

No. of 2022

VIRGIN ISLANDS
JURY ACT, 2022
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No. of 2022

Jury Act, 2022

Virgin
Islands

I Assent

Governor.
, 2022

VIRGIN ISLANDS

No. of 2022

A BILL FOR

AN ACT TO PROVIDE FOR THE MODERNISATION AND ENHANCED PERFORMANCE OF THE JURY SYSTEM AND FOR RELATED MATTERS.

[Gazetted , 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Jury Act, 2022.

(2) This Act shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires,

“alphabetical order” means alphabetical order of surnames;

“alternate juror” means a juror empanelled to sit in a trial under section 21;

“Belonger” means a person deemed to belong to the Virgin Islands under section 2(2) of the Virgin Islands Constitution Order, 2007, U.K. S.I. 2007 No. 1678;

“Book” for the purposes of swearing an oath or making an affirmation, means the Bible, Quran, Bhagvad-Gita or any other religious document that contains matters on which a person’s conscience and belief is based;

“civil proceeding” means any proceeding other than a criminal proceeding;

“counters” means cards, slips, disks or pieces of wood, metal, paper, plastic or other similar substance;

“Court” means the High Court;

“Database” means the Jury Management Database established under section 4;

“juror” means a person whose name is included in the jurors’ register for the time being in force;

“jurors’ book” means the book to be kept under section 14 for the purpose of recording the final revised jurors’ list prepared under section 12;

“jurors’ list” means the list of persons prepared under section 9;

“jurors’ register” means the register prepared under section 14 and for the time being in force;

“jury panel” means the persons selected from the jurors’ register to act as jurors under section 15 or 22;

“ordinarily resident” has the meaning set out in section 16(9) of the Immigration and Passport Act, Revised Edition 2013;

“prescribed particulars” means the name, age, marital status, place of abode, title and occupation or business of a person;

“proceeding” includes cause, matter or use of fact in the Court; and

“Registrar” means the Registrar of the Supreme Court and includes a representative authorised in writing by the Registrar.

PART II

BOOKS, BALLOT BOX AND COUNTERS, JURY MANAGEMENT DATABASE

Books, ballot box and counters

3. (1) The Registrar shall, out of the Consolidated Fund, make available a jurors’ book, a jury panel book, a ballot box and a sufficient number of counters for carrying out the provisions of this Act.

(2) The counters shall be numbered respectively, in an arithmetical series, from one upwards, and shall be, as far as possible, exactly similar to each other, except as regards the numbers, so as not to be distinguishable to the touch.

Jury Management Database

4. (1) The Registrar shall establish, maintain and update an electronic database to be known as the “Jury Management Database” in which shall be entered

- (a) the prescribed particulars of each person who is qualified and eligible under section 5 to serve as a juror;
- (b) an electronic version of the jurors' register under section 14;
- (c) the jury panel list prepared under section 15(4); and
- (d) any other particulars that may be prescribed by the Cabinet to be included under subsection (4).

(2) A person whose prescribed particulars are entered in the Database will be assigned a unique identification number.

(3) Where information in the jurors' book conflicts with information in the Database, the jurors' book shall prevail.

(4) The Cabinet, may by Order published in the Gazette, cause to be included in the Database other particulars as are necessary for the proper management of the jury system.

PART III

QUALIFICATIONS OF JURORS

Qualification

5. Subject to sections 6 and 7, a person between the ages of 18 and 70 inclusive, who

- (a) is a Belonger;
- (b) holds a certificate of residence under section 18 of the Immigration and Passport Act, Revised Edition 2013;
- (c) is listed on the Register of Voters prepared under section 23 of the Elections Act, Revised Edition 2013; or
- (d) has been ordinarily resident in the Territory for at least ten years,

is qualified and eligible to serve as a juror for the trial and determination of any criminal or civil proceeding before a Court.

Disqualification

6. (1) The following persons are disqualified from serving as a juror

- (a) a person who is unable to speak, read and write English;
- (b) a person who has a physical or mental condition which impairs that person's capacity or ability to conveniently and fully discharge the duties of a juror;
- (c) a person who has been convicted of an offence for which that person has been sentenced to imprisonment for twelve months or more unless that person has received a free pardon in respect of the sentence;
- (d) a person having bad character or currently before the Court in a criminal proceeding; or

(e) a person who is adjudged or otherwise declared bankrupt.

(2) For the purposes of subsection 1(d) “bad character” in reference to a person means a person who has evidence of, or a disposition towards, misconduct.

Exemption from jury service

7. (1) The persons specified in Schedule 1 are exempt from serving as a juror, and their names shall not be inserted in the jurors’ register.

(2) Where a person’s name who is specified in Schedule 1 appears on the jurors’ register, that person shall notify the Registrar and claim an exemption.

(3) The Cabinet may by an Order published in the *Gazette* and subject to negative resolution of the House of Assembly, amend Schedule 1.

Disqualification or exemption must be claimed

8. Subject to section 36, a person whose name appears in the jurors’ register is not entitled to be excused from attendance on the ground of any disqualification or exemption not claimed by him or her at or before the revision of the jurors’ list, unless the name has been removed from the jurors’ list by the Court, on appeal.

