

Attachment J

Jury Reforms in Other Jurisdictions

Arizona. Order Amending Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure (Filed August 30, 2021, effective January 1, 2022)

- Further materials available:

<https://www.azcourts.gov/Rules-Forum/aft/1208>

Connecticut. P.A. No. 21-170. An Act Concerning the Recommendations of the Jury Selection Task Force (Approved July 12, 2021)

- Further materials available:

https://jud.ct.gov/Committees/jury_taskforce/

Washington. Washington General Rule 37. Jury selection (2018)

- Further materials available:

<https://www.courts.wa.gov/?fa=home.sub&org=mjc&page=symposium&layout=2>

SUPREME COURT OF ARIZONA

ORDER AMENDING RULES 18.4 AND 18.5 OF
THE RULES OF CRIMINAL PROCEDURE, AND
RULE 47(e) OF THE RULES OF CIVIL PROCEDURE

A petition having been filed proposing to eliminate peremptory challenges in jury selection in criminal and civil trials, and comments having been received, upon consideration,

IT IS ORDERED that Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, are amended in accordance with the attachment to this order, effective January 1, 2022.

IT IS FURTHER ORDERED that these amendments shall be applicable to all cases in which the first day of jury selection occurs after January 1, 2022.

DATED this 30th day of August, 2021.

/s/

ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
Peter B Swann
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ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 18.4. Challenges

(a) [No change]

(b) Challenge for Cause. ~~On motion or on its own, the court must~~ The court, on motion or on its own, must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.

(c) Peremptory Challenges.

~~(1) Generally.~~ The court must allow both parties the following number of peremptory challenges:

- ~~(A) 10, if the offense charged is punishable by death;~~
- ~~(B) 6, in all other cases tried in superior court; and~~
- ~~(C) two, in all cases tried in limited jurisdiction courts.~~

~~(2) If Several Defendants Are Tried Jointly.~~ If there is more than one defendant, each defendant is allowed one half the number of peremptory challenges allowed to one defendant. The State is not entitled to any additional peremptory challenges.

~~(3) Agreement Between the Parties.~~ The parties may agree to exercise fewer than the allowable number of peremptory challenges.

COMMENT [No change]

Rule 18.5. Procedure for Jury Selection

(a) [No change]

(b) Calling Jurors for Examination. The court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates ~~plus the number of peremptory challenges that the parties are permitted~~. Alternatively, and at the court's discretion, all members of the panel may be examined.

(c)-(d) [No change]

(e) Scope of Examination. The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike through~~.

information relevant to asserting a possible challenge for cause or enabling a party to intelligently exercise the party's peremptory challenges.

(f) Challenge for Cause. Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. All challenges for cause must be made and decided before the court may call on the parties to exercise their peremptory challenges.

(g) Stipulation to Remove a Prospective Juror. The parties may stipulate to the removal of a juror. Exercise of Peremptory Challenges. After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.

(h) Selection of Jury; Alternate Jurors.

(1) Trial Jurors. After the completion of the procedures in (g) the court has resolved any challenges for cause, the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

(2)-(3) [No change]

(i) Deliberations in a Capital Case. [No change]

COMMENT [as amended 2022]

Rule 18.5(b). [No change to the first two paragraphs of the comment]

The struck method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and the court has resolved all related issues under *Batson v. Kentucky*, 476 U.S. 79 (1986), the clerk calls the first 8 or 12 names, as the law may require, remaining on the list, plus the number of alternate jurors thought necessary by the judge, who become the trial jury.

Rule 18.5(d). [No change to comment]

RULES OF CIVIL PROCEDURE

Rule 47. Jury Selection; Voir Dire; Challenges

(a)-(b) [No change]

(c) **Voir Dire Oath and Procedure.**

(1)-(2) [No change]

(3) *Extent of Voir Dire.*

(A) [No change]

(B) Extent of Questioning. Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a for cause peremptory challenge.

(d) [No change]

(e) **Peremptory Challenges.**

(1) *Procedure.* When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.

(2) *Number.* Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action whether a single action or two or more actions consolidated for trial must be treated as having only two sides. If it appears that two or more parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.

(f) (e) **Alternate Jurors.**

(1)-(4) [No change]

(5) *Additional Peremptory Challenges.* In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.

