  
14 manner charged with the duty of selecting the jury, to secure or  
15 procure his or her selection as a juror shall be deemed guilty of  
16 a contempt of court and be fined not exceeding twenty dollars and  
17 shall thereby be disqualified from serving as a juror for that term.  
18 Any attorney or party to a suit pending for trial at that term who  
19 shall request, or solicit the placing of any person upon a jury, or  
20 upon the jury panel list, shall be deemed guilty of a contempt of  
21 court and be fined not exceeding one hundred dollars, and the person  
22 so sought to be put upon the jury or jury panel list, shall be  
23 disqualified to serve as a juror at that term of the court.

24               Sec. 5. Section 25-1627.01, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26               25-1627.01. In counties having a population of less than  
27 three thousand inhabitants, the jury commissioner shall select two key

1 numbers or such larger number of key numbers as the district judge or  
2 judges may order instead of only one, and all the provisions of  
3 sections 25-1627 and 25-1628 shall apply to the selecting, recording,  
4 and use of such numbers in making up the ~~key number~~ proposed jury  
5 list. In other counties having a population of three thousand  
6 inhabitants or more, where experience demonstrates that the use of  
7 only one key number does not produce a proposed jury list of names  
8 of sufficient number to make the system of practical use, the district  
9 judge or judges of such counties may, in their discretion, order the  
10 selecting of two key numbers as herein provided for.

11 Sec. 6. Section 25-1628, Revised Statutes Cumulative  
12 Supplement, 2006, is amended to read:

13 25-1628. (1) At least once each calendar year, the officer  
14 having charge of the election records shall furnish to the jury  
15 commissioner a complete list of the names, dates of birth, and  
16 addresses of all registered electors nineteen years of age or older in  
17 the county. The Department of Motor Vehicles shall make available to  
18 each jury commissioner each December a list in magnetic, optical,  
19 digital, or other electronic format mutually agreed to by the jury  
20 commissioner and the department containing the names, dates of birth,  
21 and addresses of all licensed motor vehicle operators nineteen years  
22 of age or older in the county. The jury commissioner may request such  
23 a list of licensed motor vehicle operators from the county treasurer  
24 if the county treasurer has an automated procedure for developing such  
25 lists. If a jury commissioner requests similar lists at other times  
26 from the department, the cost of processing such lists shall be paid  
27 by the county which the requesting jury commissioner serves.

1           (2) Upon receipt of both lists described in subsection (1)  
2 of this section, the jury commissioner shall combine the separate  
3 lists and attempt to reduce duplication to the best of his or her  
4 ability to produce a master jury list. In counties having a  
5 population of three thousand inhabitants or more, the jury  
6 commissioner shall produce a master jury list at least once each  
7 calendar year. In counties having a population of less than three  
8 thousand inhabitants, the jury commissioner shall produce a master  
9 jury list at least once every two calendar years.

10           (3) The proposed ~~juror~~ jury list shall be derived by  
11 selecting from the master list the name of the person whose numerical  
12 order on such list corresponds with the key number and each successive  
13 tenth name thereafter. The jury commissioner shall certify that the  
14 proposed ~~juror~~ jury list has been made in accordance with sections  
15 25-1625 to 25-1637.

16           (4) Any duplication of names on a master jury list shall  
17 not be grounds for quashing any panel pursuant to section 25-1637 or  
18 for the disqualification of any juror.

