

CPL ARTICLE 270: JURY.

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A Criminal jury is composed of 12 jurors; the Court *may* also provide for 1 or more alternates, but not more than 6 [**EXCEPT:** in case charging Murder 1].

Jurors are chosen off a panel. Only the defendant can challenge the *entire* panel. Such challenge must be made before examination of individual jurors commences, else is deemed waived. Such challenge must be in writing, and shall allege such significant departure from Judiciary Law as would "substantially prejudice" the defendant. If People deny the challenge = hearing thereupon, with witnesses as necessary.

Absent such challenge (or upon denial, **OR** where new panel sat): 12 jurors are called and sworn before examination. Those jurors are then questioned as to qualifications/bias. People go first, then defendant. Challenges for cause shall be made *before* exercising peremptories. The People can NOT make further challenge after Defendant exercises peremptories. The Court may issue Protective Order regarding disclosure of juror's address or other info, to protect against possible bribery/tampering/injury/harassment.

Any jurors not successfully challenged are immediately sworn to "try justly" and render a verdict thereupon. If less than 12 (or such greater number where Court provides for alternates) individuals, new panel members are selected and questioned to make up the total number. This process is repeated as necessary until a full jury is sworn.

Any challenge for cause is waived if not made before juror sworn, *UNLESS* party did not then know of grounds.

Valid Cause Grounds:

- 1) not qualified (pursuant to Judiciary Law);
- 2) state of mind precludes impartiality;
- 3) 6th degree of relationship (consanguinity/affinity) to defendant/witness/victim/attorney; **OR** adverse party against such in civil action; **OR** was accused criminally by such;
- 4) was witness/juror in Grand Jury proceedings of underlying indictment;
- 5) in capital case: where conscientiously objects to death penalty.

In capital cases the Court shall also allow questions regarding racial bias of individual jurors, separately from the others. Such examination on record, but may then be sealed.

All such challenges raised shall be tried if not conceded by other party. An erroneous ruling *allowing* the People's challenge for cause is NOT "reversible error" where People still have peremptory challenges left when jury is sat; **nor** is it reversible

error to *deny* DEFENDANT'S cause challenge unless defendant then exhausts all peremptories.

Peremptory challenges:

Class A felony = 20 per side (+2 per each alternate);
Class B/C felony = 15 per side (+2 per each alternate);
All other offenses = 10 per side (+2 per each alternate).

Multiple defendants are treated as a single entity for purposes of peremptory challenges; any such must be allowed only if majority of defendants agree.

After the regular jurors retire to deliberate: alternates shall be kept separate and directed not to discuss the case. They may also be discharged with consent of both people and defendant. However they shall NOT be so discharged in a capital case, but may be kept together with each other under supervision of a Public Servant. In capital cases where jury finds defendant guilty, alternates shall not be discharged until after sentencing.

A juror can be discharged during trial - and replaced by an alternate - where ill and can't continue. If Court has information that juror is ill, and such juror fails to show within 2 hours of time for trial to resume, Court can then discharge. Court can also discharge a juror for repeated failure to appear. **AFTER** *deliberations* commence however, replacement of juror by alternate **ONLY** with consent of Defendant. Such consent in writing, signed by defendant in open court. Where juror needs to be replaced: lack of alternates shall result in a mistrial.

Court shall instruct the jury *before* People make opening statement, as follows: not to converse regarding case; not to read/watch/listen to news of case; not to view the premises (except pursuant to Court direction); or to accept/agree/discuss remuneration for providing trial information **prior** to discharge.

Before deliberations (or after rendition of verdict, but prior to sentencing), Court **MAY** allow jurors to separate during recesses no greater than 24 hours [not counting weekends/legal holidays]. Court may also direct that jurors be kept together [sequestered] under supervision of a Public Servant, who shall NOT allow discussion of the case, nor so communicate with them himself.

Court can have jury view premises any time **before** summations:
a) jury shall be kept together by Public Servant(s); b) Court **MUST** be present; Prosecutor, Defendant, and counsel **MAY** be present (or can waive such right); jurors shall NOT discuss the case during viewing.