

## O.C.G.A. § 15-12-1.1

Current through the 2020 Regular Session of the General Assembly

### **GA - Official Code of Georgia Annotated > TITLE 15. COURTS > CHAPTER 12. JURIES > ARTICLE 1. GENERAL PROVISIONS**

#### **§ 15-12-1.1. Exemptions from jury duty**

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(a)

(1) Any person who shows that he or she will be engaged during his or her term of jury duty as a trial or grand juror in work necessary to the public health, safety, or good order or who shows other good cause why he or she should be exempt from jury duty may have his or her jury service deferred or excused by the judge of the court to which he or she has been summoned or by some other person who has been duly appointed by order of the chief judge to excuse jurors. Such a person may exercise such authority only after the establishment by court order of guidelines governing excuses. Any order of appointment shall provide that, except for permanently mentally or physically disabled persons, all excuses shall be deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in the court order. It shall be the duty of the court to provide affidavits for the purpose of requesting a deferral of or excusal from jury service pursuant to this subsection.

(2) Notwithstanding paragraph (1) of this subsection, any person who is a full-time student at a college, university, vocational school, or other postsecondary school who, during the period of time the student is enrolled and taking classes or exams, requests to be excused or deferred from jury duty shall be excused or deferred from jury duty.

(3) Notwithstanding paragraph (1) of this subsection, any person who is the primary caregiver having active care and custody of a child six years of age or younger, who executes an affidavit on a form provided by the court stating that such person is the primary caregiver having active care and custody of a child six years of age or younger and stating that such person has no reasonably available alternative child care, and who requests to be excused or deferred shall be excused or deferred from jury duty.

(4) Notwithstanding paragraph (1) of this subsection, any person who is a primary teacher in a home study program as defined in subsection (c) of [Code Section 20-2-690](#) who, during the period of time the person is teaching, requests to be excused or deferred from jury duty and executes an affidavit on a form provided by the court stating that such person is the primary teacher in a home study program and stating that such person has no reasonably available alternative for the child or children in the home study program shall be excused or deferred from jury duty.

(5) Notwithstanding paragraph (1) of this subsection, any person who is the primary unpaid caregiver for a person over the age of six; who executes an affidavit on a form provided by the court stating that such primary caregiver is responsible for the care of a person with such physical or cognitive limitations that he or she is unable to care for himself or herself and cannot be left unattended and that the primary caregiver has no reasonably available alternative to provide for the care; and who requests to be excused or deferred shall be excused or deferred from jury duty. Any person seeking the exemption shall furnish to the court, in addition to the aforementioned affidavit, a statement of a physician, or other medical provider, supporting the affidavit's statements related to the medical condition of the person with physical or cognitive limitations.

(b) Any person who is 70 years of age or older shall be entitled to request that the clerk excuse such person from jury service in the county. Upon such request, the clerk shall inactivate such person. The request for

## O.C.G.A. § 15-12-1.1

excusal shall be made to the clerk in writing and shall be accompanied by an affidavit providing the person's name, age, and such other information as the clerk may require. The clerk shall make available affidavit forms for the purposes of this subsection.

(c)(1) As used in this subsection, the term:

**(A)**"Ordered military duty" means any military duty performed in the service of the state or of the United States, including, but not limited to, attendance at any service school or schools conducted by the armed forces of the United States which requires a service member to be at least 50 miles from his or her home.

**(B)**"Service member" means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who was on ordered federal duty for a period of 90 days or longer.

**(2)**Any service member on ordered military duty or the spouse of any such service member who requests to be excused or deferred shall be excused or deferred from jury duty upon presentation of a copy of a valid military identification card and execution of an affidavit in the form required by the court for deferral or excusal under this paragraph.

(d)The court shall notify the clerk of its excuse or deferment of a person's jury service.

