

Task Force on Removing Barriers to Jury Service Relevant Portions of Oregon Revised Statutes Chapter 136

[Oregon Revised Statutes Chapter 136 \(opens link to external website\)](#)

136.001 Right to jury trial; waiver.

- (1) The defendant and the state in all criminal prosecutions have the right to public trial by an impartial jury.
- (2) Both the defendant and the state may elect to waive trial by jury and consent to a trial by the judge of the court alone, provided that the election of the defendant is in writing and with the consent of the trial judge.

136.005 Challenge to jury panel.

- (1) The district attorney or the defendant in a criminal action may challenge the jury panel on the ground that there has been a material departure from the requirements of the law governing selection of jurors by filing a motion with the court supported by an affidavit alleging facts that, if true, constitute a material departure from the requirements of the law governing the selection of jurors. The party making the motion shall serve the motion and supporting affidavit on the other party, the trial court administrator and the State Court Administrator.
- (2) A challenge to the panel shall be made before the voir dire examination of the jury.
- (3) If the court determines that there has been a material departure from the requirements of the law governing selection of jurors, the court shall:
 - (a) Stay the proceedings pending the selection of a jury panel in conformity with the applicable provisions of law; and
 - (b) Grant such other relief as may be appropriate.
- (4) The procedures prescribed by this section are the exclusive means by which a district attorney or defendant may challenge a jury panel.

136.030 How issues are tried. An issue of law shall be tried by the judge of the court and an issue of fact by a jury of the county in which the action is triable.

136.210 Jury number; examination.

- (1) Except as provided in subsection (2) of this section, in criminal cases the trial jury shall consist of 12 persons unless the parties consent to a less number. It shall be formed, except as otherwise provided in ORS 136.220 to 136.250, in the same manner provided by ORCP 57 B, D(1)(a), D(1)(b), D(1)(g) and E. When the full number of jurors has been called, they shall thereupon be examined as to their qualifications, first by the court, then by the defendant and then by the state. After they have been passed for cause, peremptory challenges, if any, shall be exercised as provided in ORS 136.230.
- (2) In criminal cases in the circuit courts in which the only charges to be tried are misdemeanors, the trial jury shall consist of six persons.

136.220 Challenge for implied bias. A challenge for implied bias shall be allowed for any of the following causes and for no other:

- (1) Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged in the accusatory instrument, to the complainant or to the defendant.
- (2) Standing in the relation of guardian and ward, attorney and client, physician and patient, naturopathic physician and patient, physician associate and patient, nurse practitioner and patient, master and servant, debtor and creditor, principal and agent or landlord and tenant with the:
 - (a) Defendant;
 - (b) Person alleged to be injured by the offense charged in the accusatory instrument; or
 - (c) Complainant.
- (3) Being a member of the family, a partner in business with or in the employment of any person referred to in subsection (2)(a), (b) or (c) of this section or a surety in the action or otherwise for the defendant.
- (4) Having served on the grand jury which found the indictment or on a jury of inquest which inquired into the death of a person whose death is the subject of the indictment or information.
- (5) Having been one of a jury formerly sworn in the same action, and whose verdict was set aside or which was discharged without a verdict after the cause was submitted to it.
- (6) Having served as a juror in a civil action, suit or proceeding brought against the defendant for substantially the same act charged as an offense.
- (7) Having served as a juror in a criminal action upon substantially the same facts, transaction or criminal episode.

136.230 Peremptory challenges.

- (1) If the trial is upon an accusatory instrument in which one or more of the crimes charged is punishable with imprisonment in a Department of Corrections institution for life or is a capital offense, both the defendant and the state are entitled to 12 peremptory challenges, and no more. In any trial before more than six jurors, both are entitled to six. In any trial before six jurors, both are entitled to three.
- (2) Peremptory challenges shall be taken in writing by secret ballot as follows:
 - (a) The defendant may challenge two jurors and the state may challenge two, and so alternating, the defendant exercising two challenges and the state two until the peremptory challenges are exhausted.

- (b) After each challenge the panel shall be filled and the additional juror passed for cause before another peremptory challenge is exercised. Neither party shall be required to exercise a peremptory challenge unless the full number of jurors is in the jury box at the time.
- (c) The refusal to challenge by either party in order of alternation does not prevent the adverse party from exercising that adverse party's full number of challenges, and such refusal on the part of a party to exercise a challenge in proper turn concludes that party as to the jurors once accepted by that party. If that party's right of peremptory challenge is not exhausted, that party's further challenges shall be confined, in that party's proper turn, to such additional jurors as may be called.

(3) Notwithstanding subsection (2) of this section, the defendant and the state may stipulate to taking peremptory challenges orally.

(4) Peremptory challenges are subject to ORCP 57 D(4).

136.240 Challenge of accepted juror. If the peremptory challenges of the moving party are not already exhausted, the court may for good cause shown permit a challenge to be taken to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have been theretofore accepted.