19           Sec. 7. Section 25-1629, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           25-1629. The jury commissioner shall immediately upon  
22 deriving the proposed juror list mail a juror qualification form to  
23 each proposed juror pursuant to section 25-1629.01 and investigate the  
24 persons whose names are found on the list. If he or she finds that any  
25 one of them is not possessed of the qualifications of petit jurors as  
26 set forth in section 25-1601 or is excluded by the terms of section  
27 25-1601, he or she shall strike such name from the list and make a

1 record of each name stricken, which record shall be kept in his or her  
2 office subject to inspection by the court and attorneys of record in  
3 cases triable to a jury pending before the court, under such rules as  
4 the court may prescribe. The list as thus revised shall ~~constitute~~  
5 ~~the list~~ be the revised jury list from which petit jurors shall be  
6 selected, until such revised jury list ~~shall have been~~ is  
7 exhausted in the manner hereinafter set forth or until otherwise  
8 ordered by the judge or judges. Unless otherwise ordered by the judge  
9 or judges, the jury commissioner shall immediately upon completing  
10 ~~the revision of~~ the revised jury list, in the presence of a judge  
11 for such district, select at random the names of eighty persons  
12 ~~possessing the qualifications for grand jurors as set out in section~~  
13 ~~25-1601.~~ from the revised jury list. When no grand jury list is  
14 selected, the judge or judges may at any time order the selecting of  
15 a grand jury list. This list shall constitute the list from which  
16 grand jurors shall be chosen. Any judge of the district court shall  
17 upon the request of any person entitled to access to the list of names  
18 stricken, if satisfied that such request is made in good faith, direct  
19 the jury commissioner to appear before the judge at chambers and in  
20 the presence of the complaining person state his or her reasons for  
21 striking the name specified in the request.

22 Sec. 8. Section 25-1629.01, Revised Statutes Cumulative  
23 Supplement, 2006, is amended to read:

24 25-1629.01. The jury commissioner shall mail to every  
25 prospective juror whose name appears on the proposed ~~juror~~ jury  
26 list a juror qualification form accompanied by instructions to fill  
27 out and return the form by mail to the jury commissioner within ten

1 days after its receipt. The juror qualification form shall be in the  
2 form prescribed by the Supreme Court. Notarization of the juror  
3 qualification form shall not be required. If the prospective juror is  
4 unable to fill out the form, another person may do it for him or her  
5 and shall indicate that he or she has done so and the reason therefor.  
6 If it appears that there is an omission, ambiguity, or error in a  
7 returned form, the jury commissioner shall again send the form with  
8 instructions to the prospective juror to make the necessary addition,  
9 clarification, or correction and to return the form to the jury  
10 commissioner within ten days after its second receipt.

11 Sec. 9. Section 25-1629.04, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 25-1629.04. For each trial term of the court, the jury  
14 commissioner shall, in accordance with section 25-1641, draw such  
15 number of names from the proposed jury list as the judge or judges of  
16 the county shall direct. The jury commissioner shall, by first-class,  
17 registered, or certified mail, serve each prospective juror so drawn  
18 with a summons directing him or her to appear before the court at a  
19 time and place certain for jury duty. The jury qualification  
20 questionnaire may be sent together with the summons in a single  
21 mailing to a prospective juror. The summons may be served upon each  
22 juror by certified or registered mail, or by personal service by a  
23 jury commissioner, the clerk, or other person authorized by the court.  
24 Thereafter such juror shall appear for jury service in any court of  
25 the county as directed by the judge of any court during the term of  
26 jury service of the juror.

27 Sec. 10. Section 25-1630, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 25-1630. The jury commissioner shall, immediately after  
3 making such revised jury list of petit jurors, write the name of  
4 each person remaining upon the list upon a separate ticket, and place  
5 all the tickets thus remaining in the box or wheel to be kept for that  
6 purpose. The jury commissioner shall, immediately after making ~~such~~  
7 the revised jury list of grand jurors, write the name and address  
8 of each person upon the list upon a separate ticket, and place all  
9 the tickets in a separate box or wheel to be kept for that purpose  
10 until the next revised jury list of petit jurors is selected when  
11 those names remaining in the grand jury box shall have been destroyed  
12 and a new list of eighty names selected. If any person shall place or  
13 cause to be placed or ask to have placed in such box or wheel, any  
14 name of any person, except as provided in sections 25-1625 to 25-1637,  
15 he or she shall be guilty of a Class IV felony.

