**JUROR QUALIFICATION – POLICE OFFICERS AS JURORS IN CRIMINAL CASES - EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am still Tain Kell.*

Tain, occasionally we find episode topics when we are researching topics for our real jobs

*I used to have that happen – not as often any more. Retired life is a lot busier that I anticipated – just not as much legal research…*

Yeah, rub it in. “Retired” – you work as much now as when you were sitting!

*Just mediating disputes for a living – I kinda’ like it.*

So to be more exact, today’s topic arose when I was performing research on a topic – is that better?

*Well, it is more accurate. Anyway, Wade came across this topic and we both thought it would be good to discuss here on the podcast. Tell the folks what we are going to discuss.*

Juror qualifications in criminal cases – specifically whether “police officers” must automatically be disqualified. There are a bunch of cases on this topic, believe it or not. You can find these episode notes on our webpage – goodjudgepod.com

*If you have podcast topic ideas, send them to us at* *goodjudgepod@gmail.com. With all of that being said, let’s talk juror qualifications in criminal trials*

There was a time when the relevant statute actually provided who is and who is not qualified to serve as a juror in criminal cases

Those statutes still exist – they have just been amended over time

For example, O.C.G.A. § 15-12-1.1 provides for exemptions from jury duty

The statute exempts certain people from jury duty and discusses the “excusal” process

The court has a duty to provide form affidavits for individuals requesting to be excused[[1]](#endnote-1)

The statute provides that the following individuals are allowed to seek exemption from jury service (they are not allowed to simply ignore the juror summons – but if they seek excusal or deferment, it must be granted):

1. Full time students in post-secondary school
2. Primary caregiver of child under age 6
3. Primary teacher in a home school program
4. Primary caregiver of a handicapped person
5. Any person over the age of 70; and
6. Any person on ordered military duty or spouse of such person[[2]](#endnote-2)

Understand that there are additional requirements (such as there being no reasonable alternative for the primary caregivers) that we will not address in detail here

Remember that these are statutory provisions that allow those potential jurors who qualify to seek excusal or deferment

Over the years, most judges have heard from potential jurors who claim that they are not qualified or must be automatically disqualified from jury service if they met one of the definitions above

That is NOT the law – they are potential excusals if the potential juror completes the required affidavit that shows that they qualify

The only “unqualified” excusal that does not require additional affidavits to address the details (i.e. that no other arrangements can reasonably be made) is for a person 70 years of age or older

We told you earlier that we are going to address law enforcement officers – and we just gave you the list and did not mention law enforcement officers – so you may be asking yourself “what is the deal with that?”

The reason that we are discussing the “general” exemption statute is that in prior versions of that statute, law enforcement officers were actually excluded from jury service – but as of 1984, that exclusion does not appear in the statute

Older versions of the statute provided that full-time police officers should not normally be included in the “box” from which jurors were selected but could “opt in” by requesting that they be included

However, upon any motion to strike a full-time police officer for cause, that request should be granted[[3]](#endnote-3)

You are going to note that we are going to continually address “full-time police officers” because that distinction is important in determining whether the potential juror who is employed with a law enforcement agency must be excluded for cause

While the statute may have been altered over the years, the case law has continued to recognize that language that formerly appeared in the prior version of the statute

One of the seminal cases that addresses the fact that police officers should be excluded from criminal juror panels is *Hutcheson v. State*[[4]](#endnote-4)

*Hutcheson* and the cases that followed began the analysis with an examination of “fundamental fairness”

The cases recognized that there was simply too great a risk of potential bias or impermissible influence on jury deliberations to allow police officers to sit on criminal juries

The cases noted that the questions of potential bias “cannot be erased by a mere subjective, albeit sincere, declaration by the officer that he or she can be fair and impartial as to a particular defendant’s case.”[[5]](#endnote-5)

There may exist a misconception as to who actually qualifies as a “police officer” in this context.

You may recall that we told you we are going to stress the phrase “full-time police officer” because the cases stress that phrase.

We also want to stress that “full-time police officers” are not “ineligible” to serve – they merely must be excused for cause upon motion by either party

(But to be candid – the cases seem to use the word “disqualified” or “disqualification” pretty interchangeably with the concept of “strike for cause” so if you say that “full-time police officers” are “disqualified” from serving in a criminal case, there are plenty of Georgia appellate cases that use that same phrasing)

Some of the cases went further when attempting to define exactly who qualifies as a “full-time police officer” in this context – the cases expanded the definition to “full-time police officers with arrest powers.”[[6]](#endnote-6)

Because that is a bunch of words, we will use the phrase “full-time police officer” in the following discussion – just understand that the “arrest powers” part may prove to be a useful clarification during voir dire if that becomes relevant to you.