PART IV

PREPARATION OF JURORS’ LIST AND THE JURORS’ REGISTER

Preparation of jurors’ list

9. (1) The Registrar shall request the

- (a) Supervisor of Elections;
- (b) Chief Immigration Officer;
- (c) Registrar General;
- (d) Labour Commissioner; and
- (e) Director of Social Security,

to provide in respect of all persons qualified under section 5, such information including a person’s prescribed particulars, that may assist the Registrar in the selection of persons for inclusion in, and the preparation of, a list which shall be called the “jurors’ list”.

(2) The Registrar shall, based on information received, or of his or her own knowledge, information and belief, add to the lists received under subsection (1), the name of any person who in the opinion of the Registrar is qualified and eligible to serve as a juror.

(3) Any person who fails to provide information requested by the Registrar under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years, or both.

Publication of jurors' list

10. (1) Within the first seven days of October in each year, the Registrar shall, based on information received and preparatory work done under section 9, compile a list in alphabetical order in the form set out in Schedule 2, of the persons who, in his or her opinion, are qualified and eligible to serve as jurors.

(2) When the jurors' list is compiled, the Registrar shall write at the end of it a notice in the form set out in Schedule 2, stating the time and place on which the jurors' list will be revised by the Registrar and the assessors under section 12.

(3) The juror's list with the notice attached shall be signed by the Registrar and shall immediately be published in the Gazette and at least one newspaper of general circulation in the Territory, and copies of it shall be affixed on or near the doors of the Court House, the Magistrate's Courts, the post offices, Government Administration Buildings, churches, police stations, community centres or any other prominent place determined by the Registrar.

Appointment of assessors

11. (1) The Governor shall appoint six assessors to advise and assist the Registrar as to the suitability of persons to serve as jurors.

(2) The assessors shall comprise

(a) the Senior Magistrate;

(b) the Permanent Secretary, Office of the Deputy Governor or designate;

(c) one representative from the Attorney General's Chambers

(d) two persons, none of which shall be an Attorney-at-law, Barrister or Solicitor, who have a broad experience with, or an understanding of the society and culture of, the BVI community, nominated by the Deputy Governor; and

(e) one representative from the Royal Virgin Islands Police Force of a rank not below Chief Inspector.

(3) The appointment of an assessor shall be for a period of up to three years and the appointment shall be made in a manner that the terms of service of the assessors do not expire at the same time.

(4) An assessor is eligible for re-appointment at the expiration of his or her term of service as an assessor.

Revision of jurors' list

12. (1) The revision of the jurors' list shall be done by the Registrar sitting with at least four assessors.

(2) For the purpose of assessing the suitability of persons to serve as jurors, the Registrar shall call upon the assessors for advice and assistance.

(3) Where the Registrar departs from the advice of the assessors given under subsection (2) the Registrar shall state reasons for any such departure.

(4) Any advice given to the Registrar is confidential and shall be so held to be by each assessor.

(5) On the day appointed for the revision, the Registrar sitting with at least four assessors shall receive and hear any objections to the jurors' list.

(6) The Registrar may summon any person named in the jurors' list to appear before the Registrar and the assessors, and the Registrar and assessors may examine the person as the Registrar and the assessors consider appropriate.

(7) A summon under subsection (6) shall be served personally.

(8) Subject to subsection (9), a person may

(a) appear at the revision either personally, or through counsel, and claim and adduce evidence to show that the person is or is not, eligible to serve as a juror; or

(b) instead of appearing in person, give the Registrar a written notice containing the particulars of the claim, supporting the same by evidence as the Registrar may consider necessary.

(9) Where a claim is made

(a) under subsection (8), the burden of proof shall lie on the person making it; and

(b) in the case of subsection (8)(b), the Registrar and assessors shall, as far as they reasonably can, inquire into the claim.

(10) The Registrar shall strike out the name of a person from the jurors' list who

(a) the Registrar has by his or her own knowledge come to believe is dead;

(b) is not qualified and eligible to serve on a jury but whose name is included in the jurors' list, and the person has proved the fact upon evidence on oath or other proof to that effect; or

(c) for good reason, should be so struck off.

(11) The Registrar shall insert in the jurors' list the name of a person improperly or erroneously omitted from it, and generally correct errors or omissions on the jurors' list.

(12) The Registrar shall publish in the same manner as the original jurors' list, the alterations and corrections, if any, made to the original jurors' list.

(13) Subject to Regulations made under this Act, the Registrar and assessors shall regulate their own procedure and fix the time of their sittings and may adjourn, as they think fit.

Appeal

13. (1) A person who is dissatisfied with the decision of the Registrar after raising an objection to the jurors' list may, upon giving to the Registrar notice of intention to appeal, appeal against the decision to a Judge in Chambers within five days after the decision.

(2) The Registrar shall, as soon as practicable after the expiration of the five days referred to under subsection (1), transmit to the Judge, a note of the proceedings on the hearing and determination of the objection.

(3) The Judge shall hear the appeal in a summary manner, and shall make an order as may be just, and the decision of the Judge shall be final.

(4) The Registrar shall immediately publish in the Gazette the alterations and corrections, if any, made in the jurors' list as a result of the determination of the appeal.

The jurors' register

14. (1) The Registrar shall, immediately after the final revision of the jurors' list, cause the final revised jurors' list to be fairly and truly copied in alphabetical order, in

- (a) a jurors' book to be kept for that purpose; and
- (b) the Database established under section 4,

and the copy of the final revised jurors' list so made in the jurors' book and the Database shall be called the "jurors' register".

(2) The Registrar shall assign to each of the names in the jurors' register a number, beginning with the number from the first name and continuing them in a consecutive order down to the last name.