## History

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Laws 1843, Cobb's 1851 Digest, p. 1074; Code 1863, § 3845; Code 1868, § 3865; Ga. L. 1871-72, p. 29, §§ 1-3; Ga. L. 1872, p. 33, § 1; Ga. L. 1873, p. 31, § 1; Code 1873, § 3939; Ga. L. 1874, p. 46, § 1; Ga. L. 1874, p. 91, § 4; Ga. L. 1875, p. 96, § 1; Ga. L. 1875, p. 98, § 1; Ga. L. 1876, p. 16, § 1; Ga. L. 1878-79, p. 171, § 1; Ga. L. 1880-81, p. 112, § 1; Ga. L. 1880-81, p. 114, § 1; Code 1882, § 3939; Ga. L. 1884-85, p. 74, § 12; Ga. L. 1884-85, p. 94, § 1; Ga. L. 1884-85, p. 102, § 1; Ga. L. 1890-91, p. 219, § 1; Penal Code 1895, § 867; Ga. L. 1899, p. 69, § 1; Ga. L. 1905, p. 105, § 1; Penal Code 1910, § 871; Code 1933, § 59-112; Ga. L. 1953, Nov.-Dec. Sess., p. 284, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 328, § 1; Ga. L. 1967, p. 725, §§ 1, 2; Ga. L. 1975, p. 779, § 1; Ga. L. 1978, p. 221, §§ 1, 2; Ga. L. 1978, p. 1379, § 1; Ga. L. 1984, p. 1697, § 1; Ga. L. 1985, p. 512, § 1; Ga. L. 2000, p. 1682, § 1; [Ga. L. 2005, p. 213](#), § 1/SB 258; [Ga. L. 2006, p. 124](#), § 1/HB 376; [Ga. L. 2007, p. 47](#), § 15/SB 103; [Ga. L. 2008, p. 343](#), § 1/HB 188; Code 1981, [§ 15-12-1.1](#), as redesignated by [Ga. L. 2011, p. 59](#), § 1-5/HB 415; [Ga. L. 2014, p. 451](#), § 4/HB 776; [Ga. L. 2014, p. 862](#), § 2/HB 1078.

Annotations

## Notes

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### THE 2014 AMENDMENTS. --

The first 2014 amendment, effective July 1, 2014, in subsection (b), substituted "clerk" for "board of jury commissioners" in the second sentence, in the third sentence, deleted "board or" preceding "clerk in writing" and substituted "clerk may" for "board may" near the end, and substituted "clerk" for "board of jury commissioners of each county" in the last sentence. The second 2014 amendment, effective April 29, 2014, inserted "as a trial or grand juror" in the first sentence of paragraph (a)(1).

HISTORY OF SECTION. --The language of this Code section was derived in part from the decision in [Stater v. State, 141 Ga. 82, 80 S.E. 850 \(1913\)](#).

**EDITOR'S NOTES. --**

This Code section formerly pertained to exemptions from jury duty in counties which have established a plan for electronic or mechanical selection of jurors. The former Code section was based on Code 1933, § 59-112.1, enacted by Ga. L. 1981, p. 652, § 1, and was repealed by Ga. L. 1984, p. 1167, § 2, effective April 7, 1984.

[Ga. L. 2011, p. 59](#), § 1-1/HB 415, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Jury Composition Reform Act of 2011.'"

**EDITOR'S NOTES. --**

In light of the similarity of the statutory provisions, annotations taken from Attorney General opinions rendered prior to the 1984 and 2011 amendments, which rewrote this Code section, are included in the annotations for this Code section.

## Case Notes

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GENERAL CONSIDERATION  
POLICE OFFICERS  
OTHER  
EVIDENCE

**JUDICIAL DECISIONS**

ANALYSIS

**GENERAL CONSIDERATION**

EDITOR'S NOTES. --In light of the similarity of the statutory provisions, annotations taken from cases decided prior to the 1984, 2011, and 2014 amendments, which rewrote this Code section, are included in the annotations for this Code section.

O. C.G.A. [§ 15-12-1](#) CONSTITUTIONAL. --This section does not violate [U.S. Const., amend. 14](#). [Rawlins v. Georgia, 201 U.S. 638, 26 S. Ct. 560, 50 L. Ed. 899 \(1906\)](#).

