

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 237 An Act To Allow Veterans To Opt Out of Jury Duty

Public Hearing Date: February 18, 2021

SUMMARY

This bill allows a veteran who does not wish to serve as a juror to be excused from jury duty. The veteran must have received an honorable discharge or a general discharge under honorable conditions to qualify for the jury service excuse.

TESTIMONY

Proponents

- Representative Grohoski, sponsor (written testimony)
- Representative Doudera, cosponsor
 - This bill proposes an additional basis for excuse for honorably discharged veterans, who would be able to opt out of jury duty without additional excuse.
 - I have two main reasons for proposing this option which I will elaborate on briefly – one of my reasons is NOT to imply that veterans’ voices are not valuable in the civic process of serving on a jury.
 - The first reason is that this is an opportunity to recognize and show gratitude for the significant service and sacrifice our veterans have made for our country and communities.
 - The judicial system benefits from the perspective of veterans, and I have no doubt that many veterans will continue to want to serve their communities by serving on juries – that is why this is an opt-out provision.
 - It does not seem likely that the juror pool will diminish significantly or detrimentally because of this proposal, though I have no way of quantifying that at this time.
 - The second reason is related to mental health. It is unfortunate but true that our veteran population has significantly higher rates of post-traumatic stress disorder and suicide than the general population.
 - Additionally, research shows that for people without PTSD, jury duty can cause PTSD symptoms following their service, including sleeplessness, anxiety, stomachaches, headaches, heart palpitations, depression, sexual problems, chest pain, ulcers, elevated blood pressure, intrusive thoughts and restlessness.
 - Separately from this bill, I think these concerning outcomes indicate that we should provide greater support to jurors serving in traumatic trials.
 - This opt-out concept was proposed by a veteran in my community who is also a psychotherapist; he stated that being exposed to scenarios of violence (particularly murder and rape) through a jury trial could be triggering to veterans with PTSD, especially those with much higher prevalence rates who served in the Vietnam War, Gulf War, or Operations Iraqi Freedom (OIF) or Enduring Freedom (OEF)

- These individuals are significantly more subject to a possible negative outcome from jury duty than the general population.
- Under the current statute, it is possible that a veteran with mental health could make a successful case to be excused from service, but I do not believe that a veteran should have to go through this effort, especially if making the case for excusal would in and of itself be traumatic.
- Additionally, it is possible that jury duty could result in delayed-onset PTSD for a veteran.
- I see this as a small sign of gratitude and a possibly protective measure for our veterans
- I reached out to group of veterans – could see that some of their fellow veterans could benefit

Opponents

- John Pelletier, Criminal Law Advisory Commission (CLAC) (written report)
 - Jury service is an obligation shared by all citizens.
 - Current law grants very few exceptions to this obligation.
 - CLAC members see no reason to exempt veterans as a class from the obligation to provide jury service.
 - Moreover, CLAC is informed that veterans make up 12% of Maine’s population; Maine courts already have difficulty attracting a sufficient number of jurors, and exempting veterans has the potential to significantly worsen the existing shortage of jurors.
 - We will have a huge demand for jurors when the pandemic is over
 - For a disability exemption – judges may ask for a certificate because they want to make accurate decisions
 - Judges do ask about whether facts in some cases, such as sexual assaults, would be a problem for a potential juror
 - Neither the court nor litigants want a person on the jury who does not want to be there