(3) The Registrar shall write on separate counters the number assigned to the names and these shall be put together in a separate drawer or ballot box that shall be safely kept to be used as and when required by law.

(4) The jurors' register shall be taken to be the true record of all persons qualified and eligible to serve as jurors for the ensuing period of twelve months.

(5) The jurors' register shall remain in force until the next jurors' register is compiled.

(6) A person whose name is included in the jurors' register shall, while the register is in force, be eligible to be summoned to serve as a juror.

(7) The Registrar shall publish the jurors' register and bring it to the attention of the public in the same manner as the jurors' list under section 10(3), and shall write at the end of it a certificate, in a form set out in Schedule 3.

(8) The Registrar may, if he or she has cause to believe that a person whose name is included in the jurors' register

- (a) has permanently ceased to reside in the Territory;
- (b) is disqualified under section 6; or
- (c) is dead,

immediately inquire into the matter and if, either upon evidence adduced or of the Registrar's own knowledge, information and belief, he or she is of the opinion that the person has permanently ceased to reside in the Territory, is disqualified under section 6 or dead, the Registrar shall cancel the entry in the jurors' register relating to the person and insert the word "cancelled" in the "Remarks" column opposite to the entry together with the date on which the cancellation was made.

PART V
SELECTION OF JURY PANEL

Selection of jury panel

15. (1) At least fourteen days before a sitting of the Court at which a jury is required, the Registrar shall select such number of persons as the Registrar considers appropriate, being not less than sixty, whose names appear in the jurors' register and those persons, so selected, shall be summoned for and shall form the "jury panel".

(2) A Judge may, by an Order in writing, direct a greater number of persons to be selected and the number directed in the order shall be selected accordingly.

(3) The persons to be summoned for a jury panel shall be selected at random utilising counters in a ballot box or the unique identification number assigned in the Database.

(4) The Registrar shall prepare a list of the persons that have been summoned under section 16 for a jury panel, in the form set out in Schedule 4, and shall insert a copy of the list in the jury panel book and the Database.

(5) A copy of the jury panel list prepared under subsection (4) may be given to the legal representative of either party to a proceeding no more than five days before the sitting of the Court but shall be given to the legal representative of either party to a proceeding prior to the commencement of the trial.

(6) Notwithstanding anything in this section, the addresses of the persons summoned under this section shall not be

- (a) made available to any person other than the Registrar; or
- (b) included in any list provided under subsection (5).

Service of summons to prospective juror

16. (1) Summons to a person to serve as a juror shall be signed by the Registrar and served by the summoning officer of the Court at least eight days before the day appointed for the sitting of the Court, and service shall be effected by

- (a) delivering the summons directly to the person being summoned;
- (b) leaving the summons at the feet of the person being summoned if that person refuses to accept service when being served in person;
or
- (b) leaving the summons at the person's last or most usual place of abode or place of business.

(2) The summoning officer shall make a true return of the service, and shall attend at the sitting of the Court and, if necessary, verify the service on oath.

(3) Notwithstanding subsection (1), the service of a summons may be effected by sending it by ordinary mail or electronic mail in a manner to be prescribed.

Certain persons not to be summoned

17. (1) Subject to subsection (2), the Registrar shall not summon a person

- (a) who is known and believed by the Registrar to be temporarily absent from the Territory, and not likely to return in time to attend the sitting of the Court;
 - (b) who has within two years prior to the present selection, been selected and summoned to serve on a jury panel from the jurors' register in accordance with section 15 (1);
 - (c) who, to the best of his or her knowledge, information and belief, is currently employed at the same place of business from which a juror has already been summoned; and
 - (d) who is the spouse of a juror who has already been summoned for the same sitting of the Court.
- (2) Notwithstanding subsection (1)(c),
- (a) where the number of persons employed in the same place of business exceeds eight, the Registrar may summon up to one third of the number of persons so employed at the time;
 - (b) where two or more businesses are carried on by, or on behalf of or for the benefit of the same employer or employers at a particular place of business or at different places, the fact that a person employed in one of the businesses has been summoned to serve as a juror, shall not excuse another person employed in any of the other businesses from being summoned.
- (3) The decision of the Registrar as to whether or not two or more jurors are employed in the same business shall, for the purposes of this section, be final.

Presumption of regularity and lawfulness of panel

18. (1) A person summoned for a jury panel shall be a juror to serve for the trial of all proceedings at that sitting of the Court for the term.

(2) Unless challenged and set aside, the panel shall be deemed to be correctly selected and to be regular and lawful in every respect.

(3) For the purpose of subsection (1), a "term" means the period during which the Court is sitting in the exercise of its criminal jurisdiction.

Number of jury

19. A jury empanelled for the trial of any proceeding shall consist of nine persons.

Empanelling of jury

20. (1) When

- (a) the jury panel is not challenged; or
- (b) the jury panel is challenged, but the Judge does not direct that the jury panel be quashed and a new jury panel be returned,

the Registrar shall, in open Court, select at random one at a time, utilising counters in a ballot box or the unique identification number assigned in the Database, from

the names on the jury panel list, a sufficient number to provide a full jury including allowing for challenges.

(2) After the name of a person is selected, a party to the proceeding may in accordance with section 24 challenge the selection.

(3) Subject to section 25, the Registrar shall swear or take an affirmation from each member of the jury in the order in which their names were selected.