There is nothing in [U.S. Const., amend. 14](#) which prevents a state from excluding and exempting from jury duty certain classes on the bona fide ground that it is for the good of the community that their regular work should not be interrupted; provided, the exclusion is not the result of race or class prejudice. [Allen v. State, 110 Ga. App. 56, 137 S.E.2d 711 \(1964\)](#).

This section is not unconstitutional or violative of [U.S. Const., amends. 5, 6](#), and [14](#) as not drawing juries from the community at large by excluding therefrom arbitrarily and without reason certain classes of citizens of high intelligence and mentality, certain classes of persons such as police and law enforcement officers, court personnel and lawyers, municipal firefighters, medical and dental personnel and pharmacists in the active practice of their profession, and persons over 65 years of age. [Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 \(1969\)](#).

This section, authorizing the trial judge to excuse a juror who is a housewife with children 14 years of age or under, does not violate [U.S. Const., amends. 6](#) and [14](#), for a state may have an important interest in assuring that

## O.C.G.A. § 15-12-1.1

those members of the family responsible for the care of children are available to do so. [Willis v. State, 243 Ga. 185, 253 S.E.2d 70](#), cert. denied, 444 U.S. 885, 100 S. Ct. 178, 62 L. Ed. 2d 116 (1979).

States are free to grant exemptions from jury service to individuals in case of special hardship or incapacity and to those engaged in particular occupations, the uninterrupted performance of which is critical to the community's welfare. [Franklin v. State, 245 Ga. 141, 263 S.E.2d 666](#), cert. denied, 447 U.S. 930, 100 S. Ct. 3029, 65 L. Ed. 2d 1124 (1980).

SUPERIOR COURTS CAN MAINTAIN THEIR OWN RULES. --[Ga. Unif. Super. Ct. R. 1.2](#) provided that the repeal of the local rules notwithstanding, each superior court could retain or adopt without specific Supreme Court approval an order establishing guidelines governing excuses from jury duty pursuant to [O.C.G.A. § 15-12-1](#). Therefore, a court administrator could excuse jurors from grand jury service in accordance with county guidelines and did not err in accepting excuses without affidavits. [Humphreys v. State, 287 Ga. 63, 694 S.E.2d 316](#), cert. denied, 131 S. Ct. 599, 178 L. Ed. 2d 438 (2010), overruled in part by [Willis v. State, 304 Ga. 686, 820 S.E.2d 640 \(2018\)](#).

CHALLENGE TO ARRAY AS UNREPRESENTATIVE NOT VALID. --Challenge to the array on the basis that this section exempts numerous persons from jury duty and thereby deprives a defendant of a jury representing a cross-section of the community and the impartiality to which the defendant is entitled under [U.S. Const., amends. 6 and 14](#) is not valid. [Morris v. State, 228 Ga. 39, 184 S.E.2d 82 \(1971\)](#), cert. denied and appeal dismissed, 405 U.S. 1050, 92 S. Ct. 1511, 31 L. Ed. 2d 786 (1972).

JURY STATUTES DEEMED DIRECTORY. --Statutes regulating the selection, drawing, and summoning of jurors are intended to distribute jury duties among the citizens of the county, provide for rotation in jury service, and are merely directory. [Hampton v. State, 158 Ga. App. 324, 280 S.E.2d 158 \(1981\)](#).

Statutes regulating the selection, drawing, and summoning of jurors are intended to distribute jury duties among the citizens of the county, provide for rotation in jury service, and are merely directory; these statutes are not intended to provide parties with an impartial jury. [Bailey v. State, 209 Ga. App. 390, 433 S.E.2d 610 \(1993\)](#), overruled on other grounds, [Walker v. State, 290 Ga. 696, 723 S.E.2d 894 \(2012\)](#).