So, the direction to excuse a “police officer” for cause upon motion of a party does not apply to former police officers or retired police officers.[[7]](#endnote-7)

It does not apply to sworn deputies who only work part-time as auxiliary officers.[[8]](#endnote-8)

The disqualification does not apply to radio operators for a police department or sheriff’s office.[[9]](#endnote-9)

It does not apply to individuals employed by the GBI who work with GCIC or instructors who teach law enforcement officers.[[10]](#endnote-10)

The rule does not apply to corrections officers who do not have arrest powers.[[11]](#endnote-11)

The rule does not apply to driver’s license examiners[[12]](#endnote-12)

Even where the victim was employed with the Department of Corrections, the fact that a potential juror was also employed with the Dept. of Corrections does not lead to a “blanket disqualification.”[[13]](#endnote-13)

The rule does not apply to a potential juror who holds a certification as a Georgia Peace Officer but who is not working as a full-time police officer.[[14]](#endnote-14)

The rule does not apply to forensic experts employed with the Georgia Crime Lab.[[15]](#endnote-15)

But it is *reversible error* to refuse to strike for cause a potential juror who is a state patrolman[[16]](#endnote-16) or any other “full-time police officer”[[17]](#endnote-17)

It makes no difference whether the potential juror is employed with the law enforcement office or department involved in the underlying case or whether that potential juror had any involvement with the investigation

“Full-time police officers with arrest powers” must be struck for cause upon the motion of either party

Over time, we have seen both lawyers and judges who misunderstood the term “police officer” in relation to juror service and believed that anyone employed in any law enforcement capacity or by any law enforcement agency must be excused for cause. As noted above, that is simply not the case.

The cases specifically note that while the principle announced in the *Hutcheson* decision remains valid law, “we have refused to extend the automatic disqualification rule in *Hutcheson* to those less connected with law enforcement than full-time police officers.”[[18]](#endnote-18)

All of the prior discussion presumes one point that we need to make clear – the potential juror in each of the cases cited previously stated that their employment would not impact their ability to consider the facts of the case fairly and impartially and that their employment would not influence their deliberations.[[19]](#endnote-19)

If the potential juror states that he/she cannot be impartial – for whatever reason – including because of their employment – it does not matter where they work of if that person is retired – they must be excused for cause.

We hope you are completely clear on the difference between a blanket disqualification which applies to “full-time police officers” and a “for cause” challenge that is the product of bias any potential juror has – regardless of his/her employment

Typically, when asking the basic qualification questions to a voir dire panel, I will ask whether there is anyone on the panel who is a “full-time police officer with arrest powers” or whether anyone is P.O.S.T. Certified with arrest powers (although I realize the latter description may not adequately identify all potential strikes)

If a full-time police officer identifies himself/herself, I will ask the lawyers if they wish to ask that potential juror any additional questions and then will ask if they wish to dismiss that juror for cause (“dismiss” sounds better than “strike”)

The reason this issue arose recently bears some discussion today. A jailer at our local jail expressed some concern (off-line and through the Sheriff – not during the voir dire process) about having to reveal his personal data during voir dire

He believed (incorrectly) that he was “immune” for serving as a juror

The bigger issue that he raised is what I want to discuss here – the fact that his name, home address, etc. was included in the information provided to the parties for the purpose of voir dire

And I am not wholly sure how to address the issue – giving an individual who is presently incarcerated in our local jail easy access to a jailer’s personal data seems problematic

That point was made on the heels of a sentencing I recently conducted of a former jailer who entered a guilty plea to providing contraband to an inmate and violation of oath of office – whether it is true or not, he claimed that he was threatened with harm/harm to his family by an inmate who described to him his home, home address, etc. and instead of reporting the incident, the defendant decided to become a co-conspirator with the inmate in sneaking contraband into the jail

[DISCUSS]

So that’s all for today’s discussion of juror qualification in criminal cases with a focus on police officers

*Remember, the phrase “full-time police officer with arrest powers” will probably answer the question for you as to whether the potential juror must be excluded for cause*

