

9.1 Composition of Grand Jury

A. Selecting Grand Jurors

There is a three-step process for selecting grand jurors. The first step is for the jury commission for each county, either annually or biannually, to construct a list of potential jurors to be used for both grand and trial (petit) juries. (Each county has a jury commission composed of three members who serve two-year terms; one member is appointed by the board of county commissioners, the second by the senior resident superior court judge, and the third by the clerk of superior court. *See* G.S. 9-1.) G.S. 9-2 dictates how the list must be constructed. There are two important requirements in this first step: (i) to ensure adequate representation of minorities, the jury list must be drawn from voter registration lists, drivers' license lists, and other reliable sources; and (ii) the process of creating the jury list must be random. The State Board of Elections and the Division of Motor Vehicles create a merged "raw" list of registered voters and licensed drivers and provide it to the jury commission of each county. *See* G.S. 20-43.4; G.S. 163-82.11. The jury commission may supplement the list using any other reliable source, but in practice no counties do so. From this raw list, the jury commission creates the master jury list by removing disqualified individuals (*see infra* § 9.1B, Qualifications of Individual Grand Jurors) and then randomly selecting the number of names needed. *See* G.S. 9-2(e). "Random" is defined in G.S. 9-2(h) as a method of selection that results in each name on a list having an equal opportunity to be selected. *See also* G.S. 9-2(i) (describing permissible random selection procedure); *see generally* JAMES C. DRENNAN & MIRIAM S. SAXON, A MANUAL FOR NORTH CAROLINA JURY COMMISSIONERS 11–13 (UNC School of Government, 4th ed. 2007) [hereinafter DRENNAN & SAXON].

Second, the clerk of superior court or the assistant or deputy clerk prepares a list of names from the master jury list of those to be summoned by the sheriff for jury duty (sometimes called the jury array or venire). This selection process must also be random. *See* G.S. 9-5. The duties of the clerk of court may be performed by a trial court administrator. G.S. 9-7.1.

Third, from the list of those summoned for jury duty, the clerk must randomly select the names of eighteen people to serve as grand jurors. *See* G.S. 15A-622(b). Generally, those selected serve twelve-month terms, with nine members rotating off the panel every six months. *See id.* (senior resident judge also may fix term of service at six rather than twelve months).

The procedures described above were modernized in 2012 to reflect advances in electronic data management. *See* 2012 N.C. Sess. Laws Ch. 180 (S 133) (effective July 12, 2012). For the procedures in effect before those changes, see the previous versions of the applicable statutes.

B. Qualifications of Individual Grand Jurors

Statutory requirements. The qualifications for grand jurors are the same as for all jurors. G.S. 9-3 states that jurors must: (i) be citizens of North Carolina; (ii) be residents of the county in which they will serve; (iii) be eighteen years or older; (iv) be physically and mentally competent; (v) be able to understand the English language (effective July 1, 2011, G.S. 9-3 was amended to repeal the requirement that prospective jurors be able to hear the English language); and (vi) not have been convicted of a felony or, if convicted, have had their citizenship restored. In addition, a person may not serve as a juror more than once every two years. G.S. 9-3; G.S. 9-7. *See also* 2 NORTH CAROLINA DEFENDER MANUAL § 25.2A (Statutory Qualifications) (UNC School of Government, 2d ed. 2012) (discussing grounds for disqualification of petit jurors). (*Legislative note:* Effective January 1, 2014, S.L. 2013-148 (H 879) adds G.S. 15A-622(i) and amends G.S. 9-3 and G.S. 9-7 to provide that a person who serves a full term of service as a grand juror is exempt from service as a juror or grand juror for six years.)

Dismissing or excusing grand jurors. In preparing the jury list, the jury commission screens out potential jurors who do not meet the statutory requirements. *See generally* DRENNAN & SAXON at 14–16 (describing procedure).

A superior court judge has authority to dismiss a grand juror if the judge finds that the juror does not meet the above qualifications, is incapable of performing his or her duties, or is guilty of misconduct. *See* G.S. 15A-622(c) (so stating; also authorizing judge to dismiss entire grand jury upon finding that jurors have not been selected in accordance with law or that grand jury is illegally constituted); *see also* *State v. Oxendine*, 303 N.C. 235 (1981) (individuals with a pecuniary interest in the outcome of a case should not serve on the grand jury), *superseded by statute in part on other grounds as stated in State v. Covington*, 315 N.C. 352 (1986). In addition, district and superior court judges have the authority to excuse jurors for hardship. *See* G.S. 9-6; G.S. 15A-622(d); *see also* 2 NORTH CAROLINA DEFENDER MANUAL § 25.2B (Hardship Excuses) (UNC School of Government, 2d ed. 2012) (discussing authority of judge to excuse jurors).

There is no statutory authorization for the jury commission, sheriff, or any other authority to screen out potential jurors on the basis of the jurors' moral character or position in the community. Such a practice could result in a racially unrepresentative grand jury, providing potential grounds for challenging a grand jury indictment. *See infra* § 9.2, Challenges to Grand Jury Composition or Selection of Foreperson.