SECTION IS FOR BENEFIT OF THOSE IN CLASSES MENTIONED and allows them to express a willingness to serve. [Smith v. State, 225 Ga. 328, 168 S.E.2d 587 \(1969\)](#), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

CODE SECTION DOES NOT DISQUALIFY CLASSES THERE MENTIONED, but merely grants the classes the privilege of being left out of the jury box unless the classes signify a willingness to serve. [Smith v. State, 225 Ga. 328, 168 S.E.2d 587 \(1969\)](#), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

PERSONS EXEMPTED UNDER THIS CODE SECTION ARE NOT INELIGIBLE TO SERVE AS JURORS and litigants must accept them as jurors if they decide to serve, unless they are excused or rejected on one or more of the grounds provided by law. [Smith v. State, 225 Ga. 328, 168 S.E.2d 587 \(1969\)](#), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

[EXEMPTIONS ESTABLISHED BY THIS SECTION ARE NOT ABSOLUTE, BUT ARE PERSONAL PRIVILEGES. Arkwright v. Smith, 224 Ga. 764, 164 S.E.2d 796 \(1968\).](#)

Exemptions contained in this section are not absolute or required exemptions; and any person included in an exempt class may request that the exemption be made inapplicable to that person. [Webb v. Board of Tax Assessors, 235 Ga. 790, 221 S.E.2d 810 \(1976\)](#).

EXEMPTIONS TO BE CAREFULLY SCRUTINIZED. --Low priority should be given all classes of persons exempted from jury duty by this section. Exemption should be carefully scrutinized and not recognized when

## O.C.G.A. § 15-12-1.1

solicited. [Simmons v. Jones, 317 F. Supp. 397 \(S.D. Ga. 1970\)](#), rev'd on other grounds, [478 F.2d 321 \(5th Cir. 1973\)](#).

EXEMPTIONS DO NOT MEAN JURIES NOT REPRESENTATIVE. --Mere automatic exemption of certain citizens who have the right to serve if they desire does not result in the jury lists chosen not being representative because chosen from a restricted group of citizens. [Robinson v. State, 225 Ga. 167, 167 S.E.2d 158 \(1969\)](#).

[TRIAL COURT MUST EXERCISE DISCRETION IN EXCUSING WOMEN WITH CHILDREN FROM JURY DUTY. Barrow v. State, 239 Ga. 162, 236 S.E.2d 257 \(1977\)](#).

GENERAL POLICY OF EXCUSING VENIREMEN UPON REQUEST. --When no violation of [O.C.G.A. § 15-12-1](#) is shown and when the jury panels which were put upon the accused contained substantially more veniremen than required by [O.C.G.A. § 15-12-160](#), there was no denial of a fair trial despite the trial court's general policy of excusing veniremen upon request. [Hall v. State, 254 Ga. 272, 328 S.E.2d 719 \(1985\)](#).

Ruling by a different judge presiding over a separate proceeding that related to the ability of potential jurors to serve did not constitute an error by the trial court in allowing, prior to the selection of the jury array, an unknown number of potential jurors to be excused from service without defendant's participation. [Pruitt v. State, 279 Ga. 140, 611 S.E.2d 47](#), cert. denied, [546 U.S. 866, 126 S. Ct. 165, 163 L. Ed. 2d 152 \(2005\)](#).

AUTHORITY OF COURT CLERK TO EXCUSE JURORS. --Trial court properly denied the defendant's motion to start the trial with a new panel of jurors based on the defendant's contention that the trial court clerk lacked authority to excuse jurors from duty and that the clerk excused jurors for reasons not recognized as valid under [O.C.G.A. § 15-12-1](#) as the court clerk had the authority to excuse or defer jurors pursuant to a standing order of the trial court and there was absolutely no evidence that the excusals or deferrals were allowed in such a manner as to alter, deliberately or inadvertently, the representative nature of the jury lists. Further, the defendant had no vested interest in having any particular juror serve; defendant was only entitled to a legal and impartial jury. [English v. State, 290 Ga. App. 378, 659 S.E.2d 783 \(2008\)](#).

WAIVER OF RIGHT TO OBJECT TO RECUSAL ON APPEAL. --By failing to object to excusals of prospective jurors for hardship, a defendant waived the right to complain of the excusals on appeal. [Walker v. State, 282 Ga. 774, 653 S.E.2d 439 \(2007\)](#), cert. denied, [129 S. Ct. 481, 172 L.Ed.2d 344 \(2008\)](#), overruled on other grounds, [No. S10P1859, 2011 Ga. LEXIS 267 \(Ga. 2011\)](#).