COMMENT [as amended 2022]

1995 Amendment to Rule 47(a) and (e)
[Formerly Rule 47(a)]

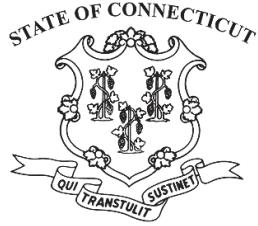
[No change to the first two paragraphs of the comment]

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, ~~the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been take, and all legal issues arising therefrom have been resolved~~, the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

COMMENT

1961 Amendment to Rule 47(e)
[Formerly Rule 47(a)(3)]

~~Rule 47(e) (formerly Rule 47(a)(3)) now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate the inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.~~



Substitute House Bill No. 6548

Public Act No. 21-170

AN ACT CONCERNING THE RECOMMENDATIONS OF THE JURY SELECTION TASK FORCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 51-217 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) All jurors shall be electors, individuals lawfully admitted for permanent residence, as defined in 8 USC 1101(a)(20), as amended from time to time, or citizens of the United States, who are residents of this state having a permanent place of abode in this state and appear on the list compiled by the Jury Administrator under subsection (b) of section 51-222a, who have reached the age of eighteen. A person shall be disqualified to serve as a juror if such person: (1) Is found by a judge of the Superior Court to exhibit any quality which will impair the capacity of such person to serve as a juror, except that no person shall be disqualified because the person is deaf or hard of hearing; (2) has been convicted of a felony within the past [seven] three years or is a defendant in a pending felony case or is in the custody of the Commissioner of Correction; (3) is not able to speak and understand the English language; (4) is the Governor, Lieutenant Governor, Secretary of the State, Treasurer, Comptroller or Attorney General; (5) is a judge of the Probate Court, Superior Court, Appellate Court or Supreme

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Court, is a family support magistrate or is a federal court judge; (6) is a member of the General Assembly, provided such disqualification shall apply only while the General Assembly is in session; (7) is a registrar of voters or deputy registrar of voters of a municipality, provided such disqualification shall apply only during the period from twenty-one days before the date of a federal, state or municipal election, primary or referendum to twenty-one days after the date of such election, primary or referendum, inclusive; (8) is [seventy] seventy-five years of age or older and chooses not to perform juror service; (9) is incapable, by reason of a physical or mental disability, of rendering satisfactory juror service; or (10) for the jury year commencing on September 1, 2017, and each jury year thereafter, has served in the United States District Court for the District of Connecticut as (A) a federal juror on a matter that has been tried to a jury during the last three preceding jury years, or (B) a federal grand juror during the last three preceding jury years. Any person claiming a disqualification under subdivision (9) of this subsection shall submit to the Jury Administrator a letter from a licensed health care provider stating the health care provider's opinion that such disability prevents the person from rendering satisfactory juror service. In reaching such opinion, the health care provider shall apply the following guideline: A person shall be capable of rendering satisfactory juror service if such person is able to perform a sedentary job requiring close attention for six hours per day, with short work breaks in the morning and afternoon sessions, for at least three consecutive business days. Any person claiming a disqualification under subdivision (10) of this subsection shall supply proof of federal jury service satisfactory to the Jury Administrator.

(b) The Jury Administrator may determine, in such manner and at such times as the Jury Administrator deems feasible, whether any person is qualified to serve as juror under this section and whether any person may be excused for extreme hardship.

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(c) The Jury Administrator shall have the authority to establish and maintain a list of persons to be excluded from the summoning process, which shall consist of (1) persons who are disqualified from serving on jury duty on a permanent basis due to a disability for which a licensed physician or an advanced practice registered nurse has submitted a letter stating the physician's or advanced practice registered nurse's opinion that such disability permanently prevents the person from rendering satisfactory jury service, (2) persons [seventy] seventy-five years of age or older who have requested not to be summoned, (3) elected officials enumerated in subdivision (4) of subsection (a) of this section and judges enumerated in subdivision (5) of subsection (a) of this section during their term of office, and (4) persons excused from jury service pursuant to section 51-217a who have not requested to be summoned for jury service pursuant to said section. Persons requesting to be excluded pursuant to subdivisions (1) and (2) of this subsection must provide the Jury Administrator with their names, addresses, dates of birth and federal Social Security numbers for use in matching. The request to be excluded may be rescinded at any time with written notice to the Jury Administrator.