136.250 Taking of challenges; number of challenges if two or more defendants. All peremptory challenges may be taken by the state or defendant, but when several defendants are tried together, the defendants are entitled to the number of challenges they would have had if each defendant had been tried separately. When two or more defendants are tried together, the state is entitled to the same total number of peremptory challenges as the sum of the peremptory challenges the defendants could have exercised.

136.260 Selection of alternate jurors; peremptory challenges.

(1)

(a) In the trial of a person charged with a crime, the court may in its discretion direct the calling of additional jurors, to be known as "alternate jurors." The court may call:

- (A) One to six additional jurors if the person is charged with a felony;
and
- (B) One to three additional jurors if the person is charged with a misdemeanor.

(b) Jurors called under paragraph (a) of this subsection:

- (A) Must be drawn from the same source and in the same manner and must have the same qualifications as other jurors in the case.
- (B) Are subject to the same examination and may be challenged in the same manner as other jurors.

- (c) In the drawing of alternate jurors, the names of jurors excused for cause or on peremptory challenges in the selection of the jury to which the jurors shall serve as alternates must be excluded from the names from which the drawing is made.
- (2) Each side is entitled to the following peremptory challenges in addition to those otherwise allowed by statute:
- (a) If one or two alternate jurors are to be impaneled, each side is entitled to one peremptory challenge.
 - (b) If three or four alternate jurors are to be impaneled, each side is entitled to two peremptory challenges.
 - (c) If five or six alternate jurors are to be impaneled, each side is entitled to three peremptory challenges.
- (3) The court has discretion to decide:
- (a) When and in what manner the alternate jurors are selected;
 - (b) When and in what manner the additional peremptory challenges described in subsection (2) of this section may be used; and
 - (c) When and in what manner the alternate jurors are informed of their status as alternate jurors.

136.270 Oath, conduct and attendance of alternate jurors at trial. Alternate jurors shall take the same oath and shall be subject to the same laws, orders and rules, including any order preventing the separation of the jury during the trial, shall be seated near the other jurors in the case, with equal opportunity and facilities for seeing and hearing the proceedings and shall attend at all times upon the trial of the case in company with the other jurors.

136.280 Substitution of alternate for discharged juror; retention and discharge of alternates.

- (1) If, before the final submission of the case, any juror dies or is unable to perform the duty because of illness or other sufficient cause, the court shall discharge the juror from the case. The court shall draw the name of an alternate juror, who shall then become a member of the jury, replacing the discharged juror as though the alternate juror had been selected as one of the original jurors.
- (2) If, after the jury has begun deliberations, any juror dies or is unable to perform the duty because of illness or other sufficient cause, the court shall discharge the juror from the case and may draw the name of an alternate juror to replace the discharged juror if:
 - (a) An alternate juror is available and has not yet been discharged; and
 - (b) Both parties agreed to the substitution after the jury was selected but prior to the beginning of the trial.
- (3) If an alternate juror replaces a juror under this section after deliberations have begun, the court shall instruct the jury to begin deliberations anew.

- (4) The court may retain alternate jurors after the case is submitted to the jury to replace jurors as provided in subsection (2) of this section. An alternate juror retained under this subsection shall not attend or otherwise participate in deliberations unless the alternate juror is selected to replace a juror.
- (5) An alternate juror who does not replace a juror as provided in subsection (1) or (2) of this section and who is not retained as provided in subsection (4) of this section shall be discharged after deliberations have begun.

136.320 Function of jury; jury to receive law as laid down by court. Although the jury may find a general verdict, which includes questions of law as well as fact, it is bound, nevertheless, to receive as law what is laid down as such by the court; but all questions of fact, other than those mentioned in ORS 136.310, shall be decided by the jury, and all evidence thereon addressed to it.

136.325 Jury not to be informed of and not to consider punishment that may be imposed. Except as required in ORS 161.313 and 163.150, the jury in a criminal proceeding may not be informed of, and may not consider, any punishment that the court may impose if the defendant is convicted of the charge.

136.450 Number of jurors required for verdict.

- (1) A jury in a criminal action may render a verdict of guilty only by unanimous agreement.
- (2) A jury in a criminal action may render a verdict of not guilty only by a concurrence of at least 10 of 12 jurors.

136.776 Effect of waiver of right to jury trial. When a defendant waives the right to a jury trial on the issue of guilt or innocence, the waiver constitutes a written waiver of the right to a jury trial on all enhancement facts whether related to the offense or the defendant.

136.792 Jury upon remand.

- (1) For the purpose of imposing a new sentence in a case that has been remanded to a trial court that will result in resentencing for which a new sentence has not been imposed prior to July 7, 2005, the court may impanel a new jury to determine the enhancement facts as defined in ORS 136.760. Laws relating to impaneling a jury for a criminal trial apply to impaneling a jury under this section.
- (2) ORS 136.785 (3) does not apply to a case in which the court has impaneled a new jury under this section. In a case with a jury impaneled under this section, an enhancement fact is not proven unless the number of jurors who find that the state has met its burden of proof with regard to the enhancement fact is equal to or greater than the number of jurors that was required to find the defendant guilty of the crime.