

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**



**PLAN FOR THE RANDOM SELECTION
OF GRAND AND PETIT JURORS
FOR SERVICE IN THE DISTRICT OF MAINE
AS AMENDED JUNE 17, 2021
Effective Date: JULY 12, 2021**

I. Introduction

Pursuant to the provisions of the Jury Selection and Service Act of 1968, as amended, 28 U.S.C. § 1861-1878, “the Act,” the United States District Court for the District of Maine adopts the following revised plan for the random selection of grand and petit jurors for service in this District, to take effect after approval by the Reviewing Panel prescribed by 28 U.S.C. § 1863(a). All prior plans are superseded as of the effective date of this revised plan, found on the front page, which shall be the date it is approved by the Reviewing Panel prescribed by 28 U.S.C. § 1863(a).

II. Declaration of Policy

Consistent with 28 U.S.C. § 1861, it is the policy of this Court that all litigants entitled to trial by jury in this District shall have the right to grand and petit juries selected at random from a fair cross-section of the community. It is further the policy of this Court that all citizens shall have the opportunity to be considered for service on grand and petit juries in this Court and shall have an obligation to serve as jurors when summoned for that purpose.

III. Prohibition of Discrimination

In accordance with 28 U.S.C. § 1862, no citizen shall be excluded from service as a grand or petit juror in this Court on account of race, color, religion, sex, national origin, or economic status.

IV. Applicability of the Plan

Maine constitutes one judicial district with Court being held at Bangor and at Portland. This is the plan for the random selection of grand and petit jurors for service in the District of Maine. 28 U.S.C. § 1863.

V. Plan for Random Jury Selection

A. Management and Supervision of the Jury Selection Process

The Clerk of Court shall manage the jury selection process in the District of Maine under the supervision and control of the Chief Judge of the Court. 28 U.S.C. § 1863(b)(1).

Wherever used in this Plan, the term “Court” shall mean the District Court or any or all of the judges of the District Court. Wherever used in this Plan, the terms “Clerk” and “Clerk of Court” shall mean the Clerk of the District Court, any authorized deputy clerk, and any other person, agency or data processing center authorized by the Court to assist the Clerk in the performance of the functions required by the Act.

B. Master Jury Wheel

The Clerk shall maintain one master jury wheel for the District of Maine, with two qualified jury wheels, one in Portland and one in Bangor.

The Clerk shall use the Central Voter Registration System (CVR) as the primary source for obtaining prospective jurors for the master jury wheel. The procedures prescribed in this Plan are designed to ensure a random selection of a fair cross-section of the citizens residing in every county within the District of Maine so that every county is substantially and proportionately represented within the District's master jury wheel. 28 U.S.C. §§ 1863(b)(2) & 1863(b)(3).

The names from the Central Voter Registration System maintained by the State of Maine represent a fair cross-section of the citizens of the State of Maine; but, to foster the policies and protect the rights secured by 28 U.S.C. §§ 1861-1862, the Clerk shall use the list of active licensed drivers and the list of state identification card holders maintained by the Maine Bureau of Motor Vehicles in addition to and in combination with the Central Voter Registration list.

The Court authorizes the Clerk to supplement the names drawn from the Central Voter Registration System with similarly-sized lists of individuals having active driver's licenses issued by the State of Maine and of those holding state identification cards issued by the State of Maine. The Maine Bureau of Motor Vehicles (BMV) maintains an integrated database of all licensed drivers and state identification card holders within the State. The Court authorizes the Bureau of Motor Vehicles to exclude those individuals who are deceased, who no longer reside in the State, who possess expired licenses or identification cards, and who are under the age of 18.

The CVR and BMV lists of names for the master jury wheel shall be referred to as the "source lists." The names drawn from all source lists shall be merged together using a data processing system to create the "merged source list."

Reasonable effort shall be made to eliminate duplications in the merged source list. The selection of names from the merged source list to create the master jury wheel shall be done in a manner consistent with the selection procedures described within this Plan. The names drawn from the merged source list will constitute the master jury wheel.

