

**38-2357. Jury trials in certain cases.** (a) *Method of trial.* A juvenile is entitled to a trial by one of the following means:

(1) The trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time requirement provided in this subsection regarding when a jury trial shall be requested may be waived in the discretion of the court upon a finding that imposing such a time requirement would cause undue hardship or prejudice to the juvenile.

(A) A jury in a felony case shall consist of 12 members. However, the parties may agree in writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(B) A jury in a misdemeanor case shall consist of six members.

(C) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall be determined by the jury.

(D) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony cases shall apply to jury trials in misdemeanor cases.

(2) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

(b) *Selection of jury panel.* (1) When a jury trial is held, the judge shall summon from the source and in the manner provided for the summoning of other petit jurors in the district court in the county. A sufficient number of jurors shall be called so that after the exercise of peremptory challenges, as provided in this section, there will remain a sufficient number of jurors to enable the court to cause 12 jurors to be sworn in felony cases and six jurors to be sworn in misdemeanor cases. When drawn, a list of prospective jurors and their addresses shall be filed in the office of the clerk of the court and shall be a public record. The qualifications of jurors and grounds for exemption from jury service in civil cases shall be applicable in juvenile trials, except as otherwise provided by law. An exemption from service on a jury is not a basis for challenge, but is the privilege of the person exempted.

(2) The county or district attorney and the juvenile's attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the juvenile's attorney or the county or district attorney if the court believes such examination to be harassment, is causing unnecessary delay or serves no useful purpose.

(3) Each party may challenge any prospective juror for cause. All challenges for cause must be made before the jury is sworn to try the case. Challenges for cause shall be tried by the court. A juror may be challenged for cause on any of the following grounds:

(A) The juror is related to the juvenile, or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.

(B) The juror is the attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the juvenile or a person alleged to have been injured by the offense charged or the person on whose complaint the adjudication was instituted.

(C) The juror is or has been a party adverse to the juvenile or the juvenile's parents in a civil action, or has complained against the juvenile in an adjudication or been accused by the juvenile in a criminal prosecution.

(D) The juror has served on a public body which has inquired into the events that are the subject of the adjudication or on any other investigatory body which inquired into the facts of the offense charged.

(E) The juror was a witness to the act or acts alleged to constitute the offense.

(F) The juror occupies a fiduciary relationship to the juvenile or the juvenile's parents or a person alleged to have been injured by the offense or the person on whose complaint the adjudication was instituted.

(G) The juror's state of mind with reference to the case or any of the parties is such that the court determines there is doubt that the juror can act impartially and without prejudice to the substantial rights of any party.

(4) Peremptory challenges shall be allowed as follows:

(A) Each juvenile charged with an offense which, if committed by an adult, would constitute:

(i) An off-grid felony or a nondrug or drug felony ranked at severity level 1 shall be allowed 12 peremptory challenges;

(ii) a nondrug felony ranked at severity level 2, 3, 4, 5 or 6, or a drug felony ranked at severity level 2 or 3, shall be allowed eight peremptory challenges;

(iii) an unclassified felony, a nondrug severity level 7, 8, 9 or 10, or a drug severity level 4 felony, shall be allowed six peremptory challenges; and

(iv) a misdemeanor shall be allowed three peremptory challenges.

(B) The state shall be allowed the same number of peremptory challenges as all juveniles.

(C) The most serious penalty offense charged against each juvenile furnishes the criterion for determining the allowed number of peremptory challenges for that juvenile.

(D) Additional peremptory challenges shall not be allowed when separate counts are charged in the complaint.

(5) 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.

(6) 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.

(7) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least five days prior to the date set for trial if the names and addresses of the panel members and the grounds for objection thereto are known to the parties or can be learned by an inspection of the records of the clerk of the district court at that time; in other cases the motion must be made prior to the time when the jury is sworn to try the case. For good cause shown, the court may entertain the motion at any time thereafter. The motion shall be in writing and shall state facts which, if true, show that the jury panel was improperly selected or drawn. If the motion states facts which, if true, show that the jury panel was improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant. If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

(8) If a juror has personal knowledge of any fact material to the case, the juror must inform the court and shall not speak of such fact to other jurors out of court. If a juror has personal knowledge of a fact material to the case, gained from sources other than evidence presented at trial and shall speak of such fact to other jurors without the knowledge of the court or the juvenile, the juror may be adjudged in contempt and punished accordingly.

