

## 25.2 Qualifying the Jury

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### A. Statutory Qualifications

**Generally.** “[T]he law not only guarantees the right of trial by jury, but also the right of trial by a proper jury; that is to say, a jury possessing the qualifications contemplated by law.” *Hinton v. Hinton*, 196 N.C. 341, 343 (1928). In giving effect to this constitutional guarantee, the General Assembly’s purpose was to ensure “that all those and only those citizens who possess the proper qualifications of character and intelligence should be selected to serve on the juries.” *State v. Ingram*, 237 N.C. 197, 204 (1953).

The qualifications for prospective jurors are set forth in G.S. 9-3. A person is qualified to serve as a juror if he or she:

- is a citizen of the state (a North Carolina citizen is one who is a citizen of the United States and a resident of North Carolina);
- is a resident of the county;
- has not served as a juror in the previous two years;
- has not served a full term of service as a grand juror in the previous six years;
- is 18 years of age or older;
- is physically and mentally competent;
- is able to understand English;
- has not been convicted of a felony or pled guilty or no contest to an indictment charging a felony, unless citizenship rights have been restored; and
- has not been adjudged non compos mentis (not of sound mind).

**Calculation of two-year requirement.** People who have served on federal juries as well as those who have served on state juries are disqualified from serving within two years. *State v. Golphin*, 352 N.C. 364, 424–25 (2000) (no error in judge’s excusal of potential juror; two years had not passed from the time of her service on a federal jury until the time jury selection in defendant’s case commenced). The two-year exclusion is triggered only if the juror is sworn—merely receiving a jury summons is not enough. *State v. Berry*, 35 N.C. App. 128 (1978). The date for determining the end of the two-year period is the date on which jurors are first sworn at the beginning of jury selection. *Golphin*, 352 N.C. 364, 425 (two-year limit could not be avoided by moving juror to a later panel so that she would not be questioned until after two-year exclusionary period had run).

**Senior citizen status.** There is no maximum age for jury service. People who are 72 years old or older may request to be excused from the jury in writing (rather than by personally appearing in court). A signed statement of the grounds for the request for excusal must be filed with the chief district court judge or his or her designee at least five business days before the date the person is summoned to appear. *See* G.S. 9-6.1(a). “The judge has the option of allowing or denying the request.” *State v. Rogers*, 355 N.C. 420, 447 (2002).

Once the older person is in the venire in the courtroom, he or she may request to be excused on the basis of age. The request may be granted if he or she is unfit to serve, if there are reasons of compelling personal hardship, or if his or her service would be contrary to the public welfare, health or safety. *See* G.S. 9-3, G.S. 9-6(a); *Rogers*, 355 N.C. 420, 447–49 (also finding no violation of fair cross-section requirement of Sixth Amendment or Equal Protection Clause by statutory scheme for excusal of jurors in light of age). A trial judge may not adopt a blanket policy of excusing all senior citizens who request to be excused, however. Rather, “excusing prospective jurors present in the courtroom who are over the age of sixty-five [now seventy-two] must reflect a genuine exercise of judicial discretion.” *Rogers*, 355 N.C. at 448; *see also State v. Elliott*, 360 N.C. 400 (2006) (trial judge did not abuse his discretion in refusing to excuse an elderly prospective juror where the record revealed that she had no hardship other than advanced age; four elderly prospective jurors that were excused each had a compelling personal hardship). For a discussion of a similar issue involving grand jurors, see 1 NORTH CAROLINA DEFENDER MANUAL § 9.1B, Qualifications of Individual Grand Jurors (2d ed. 2013).

**Full-time out-of-state student status.** Prospective jurors who are enrolled in postsecondary educational institutions outside of North Carolina may request to be excused from the jury in writing (rather than by personally appearing in court). G.S. 9-6(b1); G.S. 9-6.1(a). To qualify for this type of excusal, the prospective juror must be enrolled as a full-time student in an out-of-state postsecondary educational institution and be taking classes or exams during the session of court during which he or she is summoned for jury duty. The out-of-state educational institution may be public or private and includes any trade or professional institution, college, or university. G.S. 9-6(b1). A signed statement of the grounds for the request for excusal must be filed with the chief district court judge or his or her designee at least five business days before the date the person is summoned to appear, and it must be supported by documentation showing enrollment at the out-of-state institution. *See* G.S. 9-6(b1); 9-6.1(a). Prospective jurors who are excused under G.S. 9-6(b1) may be required to serve as a juror in a later session of court. G.S. 9-6(c).

**English language capability.** In *State v. Smith*, 352 N.C. 531 (2000), the N.C. Supreme Court upheld the constitutionality of the requirement that jurors speak and understand English. Also, the inquiry into whether a juror is an English speaker should be in English. *Id.* at 546–47 (error but no prejudice where prosecutor asked defendant in Spanish whether he understood English well enough to participate).

