



# Judicial Impact Statement

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June 16, 2011

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## Sponsors:

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## House Bill 268 129th General Assembly

## Jury Modernization & Reform

As Introduced Version  
House Bill 268

### TITLE INFORMATION

To modernize the language of, to reorganize, and to remove obsolete provisions from the jury service law.

### SUMMARY

The Ohio Judicial Conference, at the recommendation of its Jury Service Committee, endorses changes to the Ohio Revised Code to modernize the laws related to jury services, and to reform jury service law with regard to the protection of jury privacy (R.C. 2313.11) and the reduction of jury costs (R.C. 2335.28 and 2947.23). We believe these changes will benefit the Ohio judiciary by promoting public confidence in the jury service system, improving the administration of justice, and enhancing the efficiency of court operations.

### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

### BACKGROUND AND JUDICIAL IMPACT ANALYSIS

For a number of years the Ohio Judicial Conference's Jury Service Committee has conducted a review of the Ohio Revised Code and the provisions that deal with jury management principles and practices. The Committee believes that Ohio should modernize and reform jury service law, especially in regard to the protection of jury privacy and the reduction of jury costs. We welcome the introduction of House Bill 268 to address Ohio's need for modernization and reform of jury service and management laws.

**Modernization.** The Ohio Legislative Service Commission updates the currency of the language and introduces gender-neutral language to the Ohio Revised Code as substantive changes are made to particular code sections. However, provisions of the code dealing with jury service are made relatively infrequently. As such, current jury service provisions, found primarily in Title 23, contain numerous sections that are dated. As such, these code sections contain gender specific references, outdated terminology, obsolete sections, and some substantive provisions that do not reflect current practices or “best practices” in the field of jury service. House Bill 268 makes technical changes throughout the code with regard to jury service by replacing outdated words and phrases with synonyms that are more current and that reflect gender neutrality. In this way, the legislation brings currency, relevancy, and contemporaneous meaning to jury service provisions in the Ohio Revised Code. The Judicial Conference supports the clarity that is brought to the law through modernization and reform measures that are part of House Bill 268.

**Jury Privacy (ORC 2313.11).** The Ohio Judicial Conference has reviewed R.C. 2313.11 and determined that it is ambiguous as to whose attorney is authorized to be present when a juror has requested to speak privately or in-camera with the judge before answering a question that has been posed to the juror during a preliminary process called the *voir dire* where the jurors are asked questions to determine whether they are qualified to serve on the jury.

R.C. 2313.11 requires the court to “inform a prospective juror that the prospective juror has the right to request an in-camera hearing, on the record and with an attorney present, regarding any legal and pertinent question put to the prospective juror by the court.” This statutory right was intended to codify the ruling of the Supreme Court of Ohio in *State ex rel. Beacon Journal Publishing Company v. Bond* (98 Ohio St.3d 146, 781 N.E.2d 180, 2002-Ohio-7117). In the *Bond* case, the court ruled that completed juror questionnaires are not a public record under the Ohio Public Records Act but that the information contained in those questionnaires is subject to inspection under the First Amendment of the United States Constitution and under Sections 11 and 16 of Article I of the Ohio Constitution. In balancing the legitimate privacy interest of prospective jurors against the right of access to criminal proceedings, the Supreme Court of Ohio adopted the procedure prescribed by the United States Supreme Court in *Press-Enterprise I* (464 US 501, 1984). In the *Press-Enterprise* case, the U.S. Supreme Court held that trial judges should inform prospective jurors “that those individuals believing public questioning will prove damaging because of embarrassment, may properly request an opportunity to present the problem to the judge in camera but with counsel present and on the record.” According to the reasoning of *Press Enterprise I*, the juror’s right to privacy is protected by permitting the juror to answer a question to the judge in private instead of answering the question publicly in open court. The defendant’s need to know and right to a fair trial are protected by the defendant’s counsel being present and by the in-camera conversation remaining on the record.

Taken together, the *Bond* and *Press Enterprise* cases establish a rule of law that the court is required to inform prospective jurors that they can avoid embarrassment by requesting an in-camera hearing with the judge for the purposes of answering a question, but that the answer will remain on the record and counsel for the parties/defendant can be present to hear the answer.