Age as excuse. The court in its discretion may excuse a person 72 years of age or older from service as a juror. *See* G.S. 9-6.1(a) (people 72 or older may request exemption by mail without appearing in court; district court rules on requests); *State v. Elliot*, 360 N.C. 400 (2006) (trial court may rule on request by person over 65 [now 72] to be excused from jury service). Advanced age does not automatically excuse a person from serving as a grand juror, however. Older citizens called as grand jurors may serve unless they suffer from a physical or mental disability that prevents them from fulfilling their duties as a juror. *See Elliot*, 360 N.C. at 408 (juror may be excused because of his or her age if the

court determines that service would be a compelling personal hardship); *State v. Rogers*, 355 N.C. 420, 448 (2002) (“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”); *DRENNAN & SAXON* at 16 & n.5 (“it is improper to strike names from the master jury list solely on the basis of age, without a case-by-case consideration as to an elderly person’s physical or mental competence”; decision to excuse juror on account of age should ordinarily be made by court, not by jury commission). If your county has a practice of automatically exempting every person over 72 from service on grand juries, such a practice may provide grounds to challenge the indictment. *See Taylor v. Louisiana*, 419 U.S. 522 (1975) (holding that Louisiana practice of automatically excluding women from jury service unless they filed letter expressing desire to be included was unconstitutional). For a further discussion of this issue, see 2 NORTH CAROLINA DEFENDER MANUAL § 25.2A (Statutory Qualifications) (UNC School of Government, 2d ed. 2012) (discussing impact of senior citizen status).

Disability. A person with a disability that could interfere with the person’s ability to serve as a juror may request to be excused, deferred, or exempted from jury duty without appearing in court by mailing a signed request to the district court. G.S. 9-6.1(b).

C. Effect of Improper Selection Procedures

Generally. A defendant is entitled to learn the identity of the grand jurors who issued the indictment. *See generally* G.S. 15A-955 (court may dismiss indictment if it finds there is ground to challenge the array); *State v. Dellinger*, 308 N.C. 288 (1983) (information about grand jury, other than content of its deliberations, is matter of public record); *State v. Kirkland*, 119 N.C. App. 185 (1995) (defendant moved to compel disclosure of jury records in support of motion to quash indictment on ground that grand jury, grand jury foreman, and petit jury were unlawfully selected on basis of race; trial court did not err in denying defendant’s motions where motion to quash was untimely), *aff’d per curiam*, 342 N.C. 891 (1996); *see also* G.S. 132-1 (public records law).

In limited circumstances, a defendant may move to dismiss an indictment on the ground that either the grand jury as a whole was illegally constituted or individual grand jurors were unqualified. While mere “technical and insubstantial violations of the statutes regulating jury selection procedure” are not “sufficient to vitiate a jury list or afford a challenge to the array” (*State v. Massey*, 316 N.C. 558, 570 (1986)), a defendant is entitled to have a bill of indictment quashed if he or she can show that

- the jury list was compiled with a corrupt intent;
- there was systematic discrimination in the compilation of the list; or
- irregularities in the compilation of the list affected the actions of the jurors actually drawn and summoned,

State v. Johnson, 317 N.C. 343, 379 (1986).

Improper exclusion of jurors. If a qualified group, such as African-Americans or women, has been systematically excluded in either the drawing of the list of jurors or the selecting of jurors from the list, a defendant may challenge the composition of the grand jury as a whole. *See* G.S. 15A-955; G.S. 15A-1211; *State v. Vaughn*, 296 N.C. 167 (1978) (indictment may be dismissed if grand jury selection process was corrupt or discriminatory). For further discussion of this type of challenge, see *infra* § 9.2, Challenges to Grand Jury Composition or Selection of Foreperson.

Improper inclusion of jurors. An individual may be qualified to serve as a grand juror even though he or she might be subject to a challenge for cause as a petit juror under G.S. 15A-1212. *See, e.g., State v. Oxendine*, 303 N.C. 235 (1981) (not error for brother of murder victim to serve on indicting grand jury), *superseded by statute in part on other grounds as stated in State v. Covington*, 315 N.C. 352 (1986).

However, if the grand jury contains members who do not meet the requirements of G.S. 9-3, the indictment may be dismissed. *See State v. Vaughn*, 296 N.C. 167 (1978). The grand jury also should not contain members with a pecuniary interest in the outcome of the case, and the inclusion of such an interested person may be grounds for dismissal of an indictment. *See Oxendine*, 303 N.C. at 245.

D. Selection of Grand Jury Foreperson

The foreperson of the grand jury presides over grand jury sessions, swears witnesses, administers oaths, and keeps a record of the disposition of each case, usually by indicating on an indictment whether it was returned as a “true bill.” *See* G.S. 15A-623; G.S. 15A-644(a)(5). The presiding judge appoints the grand jury foreperson. *See* G.S. 15A-622(e). To make the selection, the court may personally interview grand jurors. *See* JAMES C. DRENNAN, HANDBOOK FOR GRAND JURORS at 3 (Administrative Office of the Courts, 1988). The court also may accept the recommendation of the grand jury members. *See State v. Phillips*, 328 N.C. 1 (1991) (upholding selection of grand jury foreperson based on nomination of grand jury members). Unless removed from the grand jury by the superior court judge, the foreperson serves for the duration of his or her grand jury term.