EXCUSALS HELD PROPER. --Habeas court erred in granting the petitioner a writ of habeas corpus on the claim that appellate counsel had rendered ineffective assistance because the petitioner failed to show how the outcome of the appeal could have been different if the transcript of the hearing on the motion to dismiss the jury panel had been available for the court of appeals to consider; the trial court did not err in denying the motion to dismiss because neither the transcript or any other evidence showed that the jury excusals or deferrals were allowed in such a manner as to alter, deliberately or inadvertently, the representative nature of the jury lists. [Walker v. Hagins, 290 Ga. 512, 722 S.E.2d 725 \(2012\)](#).

Defendant's challenge to the county's jury selection method failed because, contrary to the defendant's claim, there was no requirement that the county make additional efforts when a summons is returned as undeliverable and all of the county's temporary's inactivations of jurors were based on allowable exemptions. [Cooper v. State, 352 Ga. App. 783, 835 S.E.2d 724 \(2019\)](#).

CITED in [Smith v. State, 11 Ga. 89, 74 S.E. 711 \(1912\)](#); [Baskin v. State, 43 Ga. App. 760, 160 S.E. 539 \(1931\)](#); [Watkins v. State, 199 Ga. 81, 33 S.E.2d 325 \(1945\)](#); [Reece v. State, 208 Ga. 165, 66 S.E.2d 133 \(1951\)](#); [Cash v. State, 224 Ga. 798, 164 S.E.2d 558 \(1968\)](#); [Simmons v. Jones, 478 F.2d 321 \(5th Cir. 1973\)](#); [Houser v. State, 234 Ga. 209, 214 S.E.2d 893 \(1975\)](#); [Carney v. State, 134 Ga. App. 816, 216 S.E.2d 617 \(1975\)](#); [Jones v. State, 137 Ga. App. 612, 224 S.E.2d 473 \(1976\)](#); [Gibson v. State, 236 Ga. 874, 226 S.E.2d 63 \(1976\)](#); [Robinson v. Kimbrough, 540 F.2d 1264 \(5th Cir. 1976\)](#); [Robinson v. Kimbrough, 558 F.2d 773 \(5th Cir. 1977\)](#); [Cochran v. State,](#)

## O.C.G.A. § 15-12-1.1

[151 Ga. App. 478, 260 S.E.2d 391 \(1979\)](#); [Robinson v. Kimbrough, 620 F.2d 468 \(5th Cir. 1980\)](#); [Allen v. State, 158 Ga. App. 691, 282 S.E.2d 126 \(1981\)](#); [Robinson v. Kimbrough, 652 F.2d 458 \(5th Cir. 1981\)](#); [West v. State, 252 Ga. 156, 313 S.E.2d 67 \(1984\)](#); [Graham v. State, 171 Ga. App. 242, 319 S.E.2d 484 \(1984\)](#); [Ingram v. State, 253 Ga. 622, 323 S.E.2d 801 \(1984\)](#); [Walker v. State, 254 Ga. 149, 327 S.E.2d 475 \(1985\)](#); [Pelligrini v. State, 174 Ga. App. 84, 329 S.E.2d 186 \(1985\)](#); [Riley v. State, 174 Ga. App. 607, 330 S.E.2d 808 \(1985\)](#); [Melton v. State, 175 Ga. App. 472, 333 S.E.2d 682 \(1985\)](#); [Lumpkin v. State, 255 Ga. 363, 338 S.E.2d 431 \(1986\)](#); [Cargill v. State, 255 Ga. 616, 340 S.E.2d 891 \(1986\)](#); [Skipper v. State, 257 Ga. 802, 364 S.E.2d 835 \(1988\)](#); [Blankenship v. State, 258 Ga. 43, 365 S.E.2d 265 \(1988\)](#); [Haugen v. Henry County, 277 Ga. 743, 594 S.E.2d 324](#); [Harper v. State, 283 Ga. 102, 657 S.E.2d 213 \(2008\)](#).

**POLICE OFFICERS**

CHALLENGE TO POLICE OFFICER MUST BE GRANTED. --If police officers eligible for jury duty are challenged for cause in a criminal case, such a request must be granted. [Hutcheson v. State, 246 Ga. 13, 268 S.E.2d 643 \(1980\)](#).