Not everyone who has ever worked for a law enforcement agency is disqualified to serve – the parties may choose to strike that person with a peremptory challenge – but it may not be a “for cause” strike if the potential juror indicates he/she can be fair and impartial, despite their employment

Send us your thoughts and ideas at [goodjudgepod@gmail.com](mailto:goodjudgepod@gmail.com)

*This episode outline is available on goodjudgepod.com*

*Music trivia for today – we really should have kept track of the music topics we have covered because we may end up overlapping after a while. Anyway, today’s music trivia topic is “one hit wonders.” Embarrassingly, there were a bunch of one hit wonders in the 1980’s and 1990’s. What was the name of the band that sang the ear worn, “Safety Dance?” The answer is Not* *DEVO – Give up? Men Without Hats. They must have spent days trying to come up with a name for their band. Ok, another question from the 1980’s. “Come on Eileen” was another ear worm that differed from most 1980’s pop hits because instead of synthesizers, it had a banjo, accordion and fiddle featured in the song. So who sang the #1 hit, “Come on Eileen?” Dexy’s Midnight Runners.*

*Jump to the 1990’s and one hit wonders from that decade. Prince loaned a song to a female singer who gained international notoriety for all the wrong reasons (and who recently passed away – RIP). The song began with the line, “It’s been seven hours and fifteen days….” Who sang that song? Sinead O’Connor (the song was “Noting Compares 2 U”). Finally, a famous hit included the verse, “I get down, but I get up again.” The band had a unique name – do you remember what it was? Chumbawumba. Cousin of Chewbacca – just kidding. Here’s the hard part of the question. What was the name of that song? Give up? Tubthumping. No idea what that title has to do with getting up again but, anyway….*

*We are just full of useless information here at the Good Judge-Ment Podcast. Thanks for listening.*

1. O.C.G.A. § 15-12-1.1(a)(1). [↑](#endnote-ref-1)
2. O.C.G.A. § 15-12-1.1(a)(2) – (c)(2). [↑](#endnote-ref-2)
3. *Hutcheson v. State*, 246 Ga. 13 (1980), discussing prior statute Code Ann. 59-112. [↑](#endnote-ref-3)
4. *Hutcheson v. State*, 246 Ga. 13 (1980). [↑](#endnote-ref-4)
5. *Hutcheson v. State*, 246 Ga. 13 (1980). [↑](#endnote-ref-5)
6. *Robinson v. State*, 278 Ga. 836, 838 (2005). [↑](#endnote-ref-6)
7. *Mosher v. State*, 268 Ga. 555, 557 (1997); *Rickman v. State*, 277 Ga. 277, 280 (2003); *Ellis v. State*, 292 Ga. 276, 284-285 (2013). [↑](#endnote-ref-7)
8. *Denison v. State*, 258 Ga. 690, 691 (1988); *Wilson v. State*, 250 Ga. 630, 635-636 (1983). [↑](#endnote-ref-8)
9. *Denison v. State*, 258 Ga. 690, 691 (1988). [↑](#endnote-ref-9)
10. *Woods v. State*, 224 Ga.App. 52, 52-53 (1996); *Mosher v. State*, 268 Ga. 555, 557 (1997). [↑](#endnote-ref-10)
11. *Thompson v. State*, 212 Ga.App. 175, 176 (1994) (cits. omitted). [↑](#endnote-ref-11)
12. *Stocks v. State*, 182 Ga.App. 162 (1987). [↑](#endnote-ref-12)
13. *Butts v. State*, 273 Ga. 760, 764-765 (2001). [↑](#endnote-ref-13)
14. *Robinson v. State*, 278 Ga. 836, 838 (2005). [↑](#endnote-ref-14)
15. *Wellons v. State*, 266 Ga. 77, 83-84 (1995). [↑](#endnote-ref-15)
16. *Harris v. State*, 255 Ga. 464 (1986). [↑](#endnote-ref-16)
17. *Hutcheson v. State*, 246 Ga. 13 (1980). [↑](#endnote-ref-17)
18. *Mosher v. State*, 268 Ga. 555, 557 (1997). [↑](#endnote-ref-18)
19. *Wilson v. State*, 250 Ga. 630, 635-636 (1983); *Woods v. State*, 224 Ga.App. 52, 53 (1996); *Dennison v. State*, 258 Ga. 690, 691 (1988) are all examples. [↑](#endnote-ref-19)