Shortly after the *Bond* decision, the Ohio General Assembly amended the Ohio Revised Code, presumably showing the legislature's intent to codify the *Bond* ruling. The relevant statutory provision reads:

The court shall inform a prospective juror that the prospective juror has the right to request an in-camera hearing, on the record and with an attorney present, regarding any legal and pertinent question put to the prospective juror by the court.

Subsequently, Ohio judges report that this language is ambiguous and has been misinterpreted as authorizing the prospective juror's counsel to be present during the in-camera or private conversation with the judge. This requirement is not supported by the case precedent of *Press Enterprise* and *Bond*, which creates the right to the in-camera hearing to protect the privacy interests of the juror, but ensures fairness to the parties and/or defendant by requiring that the in-camera hearing remain on the record and by permitting the parties/defendant's counsel to be present.

The Ohio Judicial Conference supports House Bill 268 and the change to R.C. 2313.11, which eliminates any ambiguity in the provision regarding the counsel that is authorized to be present during an in-camera hearing requested by a prospective juror. Furthermore, the Ohio Judicial Conference also supports the revision of R.C. 2313.11, which clarifies that the same rights apply if a court uses a written questionnaire to obtain information from prospective jurors, as was the case in the *Bond* case. The legal precedent suggests that the questionnaire should contain notification of the jurors' privacy right and their right to an in-camera hearing. Adoption of House Bill 268 will ensure that the same rights and procedures apply equally under circumstances where courts question jurors through a questionnaire or through oral questioning.

The Ohio Judicial Conference supports these changes and believes they bring clarity to the law and guarantee that whenever a juror has a privacy interest at stake, the juror can request an in-camera hearing and that the counsel for the parties/defendant can be present at that hearing. This change brings much needed clarification to the law; ensures protection of constitutional rights to privacy and access; and reduces the amount of time during a court proceeding that would be devoted to clarifying the procedure required under the law.

**Jury Costs.** The Ohio Judicial Conference has reviewed R.C. 2335.28 and 2947.23 and determined that courts currently absorb the expenses associated with summoning a jury

unnecessarily due to last minute decisions by the parties to settle or a defendant to plea, which result in the dismissal of a summoned jury that has not been sworn. The Judicial Conference supports the way that House Bill 268 amends R.C. 2335.28 and 2947.23 to expand the discretion of the judge to allocate jury costs to the parties in a civil action or to defendants charged in a criminal case to circumstances when the jury has not been sworn. It is not uncommon for the parties to settle and/or the defendant to enter a plea sometime during the period leading up to the day of trial. In fact, criminal defendants often wait to see if witnesses appear before entering a plea. When these negotiations take place in a timely fashion, the courts are able to notify prospective jurors that their services will not be needed and that saves the court the cost of bringing the juror in, paying for the parking or other expenses, and paying the standard juror compensation. But when plaintiffs or defendants do not settle or plead until the last day or only a few hours before trial, current law does not provide for how those expenses will be covered. That means that the court absorbs those expenses, as well as the docket and other consequences that go along with these last minute decisions. House Bill 268 would give Ohio judges the discretion to assign the costs for summoning jurors to the parties when a civil case is settled just prior to the jury being sworn or to the defendant when that defendant enters a guilty plea less than 24 hours before the start of the criminal trial and before the jurors have been sworn. The judges believe that this discretionary power will enable the judge to recover the expenses for summoning a jury, and simultaneously give the attorneys and clients the incentive to settle or plead in time to permit the court to cancel the jury and avoid paying the high cost of summoning a jury to the courthouse.

The Ohio Judicial Conference supports the amendment to the Ohio Revised Code to give judges the discretion to charge the court costs against the parties and/or the defendant when courts summon jurors and the case settles or there is a guilty plea just prior to the jury being sworn. This will ensure that the litigants and not the courts incur the cost of delaying settlement talks or final plea negotiations. Ohio judges think that such a measure will save the courts and counties unnecessary workload and expenses associated with summoning a jury that will not be sworn. The change may also encourage parties and defendants to make more efficient use of the jury system and ultimately may improve public confidence in the courts.

#### **RECOMMENDATION**

The Ohio Judicial Conference recommends that the Ohio General Assembly enact House Bill 268 at its earliest convenience.