

SENATE BILL NO. 27—SENATOR WIENER

PREFILED FEBRUARY 3, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing selection of alternate jurors in criminal and civil trials. (BDR 14-851)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to juries; revising the provisions governing the selection of alternate jurors in criminal and civil trials; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that the court may direct additional jurors to be called and impaneled to sit as alternate jurors in both criminal and civil trials. Jurors are designated as alternate jurors during jury selection. (NRS 175.061, 16.030)

This bill prohibits the court from designating jurors as alternate jurors either during jury selection or during the trial of the case. Instead, the court must designate jurors as alternate jurors before the jury retires to deliberate.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 175.061 is hereby amended to read as follows:

175.061 1. The court may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as *jurors who will ultimately be designated* alternate jurors. *The court shall not, at any time during jury selection or the trial of the case, make any distinction as to which jurors will ultimately be designated alternate jurors. Before the jury retires to deliberate, the court shall designate the jurors who are to sit as alternate jurors.* Alternate jurors , in the order in which they ~~are called~~ *were designated as such by the court*, shall replace jurors who become unable or disqualified to perform their duties.



2. Alternate jurors shall:
 - (a) Be drawn in the same manner;
 - (b) Have the same qualifications;
 - (c) Be subject to the same examination and challenges;
 - (d) Take the same oath; and
 - (e) Have the same functions, powers, facilities and privileges ~~H~~

as the regular jurors.

3. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury.

4. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two ~~{alternate}~~ jurors *who will ultimately be designated alternate jurors* are to be impaneled, and two peremptory challenges if three or four ~~{alternate}~~ jurors *who will ultimately be designated alternate jurors* are to be impaneled. ~~{The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by statute may not be used against an alternate juror.}~~

Sec. 2. NRS 16.030 is hereby amended to read as follows:

16.030 1. Except when the jurors are drawn by a jury commissioner, in preparing for the selection of the jury, the clerk, under the direction of the judge, shall place in a box ballots containing the names of the persons summoned who have appeared and have not been excused. The clerk shall mix the ballots and draw from the box the number of names needed to complete the jury in accordance with the procedure provided either in subsection 3 or ~~{subsection}~~ 4, as the judge directs.

2. Whenever the jurors are drawn by the jury commissioner, the judge may also direct him to draw, in advance, the names of additional jurors in the order they would be used to replace discharged or excused jurors pursuant to subsections 3 and 4.

3. The judge may require that eight names be drawn, and the persons whose names are called must be examined as to their qualifications to serve as jurors. If any persons are excused or discharged, or if the ballots are exhausted before the jury is selected, additional names ~~{shall}~~ *must* be drawn from the jury box and those persons summoned and examined as provided by law until the jury is selected.

4. The judge may require that the clerk draw a number of names to form a panel of prospective jurors equal to the sum of the number of regular jurors and ~~{alternate}~~ jurors *who will ultimately be designated alternate jurors* to be selected and the number of peremptory challenges to be exercised. The persons whose names



1 are called must be examined as to their qualifications to serve as
2 jurors. If any persons on the panel are excused for cause, they must
3 be replaced by additional persons who must also be examined as to
4 their qualifications. The jury must consist of eight persons, unless
5 the parties consent to a lesser number. The parties may consent to
6 any number not less than four. This consent must be entered by the
7 clerk in the minutes of the trial. When a sufficient number of
8 prospective jurors has been qualified to complete the panel, each
9 side shall exercise its peremptory challenges out of the hearing of
10 the panel by alternately striking names from the list of persons on
11 the panel. After the peremptory challenges have been exercised, the
12 persons remaining on the panel who are needed to complete the jury
13 shall ~~[in the order in which their names were drawn]~~ be regular
14 jurors or *jurors who will ultimately be designated* alternate jurors.
15 *The court shall not, at any time during jury selection or the trial of*
16 *the case, make any distinction as to which jurors will ultimately be*
17 *designated alternate jurors.*

18 5. Before persons whose names have been drawn are examined
19 as to their qualifications to serve as jurors, the judge or his clerk
20 shall administer an oath or affirmation to them in substantially the
21 following form:

22
23 Do you, and each of you, (solemnly swear, or affirm under the
24 pains and penalties of perjury) that you will well and truly answer
25 all questions put to you touching upon your qualifications to serve
26 as jurors in the case now pending before this court (so help you
27 God)?

28
29 6. The judge shall conduct the initial examination of
30 prospective jurors, and the parties or their attorneys are entitled to
31 conduct supplemental examinations which must not be unreasonably
32 restricted.

33 **Sec. 3.** NRS 16.070 is hereby amended to read as follows:

34 16.070 1. As soon as the jury is completed, the judge or his
35 clerk shall administer an oath or affirmation to *all* the jurors in
36 substantially the following form:

37
38 Do you, and each of you, (solemnly swear, or affirm under the
39 pains and penalties of perjury) that you will well and truly try the
40 case now pending before this court and a true verdict render
41 according to the evidence given (so help you God)?

42
43 2. ~~[As soon as the alternate juror or jurors are selected, the~~
44 ~~judge or his clerk shall administer an oath or affirmation to them in~~
45 ~~substantially the following form:~~



~~—Do you, and each of you, (solemnly swear, or affirm under the pains and penalties of perjury) that, if required to replace a regular juror or jurors you will well and truly try the case now pending before this court, and a true verdict render according to the evidence given (so help you God)?~~

~~3.]~~ After the oath or affirmation has been administered and the jury has been fully impaneled, the court may order the jury into the custody of the sheriff or other officer selected by the court. The jurors shall not be allowed to separate or depart from the custody of the sheriff or other officer except by order of the court. The sheriff shall in such cases, at the charge of the parties to action, prepare suitable and comfortable accommodations and provide food for the jury pending the trial.

Sec. 4. NRS 16.080 is hereby amended to read as follows:

16.080 After the impaneling of the jury and before verdict, the court may discharge a juror upon a showing of his sickness, a serious illness or death of a member of his immediate family, an undue hardship, an extreme inconvenience, any other inability to perform his duty or a public necessity. *Before the jury retires to deliberate, the court shall designate the jurors who are to sit as alternate jurors.* Alternate jurors, in the order in which they were ~~selected,]~~ *designated as such by the court,* shall replace jurors who become unable or disqualified to perform their duties. If an alternate juror is required to replace a regular juror after the jury has retired to deliberate, the court shall recall the jury, seat the alternate and resubmit the case to the jury. If no alternate juror has been selected, the trial may proceed with the remaining jurors, only if the parties so agree. If the parties do not so agree, the jury shall be discharged, and a new jury then or afterwards impaneled.

Sec. 5. This act becomes effective on July 1, 2005.