(c) *View of place of offense.* Whenever in the opinion of the court it is proper for the jurors to have a view of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. They may be accompanied by the juvenile, the juvenile's attorney and the county or district attorney. While the jurors are thus absent, no person other than the officer and the person appointed to show them the place shall speak to them on any subject connected with the trial. The officer or person appointed to show them the place shall speak to the jurors only to the extent necessary to conduct them to and identify the place or thing in question.

(d) *Submission of case to the jury.* (1) At the close of the evidence, or at such earlier time during the trial as the judge reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests.

(A) The judge shall instruct the jury at the close of the evidence before argument and the judge, in the judge's discretion, after the opening statements, may instruct the jury on such matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.

(B) The judge shall instruct the jury as to the offense charged and any lesser included offense in cases where there is some evidence which would reasonably justify an adjudication for some lesser included offense that is:

(i) A lesser degree of the same offense;

- (ii) an offense where all elements of the lesser offense are identical to some of the elements of the offense charged;
- (iii) an attempt to commit the offense charged; or
- (iv) an attempt to commit an offense defined under subsection (d)(1)(B)(i) or (ii).
- (C) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or refuse to do so, or give the requested instruction with modification. All instructions given or requested must be filed as a part of the record of the case. The court reporter shall record all objections to the instructions given or refused by the court, together with modifications made, and the rulings of the court. No party may assign as error the giving or failure to give an instruction, including a lesser included offense instruction, unless the party objects thereto before the jury retires to consider its verdict. The attorney making the objection shall specify the matter to which the party objects and the basis of the objection unless the instruction or the failure to give an instruction is clearly erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.
- (2) When the jury has been instructed, unless the case is submitted to the jury on either side or on both sides without argument, the county or district attorney may commence and may conclude the argument. If there is more than one alleged juvenile offender, the court shall determine their relative order in presentation of evidence and argument. In arguing the case, comment may be made upon the law of the case as given in the instructions, as well as upon the evidence.
- (e) *Motion for judgment of acquittal.* (1) The court on motion of a juvenile or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if the evidence is insufficient to sustain a finding of guilt for such offense or offenses. If a juvenile's motion for judgment of acquittal at the close of the evidence offered by the county or district attorney is not granted, the juvenile may offer evidence without having reserved the right.
- (2) If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.
- (3) If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven days after the jury is discharged or within such further time as the court may fix during the seven-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.
- (f) *Jury deliberation.* (1) When the case is finally submitted to the jury, they shall retire for deliberation. They must be kept together in some convenient place under charge of a duly sworn officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer in charge of the jury shall not communicate to the jury, or allow any communications to be made to them, unless by order of the court; and before their verdict is rendered, the officer in charge of the jury shall not communicate to any person the state of their deliberations, or the verdict agreed upon. No person other than members of the jury shall be present in the jury room during deliberations.
- (2) If the jury is permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by any other person on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them, and that such admonition shall apply to every subsequent separation of the jury.
- (3) After the jury has retired for deliberation, if they desire to be informed as to any part of the law or evidence arising in the case, they may request the officer to conduct them to the court, where the information on the point of the law shall be given, or the evidence shall be read or exhibited to them in the presence of the juvenile, unless the juvenile is voluntarily absent, and the juvenile's attorney, after notice to the county or district attorney.
- (4) The jury may be discharged by the court on account of the sickness of a juror or other accident or calamity, or other necessity to be found by the court requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.
- (g) *Verdict, procedure.* The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and the inquiry made whether it is the jury's verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it may be corrected by the court, with the assent of the jury, before it is discharged.
- (h) *Mistrials.* (1) The trial court may terminate the trial and order a mistrial at any time that the court finds termination is necessary because:
- (A) It is physically impossible to proceed with the trial in conformity with the law;
- (B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the juvenile requests or consents to the declaration of a mistrial;
- (C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the juvenile or the state;
- (D) the jury is unable to agree upon a verdict;
- (E) false statements of a juror on voir dire prevent a fair trial; or
- (F) the trial has been interrupted pending a determination of the juvenile's competency to stand trial.
- (2) When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the juvenile may be held in custody pending such further proceedings pursuant to this code.

**History:** L. 2006, ch. 169, § 57; L. 2011, ch. 60, § 5; July 1.