



2023 South Dakota Legislature

House Bill 1061

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 **An Act to repeal provisions regarding criminal jury trials effective upon the adoption**
 2 **of Supreme Court rules.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 23A-20-1 be REPEALED:**

5 ~~Jurors drawn and summoned for the trial of civil actions are also the jurors for the~~
 6 ~~trial of criminal actions.~~

7 **Section 2. That § 23A-20-2 be REPEALED:**

8 ~~When prospective jurors are called for examination, the court shall allow selection~~
 9 ~~by either § 23A-20-3 or 23A-20-4.~~

10 **Section 3. That § 23A-20-3 be REPEALED:**

11 ~~When prospective jurors are called for examination, the court shall call to the jury~~
 12 ~~box a number of prospective jurors equal to the number of jurors to be impaneled, the~~
 13 ~~number of peremptory challenges allowed the parties, and number of alternates, if any.~~

14 **Section 4. That § 23A-20-4 be REPEALED:**

15 ~~Trial juries for criminal actions may be formed in the same manner as trial juries~~
 16 ~~in § 15-14-10.~~

17 **Section 5. That § 23A-20-6 be REPEALED:**

18 ~~The defense attorney or the defendant, if appearing pro se, and the prosecuting~~
 19 ~~attorney shall conduct examination of prospective jurors. Prior to the examination the~~
 20 ~~court may conduct a general examination of the prospective jurors. The court may in its~~
 21 ~~discretion allow examination of one or more jurors apart from the other jurors. If approved~~

1 ~~by the court, prospective jurors may be examined on whether the presence of a certified~~
2 ~~therapeutic dog to assist a child witness or a witness having a developmental disability~~
3 ~~would create undue sympathy for the witness or in any way serve as a prejudice to the~~
4 ~~defendant.~~

5 ~~For purposes of this section, the terms, certified therapeutic dog, child witness,~~
6 ~~and developmental disability, have the meanings provided in § 23A-24-10.~~

7 **Section 6. That § 23A-20-7 be REPEALED:**

8 ~~All members of the panel shall swear or affirm that they will answer truthfully all~~
9 ~~questions concerning their qualifications by taking the following oath.~~

10 ~~Do you swear or affirm that you will truthfully answer all questions asked of you~~
11 ~~by the court or counsel concerning your qualifications to sit as jurors on this case, so help~~
12 ~~you God?~~

13 **Section 7. That § 23A-20-7.1 be REPEALED:**

14 ~~Any person required to take an oath pursuant to §§ 15-14-11, 23A-5-7, 23A-20-~~
15 ~~7, and 23A-25-5.1, who, having conscientious scruples against oath taking, shall be~~
16 ~~allowed to make affirmation. Such person may also substitute the words, "under pains~~
17 ~~and penalties of perjury," for the words "so help you God."~~

18 **Section 8. That § 23A-20-8 be REPEALED:**

19 ~~At any time that cause for disqualifying a juror appears, the court shall excuse him~~
20 ~~and call another member of the panel to take his place in the jury box and on the clerk's~~
21 ~~list of jurors. Challenges for cause may be made out of hearing of the jurors, but shall be~~
22 ~~made on the record.~~

23 **Section 9. That § 23A-20-9 be REPEALED:**

24 ~~A challenge for cause is an objection to a particular juror. It may be taken either~~
25 ~~by the state or a defendant.~~

26 **Section 10. That § 23A-20-10 be REPEALED:**

27 ~~All challenges for cause to an individual juror must be taken, first by the defendant~~
28 ~~and then by the state, and each party must exhaust all his challenges for cause before~~
29 ~~the other begins.~~

1 ~~If new jurors are called to the panel to replace jurors dismissed for cause, the~~
2 ~~procedure in this section shall be followed in exercising challenges for cause to the~~
3 ~~substituted jurors.~~