(4) If it appears to the Judge that the number of persons on the jury panel who are in attendance is insufficient or is reduced by exemptions, exclusions, challenges or persons being found not qualified as to be insufficient to select a full jury, the Judge may call upon the Registrar either verbally or in writing, to randomly select additional persons who shall be summoned immediately to be included on the jury panel.

(5) If it is considered necessary by the Registrar, persons selected at random from the jurors' register in accordance with section 14(2), may be summoned under subsection (4) by word of mouth, and in that event, written summons signed by the Registrar shall subsequently be served on any person summoned by word of mouth and the summoning officer shall make a return of that service.

(6) The name of a person summoned under subsection (4) shall be added to the panel and the Judge shall proceed as if those summoned had been included in the panel in the first instance, and they shall serve under the same penalty and receive the same fees as if they were regularly summoned to serve.

(7) The Judge may discharge a person or persons from the jury panel as he or she thinks fit.

Alternate jurors

21. (1) The Court may direct that not more than six jurors in addition to the regular jury shall be selected and empanelled to sit as alternate jurors and, in that case, they shall in the order in which they are called, replace those jurors on the regular jury who, prior to the time it retires to consider its verdict, have become or been found to be unable or disqualified to perform their duties.

(2) An alternate juror shall attend and remain in Court during proceedings in relation to which he or she is empanelled as an alternate juror.

(3) An alternate juror who does not replace a juror in the regular jury shall be discharged after the jury retires to consider its verdict.

(4) Alternate jurors shall be selected at random in the same manner, and shall have the same qualifications, take the same oath and have the same functions, powers, facilities and privileges, as the regular jurors under this Act.

Empanelling of further jury

22. Where at any sitting of the Court, a proceeding is brought on for trial before the jury empanelled for the trial of any other proceeding has been discharged, a presiding Judge may order another jury to be empanelled from the jurors who are not yet empanelled.

Quashing of jury panel

23. An application made at a sitting of the Court for the quashing of a jury panel shall be heard and determined by the Judge, and a panel shall not be quashed on the ground of a formal defect, or of a breach of any of the provisions of this Act, unless the Judge is satisfied that it is expedient on the merits and in the interests of justice that the panel should be quashed.

Challenge

24. (1) Subject to subsection (2), either party to the proceeding in a trial may object by way of peremptory challenge to not more than three of the persons selected to form the jury without assigning any reason, and any further challenge on either side shall be for cause.

(2) Where two or more persons are arraigned together, the total number of peremptory challenges available to

- (a) each person so arraigned is three;
- (b) the Crown is three for each such person arraigned.

(3) Challenge for cause shall be allowed without restriction on the part of either party to the proceeding and, if any challenge for cause is alleged, the Judge shall immediately enquire into the truth or the validity of the allegation and shall allow or overrule the challenge as it seems proper and the Judge's decision shall be final.

(4) Where alternate jurors have been selected under section 21, in addition to the peremptory challenges provided under subsections (1) and (2),

- (a) where one person is arraigned, each party shall be entitled to one peremptory challenge;
- (b) where two or more persons are arraigned,
 - (i) each person arraigned shall be entitled to one peremptory challenge; and
 - (ii) the Crown shall be entitled to one peremptory challenge for each such person arraigned.

(5) Any right of challenge available under this section, whether peremptory or for cause, shall be exercised before the person challenged is sworn or affirmed as a juror.

Counting, swearing or affirming of jury

25. (1) As soon as the jury is chosen, the jurors empanelled for the trial of the proceeding shall be counted in the jury box by the Registrar, who shall then at once proceed to swear them with the oath set out in Part A of Schedule 5, subject to the provisions of subsection (2) and section 49.

(2) If a juror refuses or is unwilling for alleged conscientious motives to be sworn, the Court may upon being satisfied of the sincerity of the objection, allow the juror to make a solemn affirmation as set out in Part A of Schedule 5, and the affirmation shall have the same effect as if the juror had taken an oath in the usual form, and the juror is liable to the same penalty as a person convicted of perjury, if the affirmation is untrue.

(3) If in any legal or other proceedings, it is necessary or usual to state or allege that jurors have been sworn, it shall not be necessary to specify that any particular juror has made an affirmation instead of an oath, but it is sufficient to state or allege generally that the jurors have been sworn.

Foreman

26. (1) The jurors being duly sworn shall, by a majority vote, appoint one of their members to be their foreman but, if the jurors are unable to appoint a foreman within a time the Judge thinks reasonable, the Judge shall nominate one of them as foreman.

(2) The foreman shall preside at the meetings of the jury for consideration of its verdict and may ask any information from the Court that the jury or any of the jurors requires.

PART VI POWERS OF COURT

Power of Court to discharge non-neutral juror

27. A Court may, before any evidence is given, discharge a particular juror without discharging the whole of the jury and direct that an alternate juror replaces the discharged juror, if before or after the juror is sworn, it appears to the Court from the juror's own statement that the juror is not neutral as between the parties to the proceeding, or that for any other reason the juror ought not to be allowed or required to act as a juror at the trial.

Viewing of place

28. The Judge may order the jury empanelled to try the proceeding to have a view of any place, or of any real or personal property, connected with the proceeding, and the Judge may order the view to be made accordingly, under conditions as he or she considers necessary.

Absence, death or incapacity of juror

29. If, during the trial of the proceeding, one of the jurors serving on the jury is absent or dies, or, in the opinion of the Court, is incapable of serving, the juror shall be replaced by one of the alternate jurors on the panel, as the Judge may direct.

