

22-3412. Jury selection; peremptory challenges; swearing of jury; alternate or additional jurors. (a) (1) For crimes committed before July 1, 1993, peremptory challenges shall be allowed as follows:

- (A) Each defendant charged with a class A felony shall be allowed 12 peremptory challenges.
- (B) Each defendant charged with a class B felony shall be allowed eight peremptory challenges.
- (C) Each defendant charged with a felony other than class A or class B felony shall be allowed six peremptory challenges.
- (D) Each defendant charged with a misdemeanor shall be allowed three peremptory challenges.
- (E) Additional peremptory challenges shall not be allowed on account of separate counts charged in the complaint, information or indictment.

(F) The prosecution shall be allowed the same number of peremptory challenges as all the defendants.

(2) For crimes committed on or after July 1, 1993, peremptory challenges shall be allowed as follows:

- (A) Each defendant charged with an off-grid felony, a nondrug felony ranked at severity level 1, or a drug felony ranked at severity level 1 or 2, shall be allowed 12 peremptory challenges.
- (B) Each defendant charged with a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 3 or 4, shall be allowed 8 peremptory challenges.
- (C) Each defendant charged with an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 5 felony, shall be allowed six peremptory challenges.
- (D) Each defendant charged with a misdemeanor shall be allowed three peremptory challenges.
- (E) The prosecution shall be allowed the same number of peremptory challenges as all defendants.
- (F) The most serious penalty offense charged against each defendant furnishes the criterion for determining the allowed number of peremptory challenges for that defendant.

(G) Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint, information or indictment.

(H) Except as otherwise provided in this subsection, the provisions of this section shall apply. In applying the provisions of this section, the trial court may determine the number of peremptory challenges to allow by reviewing the classification for the crime charged, or nearest comparable felony, as it was classified under the criminal law in effect prior to July 1, 1993. If the severity level of the most serious crime charged raises the potential penalty above that of another crime which was classified higher under the criminal law in effect prior to July 1, 1993, the defendant shall be allowed the number of peremptory challenges as for that higher classified crime under the prior system.

(I) The trial court shall resolve any conflicts with a liberal construction in favor of allowing the greater number of peremptory challenges.

(b) After the parties have interposed all of their challenges to jurors, or have waived further challenges, the jury shall be sworn to try the case.

(c) A trial judge may empanel one or more alternate or additional jurors whenever, in the judge's discretion, the judge believes it advisable to have such jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Such jurors shall be selected in the same manner, have the same qualifications, and be subject to the same examination and challenges and take the same oath and have the same functions, powers and privileges as the regular jurors. Such jurors may be selected at the same time as the regular jurors or after the jury has been empaneled and sworn, in the judge's discretion. Each party shall be entitled to one peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror shall be discharged from jury service in any such action prior to the jury reaching its verdict, the court shall draw the name of an alternate juror who shall replace the juror so discharged and be subject to the same rules and regulations as though such juror had been selected as one of the original jurors.

History: L. 1970, ch. 129, § 22-3412; L. 1973, ch. 144, § 1; L. 1981, ch. 155, § 1; L. 1983, ch. 114, § 1; L. 1984, ch. 39, § 43; L. 1994, ch. 291, § 62; L. 1996, ch. 214, § 35; L. 1998, ch. 192, § 7; L. 2009, ch. 61, § 2; L. 2012, ch. 150, § 41; July 1.