O. C.G.A. [§ 15-12-1](#), as amended in 1984, removes the previously existing exemption of police officers from being called for jury duty, but, if a police officer is challenged for cause in a criminal case, the challenge must be granted and the officer will not be seated as a juror in that proceeding. [King v. State, 173 Ga. App. 838, 328 S.E.2d 740 \(1985\)](#).

PART-TIME CITY POLICE OFFICER AND HONORARY DEPUTY SHERIFF IS EXEMPT FROM JURY SERVICE, but not disqualified. [Corvair Furn. Mfg. Co. v. Bull, 125 Ga. App. 141, 186 S.E.2d 559 \(1971\)](#).

**OTHER**

DELEGATION OF POWER TO EXCUSE JURORS. --If the clerk delegated the duty of handling excusals to the court administrator and the chief deputy clerk, the court administrator (who excused some veniremen) did not have such power since the administrator was not authorized expressly by the chief judge to excuse jurors, but there was no such disregard of the essential and substantial provisions of [O.C.G.A. § 15-12-1](#) as would vitiate the arrays. [Hendrick v. State, 257 Ga. 17, 354 S.E.2d 433 \(1987\)](#).

PHYSICAL DISABILITY. --Under [O.C.G.A. § 15-12-1\(a\)\(1\)](#), a person may be excused from jury service if he or she shows good cause, which may include physical disability. [Sallie v. State, 276 Ga. 506, 578 S.E.2d 444](#), cert. denied, [540 U.S. 902, 124 S. Ct. 251, 157 L. Ed. 2d 185 \(2003\)](#).

Trial court did not err in excusing for hardship a potential juror on the bases that the potential juror was taking morphine twice daily because of back surgery that would also require the potential juror to stand up from time to time, had been diagnosed with manic depression and was on medication for that condition, and would not be able to concentrate on one thing for long periods of time. [Stokes v. State, 281 Ga. 875, 644 S.E.2d 116 \(2007\)](#).

DEFENDANT CANNOT COMPLAIN OF UNDER-REPRESENTATION OF OLDER CITIZENS, as age is not a recognized class for the purposes of grand and traverse jury representation. [Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 \(1979\)](#).

OLDER PERSONS MUST REQUEST JURY SERVICE. --It is not permissible to place persons who are 65 years of age or older in jury boxes unless those persons shall make request therefor in writing to the jury commissioners of the county of their residence. [Cobb v. State, 244 Ga. 344, 260 S.E.2d 60 \(1979\)](#).

FAILURE TO INCLUDE NAME NONSUBSTANTIAL ERROR. --There was not such a disregard of the essential and substantial provisions of [O.C.G.A. § 15-12-1](#) as would vitiate the jury arrays, although the names of two

## O.C.G.A. § 15-12-1.1

persons over 65 who requested that their names be included on the jury list were not placed in the jury box. [Quinn v. State, 171 Ga. App. 590, 320 S.E.2d 827 \(1984\)](#).

OLDER PERSONS NOT DISQUALIFIED. --Fact that a jury box contains names of persons 65 years or older who have not requested in writing to serve on a jury is not grounds for the defendant to object since this fact alone does not work the disqualification of a juror. [Smith v. State, 225 Ga. 328, 168 S.E.2d 587 \(1969\)](#), cert. denied, 396 U.S. 1045, 90 S. Ct. 695, 24 L. Ed. 2d 689 (1970).

COLLEGE STUDENTS. --While a blanket, indiscriminate excusal of registered college students is incompatible with Georgia law and with the need to draw juries from a fair cross-section of the community, a trial court has the discretion to excuse a student from jury duty based on a determination that service would impose a special and undue hardship on the individual student. [Thornton v. State, 264 Ga. 563, 449 S.E.2d 98 \(1994\)](#); [Holsey v. State, 271 Ga. 856, 524 S.E.2d 473 \(1999\)](#), cert. denied, 530 U.S. 1246, 120 S. Ct. 2695, 147 L. Ed. 2d 966 (2000).