Separation of jury during adjournments

30. (1) At any sitting of the Court, if the trial of a person charged with an indictable offence is adjourned before the jury begins to consider their verdict, either from one day to another day, or from one hour to another hour of the same day, the Judge may permit the jury to leave the Court and separate until the close of the adjournment if the oath set out in Part B of Schedule 5 has been previously administered to them in open court.

(2) A juror who is allowed to make a solemn affirmation under section 25 shall likewise be allowed to make an affirmation as set out in Part B of Schedule 5 for the purposes of this section.

(3) Before the jury is permitted to leave the Court, the proper officers designated to keep the jury shall take the oath or affirmation set out in Part C of Schedule 5.

(4) If a juror refuses to take the oath or make an affirmation, his or her refusal shall not prevent the separation or departure of the jurors who have taken the oath or made the affirmation, but the juror who refuses to take the oath or make an affirmation shall be kept during the adjournment, by the proper officers sworn, in a similar manner as set out in Part C of Schedule 5.

(5) If, in the course of a trial, a juror takes an oath or makes an affirmation, it shall not be necessary to take an oath or make an affirmation again during the same trial.

(6) The jurors shall not be discharged, except in cases of evident necessity, or allowed to hold communication with any other person, until they have given their verdict, but the Judge may, if he or she thinks fit, at any time whether before or after the jury have been directed to consider their verdict, permit the jury to separate.

(7) Whenever the jury has not been allowed to separate or are enclosed, the Judge may, for sufficient cause shown to his or her satisfaction, allow one or more of the jurors to separate from the other jurors, but not so as to hold communication with any other person.

(8) Where the jury, or a juror, is permitted to separate, they shall remain in the charge of the proper officers designated to keep the jury or juror, so that where the exigencies of such sufficient cause so require, the Judge may allow such supervised communication with other persons (not related to the trial) as he or she considers proper and fit, and where appropriate the judge at any time during the trial may require a report on oath from the proper officers thereon.

Refreshment of jury

31. When a jury is empanelled and sworn for the trial of a proceeding, the Judge may allow them to have reasonable refreshment to be procured at the expense of the Crown, at any time before giving their verdict on the case.

Verdict

32. (1) After the conclusion of the Judge's summing up, the Judge shall direct the jury to retire and be enclosed if the jury is not immediately prepared to return its verdict following consultation in the jury box, and the proper officers shall be charged to keep the jury by taking the oath or affirmation set out in Part D of Schedule 5.

(2) The verdict of the jury shall be returned by the mouth of the foreman of the jury in the presence of the other jurors.

(3) A verdict of the jury shall not, in any proceeding, be accepted within two hours after the conclusion of the Judge's summing up, unless it is unanimous.

(4) Subject to subsections (5) or (6), after the expiration of two hours from the conclusion of the Judge's summing up, a majority verdict of a jury, in which not less than seven of them agree, shall be accepted as the verdict of the whole.

(5) Where, due to absence, death, incapacity or there are no alternate jurors, the number of jurors are reduced, then the quantum of jurors required for a majority verdict in subsection (4), shall be reduced by the same number.

(6) A Judge shall not accept a majority verdict unless the foreman has stated in open court the number of jurors who respectively agreed to and dissented from the verdict.

Jury not agreeing may be discharged

33. If a verdict is not delivered in any proceeding by a jury, within six hours after the conclusion of the summing up of the Judge, and the Judge is satisfied that there is no prospect of the jury agreeing, he or she may discharge them.

Power of Court to discharge jury without verdict

34. (1) The Court may, in case of an emergency or casualty rendering it expedient for the ends of justice to do so, discharge the jury without the jury giving a verdict, and direct a new jury to be empanelled during the sittings, or may postpone the trial on such terms as justice may require.

(2) If the Judge becomes incapable of trying the case or directs that the jury is to be discharged, the Registrar shall discharge the jury.

(3) Where a jury is discharged under this section, an accused person in a criminal proceeding shall, unless already released on bail, remain in custody until put on trial, but he or she has the same rights with respect to admission to bail as he or she would have had upon an original committal for trial for the offence with which he or she is charged, and the Court, or the Registrar if the Judge is incapable, may in an appropriate case, admit the accused person to bail.

New trial in case of abortive trial

35. Whenever for any cause, the trial of any proceeding shall prove abortive, the presiding Judge may discharge the jury, and the proceeding may be tried with a new jury duly empanelled and sworn, either at the same sitting or, if the Judge so orders, at the next sitting of the Court, in the same manner as if the former abortive trial had not taken place.

Excusing jurors

36. (1) A juror duly summoned to attend at a sitting of the Court, is not entitled to be excused from attendance on the ground of any exemption, disqualification or on any other ground except illness or unavoidable accident or circumstance.

(2) The Judge presiding at the Court, or before the commencement of the sitting, a Judge or the Registrar, may

- (a) upon reasonable and sufficient cause being shown upon oath; or
- (b) where the cause is the state of the juror's health, on a certificate signed by a duly qualified medical practitioner,

exempt a juror summoned to attend to perform a jury service, from attendance during the whole or any part of the sitting.

(2) For the purposes of subsection (2)(a), the Judge or the Registrar may demand supporting documents as are necessary.

