

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.

~

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 that not more than four alternate jurors in addition to the regular jury be called and impaneled to sit as alternate jurors in criminal trials, and not more than six alternate jurors be called and impaneled to sit as alternate jurors in civil trials. (NRS 175.061; N.R.C.P. 47) Alternate jurors are selected at the same time and in the same manner as regular jurors and are called to replace jurors, as necessary, in the order in which they are called. (NRS 16.030, 175.061)

This bill increases the number of alternate jurors that may be called in a criminal trial to six. This bill also changes the manner in which alternate jurors are designated in both criminal and civil trials. This bill retains the authority of the court to designate alternate jurors during jury selection. Alternatively, this bill authorizes the court to designate alternate jurors, through a process of random selection in open court, at the end of the trial 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~~ **six** jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. ***The court may designate the jurors who are to sit as alternate jurors either:***



1 (a) During jury selection, based on the order in which they are
2 called; or

3 (b) Before the jury retires to deliberate, through a process of
4 random selection in open court.

5 2. If the court designates the jurors who are to sit as alternate
6 jurors in the manner described in paragraph (b) of subsection 1,
7 the court shall not, at any time during jury selection or the trial of
8 the case, make any distinction as to which jurors will ultimately be
9 designated alternate jurors.

10 3. Alternate jurors, in the order in which they ~~are~~ were called
11 or randomly selected, shall replace jurors who become unable or
12 disqualified to perform their duties.

13 ~~2-1~~ 4. Alternate jurors shall:

14 (a) Be drawn in the same manner;

15 (b) Have the same qualifications;

16 (c) Be subject to the same examination and challenges;

17 (d) Take the same oath; and

18 (e) Have the same functions, powers, facilities and privileges, as
19 the regular jurors.

20 ~~3-1~~ 5. If an alternate juror is required to replace a regular juror
21 after the jury has retired to consider its verdict, the judge shall recall
22 the jury, seat the alternate and resubmit the case to the jury.

23 ~~4-1~~ 6. Each side is entitled to one peremptory challenge in
24 addition to those otherwise allowed by law if one or two alternate
25 jurors are to be impaneled, ~~and~~ two peremptory challenges if three
26 or four alternate jurors are to be impaneled ~~1-The~~, and three
27 peremptory challenges if five or six alternate jurors are to be
28 impaneled. If the court designates jurors as alternate jurors
29 pursuant to paragraph (a) of subsection 1, the additional
30 peremptory challenges may be used against an alternate juror only,
31 and the other peremptory challenges allowed by statute may not be
32 used against an alternate juror.

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

34 16.030 1. Except when the jurors are drawn by a jury
35 commissioner, in preparing for the selection of the jury, the clerk,
36 under the direction of the judge, shall place in a box ballots
37 containing the names of the persons summoned who have appeared
38 and have not been excused. The clerk shall mix the ballots and draw
39 from the box the number of names needed to complete the jury in
40 accordance with the procedure provided either in subsection 3 or
41 ~~subsection~~ 4, as the judge directs.

42 2. Whenever the jurors are drawn by the jury commissioner,
43 the judge may also direct him to draw, in advance, the names of



1 additional jurors in the order they would be used to replace
2 discharged or excused jurors pursuant to subsections 3 and 4.

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

10 4. The judge may require that the clerk draw a number of
11 names to form a panel of prospective jurors equal to the sum of the
12 number of regular jurors and alternate jurors to be selected and the
13 number of peremptory challenges to be exercised. The persons
14 whose names are called must be examined as to their qualifications
15 to serve as jurors. If any persons on the panel are excused for cause,
16 they must be replaced by additional persons who must also be
17 examined as to their qualifications. The jury must consist of eight
18 persons, unless the parties consent to a lesser number. The parties
19 may consent to any number not less than four. This consent must be
20 entered by the clerk in the minutes of the trial. When a sufficient
21 number of prospective jurors has been qualified to complete the
22 panel, each side shall exercise its peremptory challenges out of the
23 hearing of the panel by alternately striking names from the list of
24 persons on the panel. After the peremptory challenges have been
25 exercised, the persons remaining on the panel who are needed to
26 complete the jury shall ~~{, in the order in which their names were~~
27 ~~drawn,}~~ be regular jurors or alternate jurors. ***The court may***
28 ***designate the jurors who are to sit as alternate jurors either:***

29 ***(a) During jury selection, based on the order in which they are***
30 ***called; or***

31 ***(b) Before the jury retires to deliberate, through a process of***
32 ***random selection in open court.***

33 5. ***If the court designates the jurors who are to sit as alternate***
34 ***jurors in the manner described in paragraph (b) of subsection 4,***
35 ***the court shall not, at any time during jury selection or the trial of***
36 ***the case, make any distinction as to which jurors will ultimately be***
37 ***designated alternate jurors.***

38 6. Before persons whose names have been drawn are examined
39 as to their qualifications to serve as jurors, the judge or his clerk
40 shall administer an oath or affirmation to them in substantially the
41 following form:

42
43 Do you, and each of you, (solemnly swear, or affirm under
44 the pains and penalties of perjury) that you will well and truly



1 answer all questions put to you touching upon your
2 qualifications to serve as jurors in the case now pending
3 before this court (so help you God)?
4

5 ~~[6.]~~ 7. The judge shall conduct the initial examination of
6 prospective jurors , and the parties or their attorneys are entitled to
7 conduct supplemental examinations which must not be unreasonably
8 restricted.

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

10 16.070 1. As soon as the jury is completed, the judge or his
11 clerk shall administer an oath or affirmation to **all** the jurors in
12 substantially the following form:

13
14 Do you, and each of you, (solemnly swear, or affirm under
15 the pains and penalties of perjury) that you will well and truly
16 try the case now pending before this court and a true verdict
17 render according to the evidence given (so help you God)?
18

19 2. ~~{As soon as the alternate juror or jurors are selected, the~~
20 ~~judge or his clerk shall administer an oath or affirmation to them in~~
21 ~~substantially the following form:~~
22

23 ~~— Do you, and each of you, (solemnly swear, or affirm under~~
24 ~~the pains and penalties of perjury) that, if required to replace~~
25 ~~a regular juror or jurors you will well and truly try the case~~
26 ~~now pending before this court, and a true verdict render~~
27 ~~according to the evidence given (so help you God)?~~
28

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

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

38 16.080 After the impaneling of the jury and before verdict, the
39 court may discharge a juror upon a showing of his sickness, a
40 serious illness or death of a member of his immediate family, an
41 undue hardship, an extreme inconvenience, any other inability to
42 perform his duty or a public necessity. Alternate jurors, in the order
43 in which they were **called or randomly** selected, shall replace jurors
44 who become unable or disqualified to perform their duties. If an



1 alternate juror is required to replace a regular juror after the jury has
2 retired to deliberate, the court shall recall the jury, seat the alternate
3 and resubmit the case to the jury. If no alternate juror has been
4 selected, the trial may proceed with the remaining jurors, only if the
5 parties so agree. If the parties do not so agree, the jury shall be
6 discharged, and a new jury then or afterwards impaneled.

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