STUDENTS FROM SCHOOLS OUTSIDE COUNTY. --Pre-trial excusal for "other good cause" of prospective jurors who were college students enrolled in schools outside the county was proper. [Hall v. State, 261 Ga. 778, 415 S.E.2d 158 \(1991\)](#), cert. denied, 505 U.S. 1205, 112 S. Ct. 2993, 120 L. Ed. 2d 870 (1992).

DEATH PENALTY. --Juror's age and responsibilities as organizer of a one-time reunion event were good cause for excuse under [O.C.G.A. § 15-12-1](#); because these factors constituted good cause, the juror's opposition to the death penalty was irrelevant and the defendant could not challenge the juror's dismissal on such grounds. [McClain v. State, 267 Ga. 378, 477 S.E.2d 814 \(1996\)](#), cert. denied, 521 U.S. 1106, 118 S. Ct. 2485, 138 L. Ed. 2d 993 (1997).

Trial court's failure to investigate proffered medical excuses of those seeking to be excused from jury service in a death penalty case was an abuse of discretion and was an error affecting the jury array composition; thus, a new trial was required. [Yates v. State, 274 Ga. 312, 553 S.E.2d 563 \(2001\)](#).

Clerk's excusal of jurors from a death penalty case without a written order authorizing this action was an abuse of the trial court's discretion. [Yates v. State, 274 Ga. 312, 553 S.E.2d 563 \(2001\)](#).

Argument by a defendant in a death penalty case claimed that the amount paid to jurors was insufficient to enable wage earners and people with small children to serve on the jury failed; defendant did not object to the excusal of any particular prospective juror for hardship reasons pursuant to [O.C.G.A. § 15-12-1\(a\)](#), and the decision to excuse a potential juror for hardship reasons was left to the sound discretion of the trial court. [Lewis v. State, 279 Ga. 756, 620 S.E.2d 778 \(2005\)](#), cert. denied, 547 U.S. 1116, 126 S. Ct. 1917, 164 L. Ed. 2d 671 (2006).

EXCUSALS BEFORE VOIR DIRE HELD PROPER. --Trial court properly excused two prospective jurors before voir dire under [O.C.G.A. § 15-12-1](#) when one juror was a college student who was in the process of taking final exams and the other juror told the trial judge that the judge had recently sentenced a relation of the juror's to 50 years in prison and that the juror would not be able to be fair to anyone involved in the case. [Jackson v. State, 288 Ga. App. 339, 654 S.E.2d 137 \(2007\)](#), cert. denied, [2008 Ga. LEXIS 332 \(Ga. 2008\)](#).

## EVIDENCE

BURDEN IS UPON DEFENDANT CHALLENGING ARRAY OF JURY TO ESTABLISH PRIMA FACIE CASE that there has been systematic exclusion of a distinct class of citizens. [Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 \(1976\)](#).

IN ORDER TO SHOW SYSTEMATIC EXCLUSION OF A DISTINCT CLASS OF CITIZENS, the defendant must demonstrate sufficiently to establish a prima facie case that: (1) the sources from which the jury list was drawn are tainted in that they provide the opportunity for discrimination; and (2) that use of these sources resulted in a substantial disparity between the percentages of the separate class on the jury list and in the population as a whole.

Implicit in these requirements is that the defendant has the burden of showing that the group the defendant seeks to prove has been systematically excluded constitutes a distinct and separate class of citizens. [Orkin v. State, 236 Ga. 176, 223 S.E.2d 61 \(1976\)](#).

EVIDENCE INSUFFICIENT TO SHOW PURPOSEFUL EXCLUSION. --Evidence which merely shows the number of women in a county as compared to the total population, and which does not show the number with children under 14 years of age or the number who requested in writing that they not be included in the list of jurors permitted by this section, is not sufficient to show a purposeful exclusion of women from the jury. [McHan v. State, 232 Ga. 470, 207 S.E.2d 457 \(1974\)](#).