(3) Where a juror is excused from attending to perform jury service at a particular sitting, the Judge may order that juror to attend for jury service in the next or succeeding sitting, and the order shall have effect as if the name of that juror had been selected and returned for service at the next or succeeding sitting as a member of the jury panel.

(4) A presiding Judge may exempt from further service for a period not exceeding three years, jurors who have been engaged in a prolonged or difficult criminal or civil trial.

(5) The Registrar shall maintain a record of the names of the jurors concerned and the period of exemption ordered by the Court under subsection (5).

Right to jury trial in civil proceedings

37. (1) Subject to section 23 of the Eastern Caribbean Supreme Court (Virgin Islands) Act, Revised Edition 2013, a Judge may on an application by a party to a civil proceeding for a trial by jury, order that the proceeding be tried by a Judge and jury on terms the Judge considers appropriate, and the Judge may appoint a day on which the trial shall commence.

(2) In civil proceedings, the oath and affirmation set out in Schedule 5 shall apply with such adaptation or modification that may be necessary.

PART VII

JURORS' FEES

Jurors' fees

38. A person who is summoned to attend the Court as a juror or alternate juror, and actually attends, is entitled whether empanelled or not, to fees on attendance as is fixed by any Rules for the time being in force and the fees shall be paid to him or her by the Registrar who shall make a payment request to the Accountant General for the necessary amount to pay the fees.

Registrar's discretion as to fees

39. If, owing to the hour at which a juror is discharged, the Registrar is satisfied that the juror may not be able to return home and may incur extra expense, the Registrar may pay the juror a fee not exceeding fees for two days that in the circumstances the Registrar considers appropriate.

Limitation of juror's claim for payment

40. A claim for fees made by a juror for attendance may not be entertained unless the claim is made within one month after the last day of the sitting of the Court in respect of which the claim is made.

Return by Registrar of payments

41. The Registrar shall, after the expiration of one month from every sitting of the Court, make out a list of jurors who have attended at sittings of the Court during the month, and of the several fees paid to them, and shall transmit the list to the Auditor General.

Rules for payment of jurors out of public funds

42. (1) The Cabinet may make Rules authorising the payment of fees to jurors empanelled under the provisions of this Act or attending at the Court in pursuance of summonses under this Act, on scales and in cases as the Cabinet considers appropriate.

(2) The fees under subsection (1) may include compensation for loss of time and expenses paid or incurred in going to, attending at and returning from, the Court.

(3) Fees, payable under the Rules made under subsection (1), shall be paid on the warrant of the Court Registry out of the Consolidated Fund.

PART VIII OFFENCES

Penalisation of jurors prohibited

43. (1) Fees paid to a juror under this Act or Rules made under section 42 shall be the personal property of the juror.

(2) An employer of a person who is serving, has served or is qualified to serve as a juror under this Act shall not

- (a) require the person to pay any fees paid or to be paid to that person under this Act or Rules made under section 42 to the employer or any other person;
- (b) deduct any sum from the salary, allowances, emoluments, pension, gratuity, benefits or other remuneration of that person on account of the fact that the person is serving, has served or is qualified to serve as a juror;
- (c) require, as a term or condition of employment, that a sum be deducted from the salary, allowances, emoluments, pension, gratuity, benefits or other remuneration of that person if the person serves or is qualified to serve as a juror; or
- (d) directly or indirectly penalise that person in any way, whether
 - (i) in the terms of employment which he or she affords the person;
 - (ii) in the way he or she affords the person access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or
 - (iii) by dismissing the person or subjecting him or her to any other detriment,

on account of the fact that the person is serving, has served or is qualified to serve as a juror.

(3) A written or oral term or condition of a contract of employment that is inconsistent with subsection (1) or (2) is unlawful and unenforceable to the extent

of its inconsistency with this Act, whether or not the contract is entered into before, on or after the commencement of this Act.

(4) An employer who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Failure to attend or to serve

44. (1) A person duly summoned to attend as a juror at any sitting of the Court, who

- (a) does not attend;
- (b) does not answer to a call, having been called by name three times;
- (c) is present but does not appear after having been called by name; or
- (d) wilfully withdraws from the presence of the Court without the leave of the Judge and without reasonable cause, after his or her appearance and before being sworn,

may be fined by the presiding Judge any sum not exceeding two thousand dollars.

(2) A person summoned to serve as a juror, who

- (a) refuses to serve when required to do so by the Court; or
- (b) after having been sworn, leaves the Court before a verdict is given or before that person is properly discharged,

may be fined by the presiding Judge any sum not exceeding three thousand dollars.

Making a false entry, false representation etc.

45. (1) A person who

- (a) makes an entry in the Database, knowing or having reasonable cause to believe it to be false, or which he or she does not believe to be true;
- (b) having been summoned to serve as a juror makes or causes or permits to be made on his or her behalf, any false representation with the intention of evading jury service;
- (c) makes or causes to be made on behalf of another person who has been summoned, any false representation with the intention of enabling that other person to evade jury service;
- (d) knowing that he or she is not qualified for jury service, serves on a jury;
- (e) corruptly influences or attempts to influence a juror in the performance of his or her functions as a juror in a proceeding before the Court; or
- (f) corruptly interferes with a proceeding before the Court,

commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years, or both.

(2) A juror who yields to any corrupt influence or is involved in an improper behaviour in connection with the performance of his or her functions as a juror commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding two years, or both.

Interferes with, threatens or intimidates a juror

46. A person who interferes with, threatens or intimidates a juror so as to affect the performance of his or her functions as a juror, commits an offence and is liable to conviction on indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding seven years, or both.