Unless the Court shall otherwise direct, the master jury wheel shall be emptied and refilled, as herein provided, once every two (2) years, once within nine (9) months following a general election for the President of the United States and once within nine (9) months following the midterm election. The number of names to be initially placed in the master jury wheel shall be of a sufficient

number as may be deemed needed for a two-year period and shall be a minimum of one-half of 1% of the total number of names in the merged source list. The Court may order additional names to be placed in the master jury wheel from time to time as necessary. 18 U.S.C. § 1863(b)(4).

The names of prospective jurors to serve on grand and petit juries in Bangor shall be selected at random from the merged source list from the counties of Aroostook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis, Somerset, Waldo, and Washington; and shall be maintained in the master wheel for jury service in Bangor.

The names of the prospective jurors to serve on grand and petit juries in Portland shall be selected at random from the merged source list from the counties of Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc, and York; and shall be maintained in the master wheel for jury service in Portland.

At the conclusion of the general election of the President of the United States, the Clerk shall issue written instructions directing the Secretary of State for Maine to provide the Court with lists, in electronic format, from the Central Voter Registration System of all registered voters in the State of Maine, and from the Bureau of Motor Vehicles of all active licensed drivers and of all state identification card holders. The Clerk shall also require the Secretary to provide affidavits stating that the lists include all voters and eligible licensed drivers and state identification card holders registered in the State of Maine.

The selection of names from the merged source list for the master jury wheel shall be accomplished by a purely randomized process through a properly programmed electronic data processing system. The selection of names for the master jury wheel shall ensure that every county within each jury subset is substantially proportionally representative of the total number of names for every county within that jury subset in accordance with 28 U.S.C. § 1863(b)(3). The selection of names from the merged source list must also ensure that the mathematical odds of any single name being picked are substantially equal.

After determining the total number of names needed for the master wheel and the proportionate share of names to be drawn from each particular county serving the Court in Bangor and in Portland, the Clerk shall proceed to make the initial selection.

C. Method and Manner of Random Selection

The selection of names for the master jury wheel shall be accomplished by a purely randomized process through a properly programmed electronic data processing system. A properly programmed electronic data processing system for purely randomized selection shall also be used to select names from the

master jury wheel for the purpose of determining qualification for jury service, and from the qualified wheel for summoning persons to serve as grand or petit jurors. In each instance, the selection of names shall ensure that the mathematical odds of any single name being picked are substantially equal.

The Chief Judge has authorized the use of the Jury Management System (JMS), an electronic data processing system, to select names from the master jury wheel to fill the qualified wheel; to select names from the qualified wheel for persons to be summoned to serve as grand or petit jurors; and for the recording of names and other information on any papers and records needed by the Court to administer the selection and payment of jurors.

D. Qualified Jury Wheel

The Clerk shall maintain qualified jury wheels. The Clerk shall utilize JMS to randomly draw a sufficient number of names from the master jury wheel to maintain an adequate number of names in the qualified jury wheels to meet the needs of the Court for assignment to grand and petit jury panels in Bangor and Portland.

The number of names to be drawn from the master jury wheel shall be determined by the Clerk based upon the juror demands of the Court. However, unless ordered by the Court, that number shall not be less than 500 qualified persons for service at Bangor and 500 qualified persons for service in Portland.

The lists of names drawn shall not be exhibited to any person except as provided in the Act or in this Plan. Lists of names so drawn are generated by JMS and are maintained in the Clerk's Office.

The Clerk shall prepare, by means of JMS, and deliver to every person whose name is so drawn, a juror qualification questionnaire, accompanied by instructions to execute and return the questionnaire, duly signed and sworn to, using the Court's internet website or by mail within ten days. If the person is unable to fill out the questionnaire, another shall do it for that person, and shall indicate the reason for the needed assistance. In any case in which it appears that there is a materially significant omission, ambiguity, or error, the Clerk shall return the questionnaire with instructions to the person to make such additions or corrections as may be necessary and to return it to the Clerk within ten days.