Neither for nor against

- Julie Finn, Judicial Branch (written testimony)
- David Richmond, Maine Bureau of Veterans Services (written testimony)
 - About four years ago this Committee approved, and the full Legislature passed, a law that eliminated most of the exemptions from jury service. The exemptions that were eliminated included exemptions for doctors, dentists, veterinarians, sheriffs and even lawyers and judges.
 - It was clear that the exemptions were threatening to swallow the rule.
 - I can say with certainty that the exemption for attorneys was lifted as I was summoned to jury duty in the summer of 2019 and, in fact, served on a jury. I found it to be an interesting and rewarding experience, as many people do.
 - In order for a defendant to be tried by a jury of the defendant’s peers, the jury must reflect the local community. This is required by a Maine statute
 - In Maine, veterans comprise a significant portion of our population - approximately 12%.
 - In order to reflect a true cross-section of our communities, our juries must include doctors, dentists, veterinarians, sheriffs, lawyers, judges, nurse practitioners and veterans.
 - Those who have honorably served our country in the armed services are exactly the type of jurors we need.
 - When the spread of COVID-19 decreases and more people are vaccinated, hopefully soon, jury trials in Maine will resume. When that time comes and it is safe to hold jury

- trials again, we will have a pent-up demand for jurors and will need to summon large jury pools in every part of the State.
- Now is not the time to deplete the population of potential jurors.
 - Trial by jury is a critical piece of both our state and federal constitutions.
 - Jurors exercise authority as the trier of fact, evaluating the evidence of the case presented.
 - Jury service is an important and necessary part of our democracy.
 - We greatly appreciate the commitment of Maine citizens for their willingness to serve our community.
 - There are currently 109,000 veterans living within Maine's borders, all of whom raised their right hand in defense of democracy, and our constitution. These individuals defend our right to freedom of speech, freedom of assembly, the right to a fair trial among others, and stand ready to protect and preserve our rights and privileges. For many, their commitment to service and community continues whether in or out of uniform.
 - Maine's veteran population makes up roughly ten percent of our state's adult population. Maine has one of the highest rates of veterans per capita in the entire country, and that trend shows no sign of slowing down.
 - Allowing veterans the option to opt out of jury duty has the potential to severely lower the pool of potential jurors in a community.
 - By potentially limiting the pool of jurors, we may also be limiting the diversity of our peers.
 - Invisible wounds incurred in service may be a valid excuse from jury duty. There are many veterans who have a variety of debilitating issues due to their time in service: Post Traumatic Stress Disorder, Military Sexual Trauma and Traumatic Brain Injuries are a few potential health concerns that have the potential to negatively impact a juror's ability to impartially hear a court case.
 - If a veteran has such a disability, we feel it may be in their interest to allow them the option of opting out.
 - Veterans who choose to call Maine home are incredibly fortunate to have advocates across the state.
 - Advocates including those who sponsored this bill, who want nothing more than to recognize our veterans' service and sacrifice.
 - Maine's veterans make significant contributions to our communities and we at the Bureau remain committed to working with our partners on the state level to honor their service to the country and state, all the while holding to the tenet everyone must perform their civic duty.

INFORMATION REQUESTED

- How frequently has this been an issue in jury selection?
- General overview of crimes that jury would hear
- Types of cases that would be heard by a jury that could trigger PTSD
- Percent of jury trials for more violent crimes
- What does the court require for a potential juror to show mental or physical disability to be excused?

FISCAL IMPACT:

Not yet determined by February 28, 2021

BACKGROUND

Title 14, section 1211 provides disqualifications and exemptions for jury duty. The following are exempt:

- ▶ not a citizen of the United States
- ▶ not 18 years of age

- ▶ not a resident of the county
- ▶ unable to read, speak and understand the English language

The following persons are exempt from serving as jurors:

- ▶ The Governor
- ▶ active duty military
- ▶ all persons exempt under Title 37-B, section 185.

§185. Rights and liabilities of military force members:

3. Exemption from jury duty. Every member of the state military forces, while going to, attending or returning from active state service or federal military duty, is exempt from jury duty. Production of a certificate from the claimant's commanding officer that the person qualifies for the exemption is prima facie proof that the person is entitled to the exemption.

Current law provides for excuses

§1213. Excuses from jury service

1. Determination. Upon request of a prospective juror, the presiding justice or the clerk of court acting under the supervision of the presiding justice shall determine whether the prospective juror is excused from jury service. The determination must be made on the basis of information provided on the juror qualification form, supplemented by other competent evidence when considered necessary to the determination.