Power of Judge to remit or reduce fine

47. The Judge may, during the same sitting of the Court, remit or reduce any fine under section 44 (1) or (2) upon sufficient cause shown in open court, or he or she may, within five days after the close of the sitting, remit or reduce the fine upon sufficient cause shown by affidavit duly filed.

Imprisonment for non-payment of fine

48. If a person on whom a fine is imposed under this Part refuses or neglects to pay the fine to the Registrar, the Judge may by order of the Court signed by the Registrar, order the imprisonment of that person under section 25 of the Criminal Code, Revised Edition 2013.

PART IX

MISCELLANEOUS

Choice of oath or affirmation

49. The Court shall inform a juror that he or she has a choice of swearing an oath upon a Book or making an affirmation and that where he or she shall swear he or she is required to hold the Book in their right hand, while the oath is being administered to him or her, and after the oath has been administered he or she must say "I will," or other words of assent as directed by the presiding Judge.

Irregularity as to jury not to invalidate

50. (1) A mistake, error, informality or otherwise with respect to

- (a) the qualification and eligibility of a juror;
- (b) the selection of a juror;
- (c) the preparation of the jurors' lists;
- (d) the entry of the jurors' lists in the proper books or Database;
- (e) the selection of a jury panel from the jurors' register; or
- (f) the empanelling or swearing or affirming of a jury,

shall not be a ground of impeaching the verdict, judgment or sentence rendered in any case.

(2) An omission or failure to observe any direction of the Court under this Act with respect to a jury panel shall not be a ground of impeaching the verdict, judgment or sentence rendered in any case.

Regulations

51. The Governor may make Regulations generally as are necessary or expedient for the proper carrying out of the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing may make Regulations respecting

- (a) information to be provided under section 9;
- (b) the provision of measures and procedures to be adopted for the effective preparation and revision of the jurors' list;
- (c) the jurors' register;
- (d) administrative measures for the selection of jury panels from the jurors' register;
- (e) the summoning of jurors or the empanelling of a jury;
- (f) the treatment of alternate jurors;
- (g) exercise of the power to discharge non-neutral jurors or the entire jury panel; or
- (h) any other matter or thing that by this Act may be prescribed.

Repeal

52. The Jury Act, Cap. 36, is repealed.

Savings and transitional provisions

53. (1) The Jurors' (Allowances) Rules, Revised Edition 2013, shall, until revoked, continue to be in force to the extent that the Rules are not inconsistent with this Act.

(2) Notwithstanding the repeal of the Jury Act under section 52, the voters list revised as at 29th of December, 2021 shall, on the commencement of this Act, be deemed and construed for the purposes of this Act as the jurors' list until a jurors' list is compiled in accordance with Part IV of this Act.

(3) Notwithstanding the repeal of the Jury Act under section 52, a jury panel existing prior to the commencement of this Act shall, on the commencement of this Act, be deemed to have been constituted under this Act.

SCHEDULE 1

[Section 7]

LIST OF PERSONS EXEMPT FROM JURY SERVICE

1. The Governor and his or her spouse.
 2. A Member of the Cabinet and his or her spouse.
 3. The Cabinet Secretary and his or her spouse.
 4. A Member of the House of Assembly and his or her spouse.
 5. The Clerk of the House of Assembly.
 6. A Judicial office holder and his or her spouse.
 7. The Director of Public Prosecution, Counsel and Administrative staff in the Office of the Director of Public Prosecution, his or her spouse, parents, siblings and children.
 8. An Attorney-at-Law Barrister or Solicitor in Government or private practice.
 9. An officer of the courts of law.
 11. A Police Officer and his or her spouse.
 10. A Prison Officer and his or her spouse.
 11. A Medical practitioner, nurse and other medical staff in active practice of the Dr. D. Orlando Smith Hospital or any other government medical clinic of the Territory.
 12. Critical or Essential Services staff certified by the respective heads of the following institutions - Fire and Rescue; Water and Sewerage; BVI Electricity Corporation; Air Traffic Controllers; BVI Airports Authority; and BVI Airport Security.
 13. A licensed Minister of Religion.
 14. School teachers in active practice.
 15. Auditor General.
 16. Accountant General.
 17. Director, Internal Audit.
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SCHEDULE 2

[Section 10]

JURORS' LIST FOR THE YEAR 20

Names. (In Full)	Place of abode.	Title, Occupation or Business.	Remarks.

NOTICE

The above are the persons whom it is proposed should be inserted in the jurors' register for the year 20 . The list will be revised by the Registrar and four assessors at the Court, on the day of , at o'clock, and the Registrar may make changes to the list as he or she thinks fit, either by adding or striking out names, or otherwise.

A person, whether included or not on the said list, may then appear personally, or by his or her counsel or solicitor, and claim that he or she is, or is not, qualified and eligible to serve as a juror or, if unable to attend personally, may give the Registrar notice in writing of his or her claim, supporting it with evidence the Registrar thinks fit, and the Registrar will then, as far as he or she reasonably can, inquire into the claim.

Subject to the right of appeal under section 13, the Registrar's decision in revising the said list will be conclusive, and all persons included in the said list, after it has been revised by the Registrar, will be qualified and eligible during the year 20 to be summoned and serve as jurors, notwithstanding any disqualification or exemption other than illness or unavoidable accident.

Dated this day of 20 .