The Court will send a replacement questionnaire to a prospective juror within the same zip code area for each undeliverable questionnaire, as well as those to which no response has been received even after the Clerk has sent a follow up questionnaire.

At the time of appearance for jury service, any person so appearing may be required to fill out another juror qualification form in the presence of the Clerk, at which time, in such cases as it appears warranted, the person may be questioned by the Clerk, but only with regard to the person's responses to questions contained on the form. Any information thus acquired shall be noted by the Clerk on the juror qualification form transmitted to the Court.

At the option of the Clerk, questionnaires may be mailed by the Clerk's Office or by a commercial mailing service, or they may be delivered to the United States Marshal for direct service upon the prospective jurors.

Prospective jurors who fail to complete the juror qualification questionnaire may be summoned to the Clerk's Office to complete the form. 28 U.S.C. § 1864(a). Under 28 U.S.C. § 1864(b) certain penalties may be imposed on persons who fail to complete and return the form without showing good cause, including a fine of not more than \$1,000, imprisonment of not more than three days, an order to perform community service, or any combination thereof.

E. Qualifications for Jury Service

In accordance with 28 U.S.C. § 1865(b), any person shall be deemed qualified to serve on grand and petit juries unless the person:

1. is not a citizen of the United States, is not eighteen years old, or has not resided for a period of one year within the judicial district;
2. is unable to read, write, and understand the English language with a degree of proficiency sufficient to satisfactorily complete the juror qualification form;
3. is unable to speak the English language;
4. is incapable by reason of mental or physical infirmity of rendering satisfactory jury service; or
5. has a charge pending against him or her, or has been convicted in a state or federal court of record, for the commission of a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored.

F. Selection and Summoning of Jury Pools

From time to time, the Clerk will draw at random from the qualified jury wheel or wheels, either manually or by use of JMS, such numbers of names of persons as may be required for assignment to grand or petit jury pools. Each person drawn for jury service will be issued a summons. Summonses will be served by first-class mail addressed to each potential juror at his/her usual residence. Any person summoned for jury service who fails to appear as directed may be ordered by the Court to appear forthwith and show cause for failure to comply

with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

G. Exemptions from Jury Service

In accordance with 28 U.S.C. § 1863(b)(6), the following occupational classes or groups of persons are barred from jury service on the ground that they are exempt. Accordingly, members of such classes or groups who are employed on a full-time basis shall be exempt from jury service:

1. members in active service in the Armed Forces of the United States;
2. members of fire or police departments of any state, district, territory, possession, or subdivision thereof; and
3. public officers of the United States, or state or local governments, who are actively engaged in the performance of official duties.

H. Determination of Qualifications, Exemptions and Excuses

The Court on its own initiative, or the Clerk under the supervision of the Court, shall determine solely on the basis of the information provided on the juror qualification questionnaires and other competent evidence, whether a person is unqualified for, exempt, or to be excused from jury service. Such determination shall be entered by the Clerk in the space provided on the juror qualification questionnaire or shall appear on the appropriate database listing. If a person did not appear in response to a summons, such a fact shall be noted by the Clerk. 28 U.S.C. § 1865(a).

In accordance with 28 U.S.C. § 1866(c)(1-5) and except as provided in this Plan, no person or class of persons shall be disqualified, excluded, excused, or exempt from jury service. However, any person summoned for jury service may be excluded by the Court:

1. upon a showing of undue hardship or extreme inconvenience;
2. on the grounds that such person may be unable to render impartial jury service or that the person's service as a juror would be likely to disrupt the proceedings;
3. upon peremptory challenge as provided by law;
4. pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or
5. upon determination by the Court that the person's service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberation. No person shall be excluded under this Clause unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be in-

consistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under this Clause shall not exceed one percent of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded pursuant to this Clause, together with detailed explanations for the exclusions, shall be forwarded immediately to the Judicial Council of the United States Court of Appeals for the First Circuit, which, pursuant to 28 U.S.C. § 1866(c)(5), has the power to make any appropriate order, prospective or retroactive, to redress any misapplication of this Clause. Any person excluded from a particular jury pursuant to Clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