2. Basis for excuse. A qualified prospective juror may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity or inability to render satisfactory jury service because of physical or mental disability.

A. A person claiming to be excused on the grounds of disability may be required to submit a physician's certificate or accredited Christian Science practitioner's certificate. The certifying physician or Christian Science practitioner is subject to inquiry by the court at its discretion.

B. Municipal election officials, as defined in Title 21-A, section 1, subsection 14, are excused from serving on a jury on the day of an election. State election officials and municipal clerks and registrars and their employees are excused from serving on a jury for 31 days prior to an election.

C. A person 80 years of age or older who does not wish to serve on a jury is excused from jury service.

3. Extent of excuse; record. Depending upon the circumstances, a juror may be finally excused from jury service, be required to serve at a later specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter the determination regarding the requested excuse and the reason for the determination in the appropriate record kept for that purpose.

Right to a jury trial: The Maine Constitution guarantees a right to a jury trial in all criminal cases:

Section 6. Rights of persons accused. In all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against the accused;

To have compulsory process for obtaining witnesses in favor of the accused;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, nor be deprived of life, liberty, property or privileges, but by judgment of that person's peers or the law of the land.

History of exemptions and excuses

1971, 105th Legislature, PL 1971, c. 391 enacted a new subchapter on jury service, including §1211, §1212 and §1213

§ 1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if he: Is not a citizen of the United States, 20 years old and a resident of the county; is unable to read, speak and understand the English language; is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion; or has lost the right to vote because of a criminal conviction. The following persons are exempt from serving as jurors and their names shall not be placed on the list: The Governor, councilors, judges, clerks and deputy clerks of common law courts, Secretary and Treasurer of State, all officers of the United States, judges of probate, physicians and surgeons, dentists, sheriffs, counselors and attorneys at law.

§ 1212. No exemptions

No qualified prospective juror is exempt from jury service.

§ 1213. Excuses from jury service

A person who is not disqualified for jury service, section 1211, may be excused from jury service by the court only upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period the court deems necessary at the conclusion of which the person shall reappear for jury service in accordance with the court's direction.

1973, 106th Legislature amended §1211 (PL 1973, c. 461)

A prospective juror is disqualified to serve on a jury if he: Is not a citizen of the United States, ~~20~~ 18 years old and a resident of the county; is unable to read, speak and understand the English language; is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion; or has lost the right to vote because of a criminal conviction.

In 1982, 110th Legislature amended §1211, repealed §1212 and repealed and replaced §1213 (PL 1981, c. 705)

Sec. 4. 14 MRSA §1211, as amended by PL 1973, c. 461, is further amended to read:

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if he ~~is~~ is not a citizen of the United States, 18 years old and a resident of the county, or is unable to read, speak and understand the English language, is incapable, by reason of his physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the court at its discretion; or has lost the right to vote because of a criminal conviction. The following persons are exempt from serving as jurors and their names shall not be placed on the list: The Governor, councilors, judges, clerks and deputy clerks of common law courts, Secretary and Treasurer of State, all officers of the United States, judges of probate, physicians and surgeons, dentists, sheriffs, counselors and attorneys at law, attorneys-at-law and all persons exempt under Title 37-A, section 1117.

Sec. 5. 14 MRSA §1212, as enacted by PL 1971, c. 391, §1, is repealed.

Sec. 6. 14 MRSA §1213, as enacted by PL 1971, c. 391, §1, is repealed and the following enacted in its place:

§1213. Excuses from jury service

1. Determination. The presiding justice or the clerk of court acting under the supervision of the presiding justice, upon request of a prospective juror, shall determine on the basis of information provided on the juror qualification form, supplemented by other competent evidence when deemed necessary to such determination, whether the prospective juror should be excused from jury service.