SHERIFF'S EXCUSAL OF JURORS VIOLATES DEFENDANT'S RIGHTS. --Excusal of five prospective jurors by the sheriff, as the chief law enforcement officer in the county and as a direct participant in the trial, was a violation of the integrity of the jury selection process, and constitutes an alteration of the array of traverse jurors to such extent as to deprive the defendant of the defendant's proportional share of peremptory strikes. [Joyner v. State, 251 Ga. 84, 303 S.E.2d 106 \(1983\)](#).

## Research References & Practice Aids

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### CROSS REFERENCES. --

Discrimination against employee for attending a judicial proceeding in response to a court order or process, [§ 34-1-3](#). Exemption from jury duty for officers and enlisted personnel of organized militia, [§ 38-2-276](#). Authority of probate courts to enact local rules, [Uniform Rules for the Probate Courts, Rule 1.2](#).

### LAW REVIEWS. --

For article surveying developments in Georgia criminal law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 95 (1981).

### OPINIONS OF THE ATTORNEY GENERAL

FORMER CODE 1933, § 86-701 (SEE NOW [O.C.G.A. § 38-2-276](#)) WAS IN CONFLICT WITH FORMER CODE 1933, § 59-112 (SEE NOW [O.C.G.A. § 15-12-1](#)) AND WAS THEREFORE REPEALED insofar as the statute purported to grant specific exemptions from jury duty to members of the organized militia. 1967 Op. Att'y Gen. No. 67-296.

OLDER PERSONS AUTOMATICALLY EXEMPTED. --This section, in dealing with performance of jury duty by persons 65 years of age or older, does not remove an automatic exemption from jury duty for such persons. 1978 Op. Att'y Gen. No. U78-27.

MEMBERS OF COUNTY BOARD OF EDUCATION ARE ELIGIBLE FOR SERVICE ON TRAVERSE JURY in civil and criminal matters. 1960-61 Op. Att'y Gen. p. 150.

FEDERAL EMPLOYEES ARE NOT EXEMPT FROM JURY DUTY. 1954-56 Op. Att'y Gen. p. 85.

TEACHER'S SALARY MAY BE PRECLUDED. --State Board of Education and local boards of education may promulgate regulations to preclude the payment of a teacher's regular salary for a period of time spent on jury duty. 1974 Op. Att'y Gen. No. 74-52.

## O.C.G.A. § 15-12-1.1

[O.C.G.A. § 15-12-1\(A\)](#) GIVES BROAD DISCRETION TO A TRIAL JUDGE TO EXCUSE PROSPECTIVE JURORS when the court finds that, during the term of court, the juror will be engaged in work necessary to the public health, safety, or good order, or who shows other good cause, which authority may be delegated to some other person appointed by the order of the chief judge after the establishment by court order of guidelines governing excuses. 1986 Op. Att'y Gen. No. U86-4.

DEFERRAL OF JURORS. --Except for permanently disabled persons, all other prospective jurors who meet the minimum legal requirement for excusal shall be deferred to a date and time certain within that term or the next succeeding term or shall be deferred as set forth in the order. 1986 Op. Att'y Gen. No. U86-4.

**AM. JUR. 2D. --**

47 Am. Jur. 2d, Jury, § 157 et seq.

**C.J.S. --**

50A C.J.S., Juries, §§ 302 et seq., 385.

**ALR. --**

Exclusion of attorneys from jury list in criminal cases, [32 A.L.R.2d 890](#).

Religious belief as ground for exemption or excuse from jury service, [2 A.L.R.3d 1392](#).

Law enforcement officers as qualified jurors in criminal cases, [72 A.L.R.3d 895](#).

Former law enforcement officers as qualified jurors in criminal cases, [72 A.L.R.3d 958](#).

Excusing, on account of public, charitable, or educational employment, one qualified and not specifically exempted as juror in state criminal case as ground of complaint by accused, [99 A.L.R.3d 1261](#).

Jury: visual impairment as disqualification, [48 A.L.R.4th 1154](#).

Jury: who is lawyer or attorney disqualified or exempt from service, or subject to challenge for cause, [57 A.L.R.4th 1260](#).

**Hierarchy Notes:**

[Title Note](#)

**Hierarchy Notes:**

[Chapter Note](#)

**Hierarchy Notes:**

[Article Note](#)

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