16 Sec. 11. Section 25-1633, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18 25-1633. If a grand jury shall be required by law, or by  
19 order of the judge or judges, for any term of court, it shall be the  
20 duty of the jury commissioner to draw out of the box or wheel,  
21 containing the names of the ~~grand~~ revised jury list, in the  
22 presence of the judge or judges, forty names of persons. The jury  
23 commissioner shall then prepare a list of such names, which list shall  
24 contain the given names and surnames of persons named therein, their  
25 respective places of residence, and their several occupations. Such  
26 list shall then be turned over by the jury commissioner to a board to  
27 consist of the jury commissioner, the presiding judge of the district

1 court, and one other person whom the presiding judge shall designate.  
2 The presiding judge shall be the chairperson. Such board shall select  
3 from the list of forty names, the names of sixteen persons, qualified  
4 as grand jurors under this section, and the persons whose names are so  
5 selected shall be the grand jurors. Such board shall also select from  
6 the list of forty names, the names of three additional persons to  
7 serve as alternate jurors. The alternate jurors shall sit with the  
8 grand jury and participate in all investigative proceedings to the  
9 same extent as the regular grand jurors. Alternate grand jurors shall  
10 be permitted to question witnesses, review evidence, and participate  
11 in all discussions of the grand jury which occur prior to the  
12 conclusion of presentation of evidence. When the grand jury has  
13 determined that no additional evidence is necessary for its  
14 investigation, the alternate grand jurors shall be separated from the  
15 regular grand jurors and shall not participate in any further  
16 discussions, deliberations, or voting of the grand jury unless one or  
17 more of the regular grand jurors is or are excused because of illness  
18 or other sufficient reason. Such alternate jurors shall fill vacancies  
19 in the order of their selection.

20 Sec. 12. Section 25-1635, Revised Statutes Cumulative  
21 Supplement, 2006, is amended to read:

22 25-1635. (1) It shall be unlawful for a jury commissioner or  
23 the officer in charge of the election records, or any clerk or deputy  
24 thereof, or any person who may obtain access to any record showing the  
25 names of persons drawn to serve as grand or petit jurors to disclose  
26 to any person, except to other officers in carrying out official  
27 duties or as herein provided, the name of any person so drawn or to

1 permit any person to examine such record or to make a list of such  
2 names, except under order of the court. The application for such an  
3 order shall be filed in the form of a motion in the office of the  
4 clerk of the district court, containing the signature and residence of  
5 the applicant or his or her attorney and stating all the grounds on  
6 which the request for such order is based. Such order shall not be  
7 made except for good cause shown in open court and it shall be spread  
8 upon the journal of the court. Any person violating any of the  
9 provisions of this section shall be guilty of a Class IV felony.  
10 Notwithstanding the foregoing provisions of this section, the judge or  
11 judges in any district may, in his, her, or their discretion, provide  
12 by express order for the disclosure of the names of persons drawn from  
13 the revised ~~key number~~ jury list for actual service as grand or  
14 petit jurors.

15 (2) Notwithstanding subsection (1) of this section, the  
16 Supreme Court or an agent of the Supreme Court acting under the  
17 direction and supervision of the Chief Justice shall have access to  
18 juror qualification forms for research purposes. The Supreme Court and  
19 its agent shall treat such information as confidential, and nothing  
20 identifying any individual shall be released.

21 Sec. 13. Section 25-1637, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 25-1637. (1) A party may move to stay the proceedings, to  
24 quash the entire panel, or for other appropriate relief on the ground  
25 of substantial failure to comply with Chapter 25, article 16, in  
26 selecting the grand or petit jury. Such motion shall be made within  
27 seven days after the moving party discovered or by the exercise of

1 diligence could have discovered the grounds for such motion, and in  
2 any event before the petit jury is sworn to try the case.