4 **Section 11. That § 23A-20-13.1 be REPEALED:**

5 ~~Challenges for cause may be taken on any of the following grounds:~~

- 6 ~~(1) — The prospective juror does not meet one of the qualifications required by § 16-13-~~
7 ~~10 or is disqualified under that section.~~
- 8 ~~(2) — The prospective juror is related by consanguinity or affinity within the sixth degree,~~
9 ~~as defined by § 23A-20-30 to the defendant, alleged victim or complainant.~~
- 10 ~~(3) — The prospective juror is a member of the family of the defendant, alleged victim or~~
11 ~~complainant or one of the attorneys in the case.~~
- 12 ~~(4) — The prospective juror has a relationship of guardian and ward, master and servant,~~
13 ~~employer and employee, landlord and tenant, or principal and agent with an~~
14 ~~attorney or the defendant, alleged victim or complainant in the case.~~
- 15 ~~(5) — The prospective juror is a partner or associate in business with an attorney or the~~
16 ~~defendant, alleged victim or complainant in the case.~~
- 17 ~~(6) — The prospective juror is a surety on a bond or an obligation with an attorney or the~~
18 ~~defendant, alleged victim or complainant in the case.~~
- 19 ~~(7) — The prospective juror, presently, has a relationship of attorney and client with one~~
20 ~~of the attorneys in the case or has had such a relationship within one year~~
21 ~~previously.~~
- 22 ~~(8) — The prospective juror is an officer, agent, or employee of a corporation, between~~
23 ~~which corporation and an attorney in the case, the relationship of attorney and~~
24 ~~client exists.~~
- 25 ~~(9) — The prospective juror is the spouse of an attorney in the case.~~
- 26 ~~(10) — The prospective juror is the spouse of any other prospective juror who would be~~
27 ~~subject to a challenge for cause under this section.~~
- 28 ~~(11) — The prospective juror has knowledge of some or all of the material facts of the case~~
29 ~~and has an unqualified opinion or belief as to the merits of the case.~~
- 30 ~~(12) — The prospective juror has a state of mind evincing enmity against, or bias to or~~
31 ~~against an attorney, the defendant, the prosecution, the alleged victim or~~
32 ~~complainant in the case.~~
- 33 ~~(13) — Within two years prior to being summoned, the prospective juror served as a juror~~
34 ~~in the county during a prior term of jury service pursuant to § 16-13-22.~~

- 1 ~~(14) The prospective juror is a defendant in a criminal prosecution pending in the~~
2 ~~county.~~
- 3 ~~(15) The prospective juror is a party adverse to the defendant in a civil action, or has~~
4 ~~complained against or been accused by the defendant in a criminal action.~~
- 5 ~~(16) The prospective juror served on a grand jury that found the indictment, or on a~~
6 ~~coroner's jury that inquired into the death of a person whose death is the subject~~
7 ~~of the prosecution.~~
- 8 ~~(17) The prospective juror served on a jury trial that tried another person for the offense~~
9 ~~charged in the indictment or information.~~
- 10 ~~(18) The prospective juror was a member of a jury formerly sworn to try the indictment,~~
11 ~~information, or complaint, and whose verdict was set aside or which was~~
12 ~~discharged without a verdict.~~
- 13 ~~(19) The prospective juror served as a juror in a civil action brought against the~~
14 ~~defendant for the act charged as an offense.~~
- 15 ~~(20) If a talesman, the prospective juror applied directly or indirectly to a sheriff, deputy~~
16 ~~sheriff, or coroner of the county to be summoned for jury duty.~~
- 17 ~~(21) A challenge for actual bias showing the existence of a state of mind on the part of~~
18 ~~a prospective juror, in reference to the case or to the defendant, the prosecution,~~
19 ~~alleged victim, or complainant that satisfies the court, in the exercise of sound~~
20 ~~discretion, that the juror cannot try the issue impartially, without prejudice to the~~
21 ~~substantial rights of the party challenging.~~

22 **Section 12. That § 23A-20-14 be REPEALED:**

23 ~~A challenge to an individual juror may be oral, but must be entered upon the~~
24 ~~minutes of the court.~~

25 **Section 13. That § 23A-20-15 be REPEALED:**

26 ~~An adverse party or counsel may object to a challenge in the manner specified in~~
27 ~~§§ 23A-19-6 to 23A-19-9, inclusive, and the same proceedings must be had thereon,~~
28 ~~except that if an objection is allowed the juror must be excluded. An adverse party may~~
29 ~~also orally deny facts alleged as a ground for challenge.~~

30 **Section 14. That § 23A-20-16 be REPEALED:**

1 ~~All challenges, whether to a panel or to an individual juror, shall be tried by the~~
2 ~~court.~~

3 **Section 15. That § 23A-20-17 be REPEALED:**

4 ~~When a challenge to an individual juror is tried, the juror challenged may be~~
5 ~~examined as a witness to prove or disprove the challenge, and is bound to answer every~~
6 ~~question pertinent to the inquiry therein. Other witnesses may also be examined on either~~
7 ~~side, and the rules of evidence applicable to the trial of other issues govern the admission~~
8 ~~or exclusion of evidence on the trial of the challenge.~~

9 **Section 16. That § 23A-20-18 be REPEALED:**

10 ~~When a challenge to an individual juror is tried, the court must either allow or~~
11 ~~disallow the challenge and direct an entry accordingly upon the minutes.~~

12 **Section 17. That § 23A-20-19 be REPEALED:**

13 ~~A peremptory challenge is an objection to a juror for which no reason need be~~
14 ~~given. It can be taken by either party and may be oral. A court must exclude a juror on a~~
15 ~~peremptory challenge.~~

16 **Section 18. That § 23A-20-20 be REPEALED:**

17 ~~If an offense charged is a Class A, Class B, Class C, or Class 1 felony, the~~
18 ~~prosecution and the defense each have twenty peremptory challenges. In all other felony~~
19 ~~cases, the prosecution and the defense each have ten peremptory challenges. In~~
20 ~~misdemeanor cases, the prosecution and the defense each have three peremptory~~
21 ~~challenges.~~

22 **Section 19. That § 23A-20-21 be REPEALED:**

23 ~~For good cause shown, a court may grant such additional challenges as it, in its~~
24 ~~discretion, believes necessary and proper.~~