Sec. 2. Section 51-220 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2023*):

(a) The number of jurors to be chosen from each town shall be equal to a percentage of the town's population rounded off to the nearest whole number, such percentage to be determined by the Jury Administrator [. Such population figures shall derive from the last published census of the United States government.] in accordance with the provisions of this section and section 51-220a, as amended by this act. The number of jurors chosen from each town shall reflect the proportional representation of the population of each town within the judicial district. The Jury Administrator shall calculate such percentage by determining each town's proportional share of the population of the

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judicial district and dividing that proportional share by the town's yield ratio. A town's yield ratio shall be calculated by dividing the number of jurors from such town who, when summoned during the previous court year, complied with the summons to appear for jury service, by the product that results when the town's proportional share of the population of the judicial district is multiplied by the total number of jurors summoned in the judicial district in the previous court year. For purposes of this subsection, "court year" means a one-year period beginning on September first and ending on August thirty-first of the following year.

(b) The Jury Administrator shall derive population figures from the most recent decennial census.

Sec. 3. Section 51-220a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2022*):

(a) Electronic data processing and similar equipment may be used in the selection, drawing and summoning of jurors under this chapter. At [his] the Jury Administrator's election, the Jury Administrator may enter into a computerized data processing file the names of persons appearing on the list compiled under subsection (b) of section 51-222a, in order to perform any of the duties prescribed in this chapter.

(b) In carrying out the duties prescribed in section 51-220, as amended by this act, the Jury Administrator annually shall compile the number of jurors summoned from each town who complied with the summons and appeared for jury service.

Sec. 4. Section 51-232 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2022*):

(a) The Jury Administrator shall send to each juror drawn, by first class mail, a notice stating the place where and the time when he or she is to appear and such notice shall constitute a sufficient summons unless

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a judge of said court directs that jurors be summoned in some other manner.

(b) Such summons or notice shall also state the fact that a juror has a right to one postponement of the juror's term of juror service for not more than ten months and may contain any other information and instructions deemed appropriate by the Jury Administrator. If the date to which the juror has postponed jury service is improper, unavailable or inconvenient for the court, the Jury Administrator shall assign a date of service which, if possible, is reasonably close to the postponement date selected by the juror. Such notice or summons shall be made available to any party or to the attorney for such party in an action to be tried to a jury. The Jury Administrator may grant additional postponements within or beyond said ten months but not beyond one year from the original summons date.

(c) The Jury Administrator shall send to a prospective juror a juror confirmation form and a confidential juror questionnaire. Such questionnaire shall include questions eliciting the juror's name, age, race and ethnicity, occupation, education and information usually raised in voir dire examination. The questionnaire shall inform the prospective juror that information concerning race and ethnicity is required solely to enforce nondiscrimination in jury selection, that the furnishing of such information is not a prerequisite to being qualified for jury service and that such information need not be furnished if the prospective juror finds it objectionable to do so. Such juror confirmation form and confidential juror questionnaire shall be signed by the prospective juror under penalty of false statement. Copies of the completed questionnaires shall be provided to the judge and counsel for use during voir dire or in preparation therefor. Counsel shall be required to return such copies to the clerk of the court upon completion of the voir dire. Except for disclosure made during voir dire or unless the court orders otherwise, information inserted by jurors shall be held in confidence by

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the court, the parties, counsel and their authorized agents. Such completed questionnaires shall not constitute a public record.

(d) The number of jurors in a panel may be reduced when, in the opinion of the court, such number of jurors is in excess of reasonable requirements. Such reduction by the clerk shall be accomplished by lot to the extent authorized by the court and the jurors released shall be subject to recall for jury duty only if and when required.

(e) In each judicial district, the Chief Court Administrator shall designate one or more courthouses to be the courthouse to which jurors [shall] originally shall be summoned. The court may assign any jurors of a jury pool to attend any courtroom within the judicial district.

(f) On and after July 1, 2022, and until June 30, 2023, for each jury summons the Jury Administrator finds to be undeliverable, the Jury Administrator shall cause an additional randomly generated jury summons to be sent to a juror having a zip code that is the same as to which the undeliverable summons was sent.