3 (2) Upon a motion filed under subsection (1) of this section  
4 containing a sworn statement of facts which, if true, would constitute  
5 a substantial failure to comply with Chapter 25, article 16, the  
6 moving party is entitled to present, in support of the motion, the  
7 testimony of the jury commissioner or the clerk, any relevant records  
8 and papers not public or otherwise available which were used by the  
9 jury commissioner or the clerk, and any other relevant evidence. If  
10 the court determines that in selecting either a grand jury or a petit  
11 jury there has been a substantial failure to comply with Chapter 25,  
12 article 16, the court shall stay the proceedings pending the selection  
13 of the jury in conformity with Chapter 25, article 16, quash an entire  
14 panel, or grant other appropriate relief.

15 (3) The procedures prescribed by this section are the  
16 exclusive means by which the state, a person accused of a crime, or a  
17 party in a civil case may challenge a jury on the ground that the jury  
18 was not selected in conformity with Chapter 25, article 16.

19 (4) The contents of any records or papers used by the jury  
20 commissioner or the clerk in connection with the selection process and  
21 not made public under Chapter 25, article 16, shall not be disclosed,  
22 except in connection with the preparation or presentation of a motion  
23 under subsection (1) of this section, until after all persons on the  
24 revised ~~proposed juror~~ jury list have been discharged. The parties  
25 in a case may inspect, reproduce, and copy the records or papers at  
26 all reasonable times during the preparation and pendency of a motion  
27 under subsection (1) of this section.

1           (5) Whenever the entire panel is quashed the court shall  
2           make an order directing the jury commissioner to select a new key  
3           number in the manner provided in section 25-1627 and prepare a new  
4           proposed juror list in the manner provided in section 25-1628. The  
5           jury commissioner shall ~~revise such~~ prepare a new revised jury  
6           list and qualify and summon jurors as provided in sections 25-1629 to  
7           25-1630.

8           Sec. 14. Section 25-1641, Reissue Revised Statutes of  
9           Nebraska, is amended to read:

10           25-1641. Unless the judge or judges shall order that no jury  
11           be drawn, the jury commissioner shall select a ~~list of petit jurors~~  
12           jury panel list in the manner directed by the judge or judges  
13           pursuant to this section. At least ten days before the first day of  
14           any jury term of the district court or ten days before the day the  
15           jury is otherwise directed to report, three of the judges of the court  
16           if there be three, or one of the judges if there be less than three,  
17           or a judge of the county court or the sheriff or such other elective  
18           officer of the county as the judge or judges may designate shall  
19           appear at the office of the jury commissioner who, in the presence of  
20           such judge or judges or the sheriff or other officer of the county so  
21           designated by the judge or judges, shall select by chance the names of  
22           thirty persons or such number as the judge or judges may otherwise  
23           direct, from the revised jury list for each judge sitting with a  
24           jury in such court, as petit jurors for such term. The person  
25           selecting the names may use an electrical or mechanical system or  
26           device in carrying out his or her duties pursuant to this section.

27           If an electronic or mechanical system or device is used to

1 select the petit jurors, the judge or judges or the sheriff or other  
2 elective officer so designated need not be personally present at the  
3 office of the jury commissioner during such selection. In lieu  
4 thereof, the presiding judge or his or her designated representative  
5 may direct the jury commissioner to select at random from the  
6 ~~proposed~~ revised jury list a specified number of petit jurors for  
7 such term of court or, if more than one jury panel is summoned during  
8 such term, for each such panel.

9 Sec. 15. This act becomes operative on January 1, 2008.

10 Sec. 16. Original sections 25-1607, 25-1612, 25-1627.01,  
11 25-1629, 25-1629.01, 25-1629.04, 25-1630, 25-1637, and 25-1641,  
12 Reissue Revised Statutes of Nebraska, and sections 25-1601, 25-1628,  
13 25-1633, and 25-1635, Revised Statutes Cumulative Supplement, 2006,  
14 are repealed.