25 **Section 20. That § 23A-20-22 be REPEALED:**

1 ~~If there is more than one defendant a court may, upon good cause shown, allow~~
2 ~~the parties additional challenges and permit them to be exercised separately or jointly, as~~
3 ~~it, in its discretion, believes necessary and proper.~~

4 **Section 21. That § 23A-20-23 be REPEALED:**

5 ~~A motion made pursuant to § 23A-20-21 or 23A-20-22 must be made at least one~~
6 ~~week in advance of the first scheduled trial date or within such other time as may be~~
7 ~~provided by the rules of the circuit court.~~

8 **Section 22. That § 23A-20-24 be REPEALED:**

9 ~~If prospective jurors are called for examination pursuant to § 23A-20-3, the~~
10 ~~manner of exercising a peremptory challenge shall be as found in § 23A-20-25. If~~
11 ~~prospective jurors are called for examination pursuant to § 23A-20-4 the manner of~~
12 ~~exercising a peremptory challenge shall be as found in § 23A-20-26.~~

13 **Section 23. That § 23A-20-25 be REPEALED:**

14 ~~Following examination of the jurors called for examination pursuant to § 23A-20-~~
15 ~~3, the parties, commencing with the prosecuting attorney, shall alternately exercise their~~
16 ~~peremptory challenges on the clerk's list. A peremptory challenge may not be waived.~~

17 **Section 24. That § 23A-20-26 be REPEALED:**

18 ~~When prospective jurors are called for examination pursuant to § 23A-20-4,~~
19 ~~peremptory challenges shall be exercised in the same manner prescribed in § 15-14-10.~~

20 **Section 25. That § 23A-20-27 be REPEALED:**

21 ~~The persons remaining after both parties have exercised their peremptory~~
22 ~~challenges constitute the jurors for the trial. The jurors remaining who were last called~~
23 ~~under § 23A-20-3, 23A-20-4, or 23A-20-8 to make up the full jury box shall be the~~
24 ~~alternate jurors.~~

25 **Section 26. That § 23A-20-28 be REPEALED:**

26 ~~A court may direct that not more than six jurors in addition to the regular jury~~
27 ~~members be called and impaneled to sit as alternate jurors. Alternate jurors, in the order~~

1 ~~in which they were called, shall replace jurors who, prior to the time the jury retires to~~
2 ~~consider its verdict, become or are found to be disqualified, discharged, or unable to~~
3 ~~perform their duties. Alternate jurors shall be drawn at the same time and in the same~~
4 ~~manner, shall have the same qualifications, shall be subject to the same examination and~~
5 ~~challenges, shall take the same oath and shall have the same functions, powers, facilities,~~
6 ~~and privileges as regular jurors. An alternate juror who does not replace a regular juror~~
7 ~~shall be discharged after the jury retires to consider its verdict.~~

8 **Section 27. That § 23A-20-28.1 be REPEALED:**

9 ~~In addition to the method of choosing or seating an alternate juror provided by~~
10 ~~§§ 23A-20-27 and 23A-20-28, the judge may choose the alternate jurors by lot, or by~~
11 ~~such other means as the parties agree on the record.~~

12 **Section 28. That § 23A-20-29 be REPEALED:**

13 ~~If, before the jury retires, a juror or alternate or a member of his immediate family~~
14 ~~dies, or if he or a member of his immediate family becomes ill, or upon other good cause~~
15 ~~shown to the court, the court may order him discharged.~~

16 **Section 29. That § 23A-20-30 be REPEALED:**

17 ~~The degree of kindred is established by the number of generations, and each~~
18 ~~generation is called a degree. The series of degrees form the line; the series of degrees~~
19 ~~between persons who descend from one another is called direct or lineal consanguinity;~~
20 ~~and the series of degrees between persons who do not descend from one another, but~~
21 ~~spring from a common ancestor, is called the collateral line or collateral consanguinity.~~

22 ~~The direct line is divided into a direct line descending and a direct line ascending.~~
23 ~~The first is that which connects the ancestor with those who descend from that ancestor.~~
24 ~~The second is that which connects a person with those from whom that person descends.~~
25 ~~In the direct line there are as many degrees as there are generations. Thus the son is,~~
26 ~~with regard to the father, in the first degree; the grandson in the second; and vice versa~~
27 ~~with regard to the father and grandfather toward the sons and grandsons.~~

28 ~~In the collateral line the degrees are counted by generations from one of the~~
29 ~~relations up to the common ancestor, and from the common ancestor to the other~~
30 ~~relations. In such computation the person whose consanguinity or affinity is being~~
31 ~~determined is excluded, the relative included, and the ancestor counted but once. Thus~~

1 ~~brothers are related in the second degree, uncle and nephew in the third degree, cousins~~
2 ~~germane in the fourth degree, and so on.~~

3 **Section 30.** This Act is effective upon the effective date of the Supreme Court's adoption of
4 new court rules concerning the criminal jury trial process.