I. Excuse from Jury Service Upon Individual Request

Pursuant to 28 U.S.C. § 1863(b)(5), the Court finds that jury service by members of the following occupational classes or groups of persons may entail undue hardship or extreme inconvenience, and the excuse from jury service of such members is in the public interest and consistent with the law. Accordingly, excusal from jury service of members of such classes or groups shall be granted by the Court or by the Clerk under the supervision of the Court, upon individual request therefore:

1. Permanently Excused

- a. all persons seventy-five years of age or older;
- b. all attorneys, physicians, surgeons, and dentists, actively so engaged;
- c. all persons who have served as grand or petit jurors in a state or federal court within the preceding two (2) years;
- d. volunteer safety personnel;
- e. all persons who have active care and custody of a child or children under ten years of age whose health and/or safety could be jeopardized by such person's absence for jury service; or if such person is essential to the care of aged or infirmed persons;
- f. all persons whose services are essential to the operation of a business, commercial, or agricultural enterprise, such that the business could not function in their absence;
- g. all persons showing good cause that service as a juror would likely cause undue financial hardship; or
- h. all persons showing good cause that service as a juror is not possible due to mental or physical infirmity.

2. Temporarily Excused

The Court or the Clerk under the supervision of the Court, upon individual request, may temporarily excuse from jury service, for such period as the Court deems necessary, any individual who demonstrates that jury service would present an undue hardship or extreme inconvenience or for any other cause deemed appropriate consistent with 28 U.S.C. § 1866(c).

Unless otherwise directed by the Court, the Clerk shall return to the qualified wheel the name of any temporarily excused person.

J. Frequency of Service

The Jury Act provides that, in any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case; or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror. 28 U.S.C. § 1866(e).

VI. Review of Jury Plan

This Plan will be reviewed periodically or, at a minimum, each time the master wheel is emptied and refilled. The review will be done to ensure that it complies with all legislation and Judicial Conference rules and regulations, that it encompasses the most effective procedures and that it reflects the policy of this Court.

Documentation of the review of this Plan will be retained for four (4) years after the jury wheel is emptied and refilled.

VII. Maintenance, Inspection and Disclosure of Juror Records

Except when the Court orders a longer retention period, all jury records and papers may be disposed of four years after the master jury wheel has been refilled and all persons selected have completed jury service in accordance with 28 U.S.C. § 1868. These records are not to be transferred to the Federal Records Center.

1. The names and personal information concerning petit and grand jurors shall not be disclosed to attorneys, parties, the public or the media, except as provided herein.
2. Not less than three business days prior to impanelment of a petit jury, the parties, their lawyers, and any person employed by or working with those lawyers, shall ordinarily have access to the list of those jurors summoned to appear and to any supplemental juror questionnaires

issued by the Court for that purpose. The information made available to these individuals shall not be shared except as necessary for jury selection. If the interests of justice so require, the Court may order that the names of jurors remain confidential. Upon request, the list of all jurors who have been excused for the impanelment shall also be made available to these individuals.

3. After a petit jury has been discharged at the conclusion of any trial, the names and addresses of the jurors may be released to the public only upon leave of the Court.
4. The contents of records or papers used by the Clerk in the process of filling the master jury wheel shall not be disclosed, except pursuant to a motion under 28 U.S.C. § 1867 challenging the Court's compliance with selection procedures, pursuant to this Plan or upon order of the Court.

So ORDERED.

For the Court:

/s/ Jon D. Levy
Chief U.S. District Judge

Dated at Portland, Maine, this 17th day of June, 2021

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

Entered: July 12, 2021

The First Circuit Judicial Council has voted to approve the United States District Court for the District of Maine's revised Plan for the Random Selection of Grand and Petit Jurors for Service in the District of Maine, as amended June 17, 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Goldberg', with a long horizontal line extending to the right.

Susan J. Goldberg
Circuit Executive