**Physical and mental competence, disabilities, and hearing.** The trial judge has broad discretion to determine whether a person is physically competent to serve as a juror. *See, e.g., State v. Neal*, 346 N.C. 608 (1997) (no error in excusing juror with history of medical problems and Valium addiction); *State v. Carter*, 338 N.C. 569 (1994) (no error in excusing juror who was eight months pregnant); *State v. King*, 311 N.C. 603 (1984) (no error in declining to excuse juror who suffered from hearing impairment but stated he could hear and understand lawyer’s voir dire); *see also* G.S. 9-3 (effective July 1, 2011, statute requires that prospective jurors be able to understand English language but no longer requires that they be able to hear English language). A person summoned as a juror who has a disability may request to be excused from the jury in writing (rather than personally appearing in court); a signed statement of the grounds for the request for excusal, including a brief description of the disability, must be filed with the chief district court judge or his or her designee at least five business days before the date the person is summoned to appear. *See* G.S. 9-6.1(b). The trial judge can request medical documentation of the submitted disability. That documentation will be kept confidential and is not subject to the N.C. Public Records Act, Chapter 132 of the N.C. General Statutes. *Id.*

**Compelling personal hardships.** Trial judges are not limited to excusing jurors who are disqualified under G.S. 9-3 and may excuse any person for whom jury service would constitute a “compelling personal hardship.” G.S. 9-6(a); *see also infra* § 25.2B, Hardship Excuses. The N.C. Supreme Court has suggested that the reason the trial judge gives for excusing a juror as disqualified or for hardship should not be pretextual. *State v. Alston*, 341 N.C. 198 (1995) (rejecting defendant’s contention that trial judge’s actual reason for excusing juror with medical problems was her position on death penalty).

**Restoration of citizenship rights for convicted felons.** A convicted felon’s citizenship rights are automatically restored on unconditional discharge from the agency of the State having jurisdiction of him or her. G.S. 13-1(1) (requiring automatic restoration of citizenship rights on unconditional discharge of inmates, probationers, and parolees). Citizenship rights are also automatically restored to convicted felons who are unconditionally pardoned or who have satisfied the terms of a conditional pardon. G.S. 13-1(2), (3). A person with a prior North Carolina felony conviction whose citizenship rights have been restored is eligible for jury service. *See* G.S. 9-3; G.S. 13-1. Likewise, a person convicted of a federal crime or a crime in another state may serve on the jury if he or she has been unconditionally discharged by the agency having jurisdiction of him or her. G.S. 9-3; G.S. 13-1(4), (5).

People with pending felony charges are excusable for cause under G.S. 15A-1212(7).

## **B. Hardship Excuses**

**Generally.** The General Assembly has declared the public policy of the state to be that jury service is a solemn obligation of all qualified citizens and that people qualified for jury service should be excused or deferred only for reasons of “compelling personal hardship” or because service would be “contrary to the public welfare, health, or safety.”

G.S. 9-6(a), (c). Hardship excuses are heard and determined in district court, by a district court judge or trial court administrator. G.S. 9-6(b). The presiding judge in superior court also may excuse or defer prospective jurors for hardship. *See* G.S. 9-6(f). The judge has broad discretion in determining what constitutes hardship. *E.g.*, *State v. Hedgepeth*, 350 N.C. 776 (1999) (no error in failing to excuse juror who had inoperable brain tumor where trial judge was convinced that juror's memory impairment was insufficient to disqualify juror); *State v. Norwood*, 344 N.C. 511 (1996) (no error in excusing last remaining African-American female venireperson where she had five children and was in community college); *State v. Fisher*, 336 N.C. 684 (1994) (no error in excusing visibly upset juror who was distracted by her child's illness). Nevertheless, the judge's power to excuse jurors must be exercised within constitutional constraints. *See. e.g.*, *State v. Cole*, 331 N.C. 272 (1992) (violation of capital defendant's constitutional right to presence found where after the trial had commenced, the trial judge deferred service for some jurors at a bench conference outside defendant's presence).

**Scope of district court's authority to excuse jurors.** The district court should excuse prospective jurors only for hardship, pursuant to G.S. 9-6, and not because of bias, opinion about the death penalty, or other grounds that might constitute the basis for a cause challenge under G.S. 15A-1212. *State v. Murdock*, 325 N.C. 522 (1989) (proper practice is for district court judges to excuse jurors only on grounds set forth in G.S. 9-6). If the district court excuses jurors on too broad of a basis, the defendant may have grounds to move to dismiss the venire. A defendant who moves to dismiss the venire because of improper conduct by the district court must show evidence of corrupt intent, systematic discrimination, or other irregularities affecting the actions of the jurors actually drawn and summoned. *Murdock*, 325 N.C. at 526; *accord State v. Leary*, 344 N.C. 109 (1996) (reaffirming *Murdock*); *see also State v. Hyde*, 352 N.C. 37 (2000) (evidence that district court judge excused jurors on basis of "religious scruples" [presumably, about death penalty] did not entitle defendant to new trial; defendant failed to show corrupt intent or that he was prejudiced by jury that was impaneled).

**No right to presence when district court excuses jurors.** The North Carolina courts have held that a defendant's right to be present at all critical stages of his or her trial applies only after the defendant's trial is called in superior court. A defendant has no right to be present during the preliminary qualification of jurors by the district court because this occurs before the defendant's trial begins. *State v. McCarver*, 341 N.C. 364 (1995); *State v. Cole*, 331 N.C. 272 (1992).

**Right to presence when superior court excuses jurors.** A defendant has a constitutional right to be present after his or her case is called, when jurors are being selected for his or her case. Once a defendant's case is called for trial, a superior court judge may not excuse jurors for hardship in unrecorded bench conferences; he or she must conduct all jury selection proceedings on the record and in the presence of the defendant. *State v. Cole*, 331 N.C. 272 (1992); *State v. Smith*, 326 N.C. 792 (1990). If a defendant is not present during any part of jury selection, there is reversible error. *Smith*, 326 N.C. at 794. For further discussion of a defendant's right to be present during jury selection, see *supra* § 21.1C, Trial Proceedings (discussing right to presence at different proceedings).