Sec. 5. Subsection (c) of section 51-232 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2022*):

(c) (1) The Jury Administrator shall [send] provide to a prospective juror a juror confirmation form and a confidential juror questionnaire. Such questionnaire shall include questions eliciting the juror's name, age, race and ethnicity, gender, occupation, education, [and] information usually raised in voir dire examination and such other demographic information determined appropriate by the Judicial Branch. The questionnaire shall inform the prospective juror that information concerning race and ethnicity is required solely to enforce nondiscrimination in jury selection, that the furnishing of such information is not a prerequisite to being qualified for jury service and

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that such information need not be furnished if the prospective juror finds it objectionable to do so. Such juror confirmation form and confidential juror questionnaire shall be signed by the prospective juror under penalty of false statement. Copies of the completed questionnaires shall be provided to the judge and to counsel for use during voir dire or in preparation therefor. Counsel shall be required to return such copies to the clerk of the court upon completion of the voir dire. Except for disclosure made during voir dire or unless the court orders otherwise, information inserted by jurors shall be held in confidence by the court, the parties, counsel and their authorized agents. Such completed questionnaires shall not constitute a public record.

(2) The Judicial Branch shall compile a record of the demographic characteristics of all persons who: (A) Are summoned for jury service, (B) participated in a panel, (C) are subject to a peremptory challenge, (D) are subject to challenge for cause, and (E) serve on a jury. Such record shall exclude personally identifiable information and shall be maintained in a manner that provides free and open access to the information on the Internet. As used in this subdivision, "personally identifiable information" means any identifying information that is linked or linkable to a specific individual.

Approved July 12, 2021

Rule 37. Jury selection

(a) Policy and Purpose. The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race or ethnicity.

(b) Scope. This rule applies in all jury trials.

(c) Objection. A party may object to the use of a peremptory challenge to raise the issue of improper bias. The court may also raise this objection on its own. The objection shall be made by simple citation to this rule, and any further discussion shall be conducted outside the presence of the panel. The objection must be made before the potential juror is excused, unless new information is discovered.

(d) Response. Upon objection to the exercise of a peremptory challenge pursuant to this rule, the party exercising the peremptory challenge shall articulate the reasons that the peremptory challenge has been exercised.

(e) Determination. The court shall then evaluate the reasons given to justify the peremptory challenge in light of the totality of circumstances. If the court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. The court need not find purposeful discrimination to deny the peremptory challenge. The court should explain its ruling on the record.

(f) Nature of Observer. For purposes of this rule, an objective observer is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in Washington State.

(g) Circumstances Considered. In making its determination, the circumstances the court should consider include, but are not limited to, the following:

- (i)** the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it;
- (ii)** whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror

against whom the peremptory challenge was used in contrast to other jurors;

(iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;

(iv) whether a reason might be disproportionately associated with a race or ethnicity; and

(v) whether the party has used peremptory challenges disproportionately against a given race or ethnicity, in the present case or in past cases.

(h) Reasons Presumptively Invalid. Because historically the following reasons for peremptory challenges have been associated with improper discrimination in jury selection in Washington State, the following are presumptively invalid reasons for a peremptory challenge:

(i) having prior contact with law enforcement officers;

(ii) expressing a distrust of law enforcement or a belief that law enforcement officers engage in racial profiling;

(iii) having a close relationship with people who have been stopped, arrested, or convicted of a crime;

(iv) living in a high-crime neighborhood;

(v) having a child outside of marriage;

(vi) receiving state benefits; and

(vii) not being a native English speaker.

(i) Reliance on Conduct. The following reasons for peremptory challenges also have historically been associated with improper discrimination in jury selection in Washington State: allegations that the prospective juror was sleeping, inattentive, or staring or failing to make eye contact; exhibited a problematic attitude, body language, or demeanor; or provided unintelligent or confused answers. If any party intends to offer one of these reasons or a similar reason as the justification for a peremptory challenge, that party must provide reasonable notice to the court and the other parties so the behavior can be verified and addressed in a timely manner. A lack of corroboration by the judge or opposing counsel verifying the behavior shall invalidate the given reason for the peremptory challenge.

Adopted April 5, 2018, effective April 24, 2018.