2. Basis for excuse; record. A qualified prospective juror may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or that he is incapable of rendering satisfactory jury service by reason of physical or mental disability. A person claiming a disability excuse may be required to submit a physician's certificate or accredited Christian Science

practitioner's certificate and the certifying physician or Christian Science practitioner is subject to inquiry by the court at its discretion. The decision concerning a request for excuse shall be made by the presiding justice or by a clerk of court acting under the supervision of the presiding justice. Depending upon the circumstances, such a juror may be excused from jury service finally, be required to serve at a later specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter this determination and the reason therefor in the appropriate record kept for that purpose.

1983, 111th Legislature amended §1211 (PL 1983, c. 202)

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if he is not a citizen of the United States, 18 years old and a resident of the county, or is unable to read, speak and understand the English language. The following persons are exempt from serving as jurors: The Governor, judges, clerks and ~~deputy~~ assistant clerks of courts, Secretary and Treasurer of State, all officers of the United States, judges of probate, physicians and surgeons, dentists, sheriffs, counselors, attorneys-at-law and all persons exempt under Title 37-A, section 1117.

1986, 112th Legislature amended §1211 (PL 1981, c. 608)

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if he is not a citizen of the United States, 18 years old and a resident of the county, or is unable to read, speak and understand the English language. The following persons are exempt from serving as jurors: The Governor, judges, ~~clerks and assistant clerks of courts,~~ Secretary and Treasurer of State, all officers of the United States, judges of probate, physicians and dentists providing active patient care; and surgeons, dentists, sheriffs, ~~counselors,~~ attorneys-at-law and all persons exempt under Title 37-A, ~~section 1117~~ 37-B, section 185.

1999, 119th Legislature repealed and replaced §1213 (PL 1999, c. 87)

§1213. Excuses from jury service

1. Determination. Upon request of a prospective juror, the presiding justice or the clerk of court acting under the supervision of the presiding justice shall determine whether the prospective juror is excused from jury service. The determination must be made on the basis of information provided on the juror qualification form, supplemented by other competent evidence when considered necessary to the determination.

2. Basis for excuse. A qualified prospective juror may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity or inability to render satisfactory jury service because of physical or mental disability.

A. A person claiming to be excused on the grounds of disability may be required to submit a physician's certificate or accredited Christian Science practitioner's certificate. The certifying physician or Christian Science practitioner is subject to inquiry by the court at its discretion.

B. Municipal election officials, as defined in Title 21-A, section 1, subsection 14, are excused from serving on a jury on the day of an election. State election officials and municipal clerks and registrars and their employees are excused from serving on a jury for 31 days prior to an election.

3. Extent of excuse; record. Depending upon the circumstances, a juror may be finally excused from jury service, be required to serve at a later specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter the determination regarding the requested excuse and the reason for the determination in the appropriate record kept for that purpose.

2005, 122nd Legislature amended §1211 (PL 2005, c. 60)

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if ~~he~~ that prospective juror is not a citizen of the United States, 18 years ~~old~~ of age and a resident of the county, or is unable to read, speak and understand the English language. The following persons are exempt from serving as jurors: The Governor, judges, physicians and dentists providing active patient care, veterinarians with or in an active veterinary medicine practice, sheriffs, attorneys-at-law and all persons exempt under Title 37-B, section 185.

2013, 126th Legislature amended §1213 (PL 2013, c. 74)

Sec. 1. 14 MRSA §1213, sub-§2, ¶C is enacted to read:

C. A person 80 years of age or older who does not wish to serve on a jury is excused from jury service.

2017, 128th Legislature amended §1211 (PL 2017, c. 46)

Sec. 1. 14 MRSA §1211, as amended by PL 2005, c. 60, §1, is further amended to read:

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if that prospective juror is not a citizen of the United States, 18 years of age and a resident of the county, or is unable to read, speak and understand the English language. The following persons are exempt from serving as jurors: The Governor, ~~judges, physicians and dentists providing active patient care, veterinarians with or in an active veterinary medicine practice, sheriffs, attorneys-at-law~~ active duty military and all persons exempt under Title 37-B, section 185.