Registrar.

SCHEDULE 3

[Section 14(7)]

FINAL REVISED JURORS' LIST FOR THE YEAR 20

I CERTIFY that this list is the final revised jurors' list, and that it is a true and correct list of the persons whose names appear in the jurors' register and are qualified and eligible to be summoned to serve in the Territory on a jury panel.

Dated this day of 20 .

Registrar.

SCHEDULE 4

[Section 15(4)]

JURY PANEL

For the Sitting of the Court to be held on the
day of 20 .

Names. (In Full)	Place of abode.	Title, Occupation or Business.	Remarks.

SCHEDULE 5

[Sections 25, 30, 32 and 37]

PART A

JURORS OATH

“I swear by Almighty God (or the person to be sworn may name a god recognised by his or her religion) that I will faithfully try the several issues, joined between our Sovereign Lady, the Queen, and the Accused at the bar, and give a true verdict according to the evidence, so help me God (or the person to be sworn may name a god recognised by his or her religion)?”

JURORS AFFIRMATION

“I solemnly and sincerely declare and affirm that I will faithfully try the several issues, joined between our Sovereign Lady, the Queen, and the Accused at the bar, and give a true verdict according to the evidence?”

PART B

JURORS OATH ON SEPARATION

“I swear by Almighty God (or the person to be sworn may name a god recognised by his or her religion) that during any adjournment of this trial of the issues joined between our Sovereign Lady, the Queen, and the Accused (persons) at the bar whom I have been sworn to try, I will not, whilst separated and until I shall be assembled in Court, speak with, listen to, or hold any communication, verbal, written or otherwise, with any person whomsoever other than my fellow Jurors empanelled and sworn for the trial of the said issue, on any matter relative to the said trial, and that, upon the termination of every adjournment of the said trial I will again come into this Court, so help me God(or the person to be sworn may name a god recognised by his or her religion)?”

JURORS AFFIRMATION ON SEPARATION

“I solemnly and sincerely declare and affirm that during any adjournment of this trial of the issues joined between Our Sovereign Lady, the Queen, and the Accused (persons) at the bar whom I have been sworn to try, I will not, whilst separated and until I shall be assembled in Court, speak with, listen to, or hold any communication, verbal, written or otherwise, with any person whomsoever other than my fellow Jurors empanelled and sworn for the trial of the said issue, on any matter relative to the said trial, and that, upon the termination of ever adjournment of the said trial I will again come into this Court?”

PART C

OATH OF OFFICERS

“I swear by Almighty God (or the person to be sworn may name a god recognised by his or her religion) that I will well and truly keep this jury together; shall suffer none to speak to them except the Provost Marshall neither shall I speak to them myself on the subject matter of the trial and I shall suffer them to have such refreshment as may be permitted by the authority of the Court conveyed through the Provost Marshall, so help me God (or the person to be sworn may name a god recognised by his or her religion)?”

AFFIRMATION OF OFFICER

“I solemnly and sincerely declare and affirm that I will well and truly keep this jury together; shall suffer none to speak to them except the Provost Marshall neither shall I speak to them myself on the subject matter of the trial and I shall suffer them to have such refreshment as may be permitted by the authority of the Court conveyed through the Provost Marshall?”

PART D

OATH OF OFFICERS ON RETIREMENT OF JURY

“I swear by Almighty God (or the person to be sworn may name a god recognised by his or her religion) that I will well and truly keep this jury together; shall suffer none to speak to them except the Provost Marshal neither shall I speak to them myself on the subject matter of the trial, but only to ask them if they are agreed and I shall suffer them to have such refreshment as may be permitted by the authority of the Court conveyed through the Provost Marshall, so help you God (or the person to be sworn may name a god recognised by his or her religion)?”

AFFIRMATION OF OFFICERS ON RETIREMENT OF JURY

“I solemnly and sincerely declare and affirm that I will well and truly keep this jury together; shall suffer none to speak to them except the Provost Marshal neither shall I speak to them myself on the subject matter of the trial, but only to ask them if they are agreed and I shall suffer them to have such refreshment as may be permitted by the authority of the Court conveyed through the Provost Marshall?”

Passed by the House of Assembly this day of , 2022.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to reform the law relating to the jury system in the Virgin Islands.

Part I of the Bill makes provision for the preliminary clauses providing for the short title and interpretation provisions.

Part II makes provision for the necessary paraphernalia required for the use and convenience of the Registrar to properly manage the jury system. It also provides, in addition to the manual system, for the establishment and maintenance of an electronic database to be known as the Jury Management Database.

Part III sets out the criteria for the qualification of jurors. These now include any person between the ages of 18 to 70 years who is a Belonger, holder of a Certificate of Residence, listed on the Register of Voters or has been ordinarily resident in the Territory for at least ten years. It further sets out the basis on which a person is disqualified from serving. It also provides for persons who may be exempt from service which is set out in Schedule 1. It also provides that any such disqualification or exemption must be claimed.

Part IV of the Bill makes provision for the preparation jurors' list and the jurors' register. This includes the Registrar having the power to request information from multiple sources, instead of only the Register of Voters which previously was the practice, to compile a list of qualified persons. The widening of the source of information beyond persons listed on the Register of Voters is envisioned to increase the pool of qualified persons who can now be included in the list. Provision is also made for the publication of the jurors' list, revision of the jurors' list, appeals against the Registrar's decision with respect to the compilation of the jurors' list and the settlement and publication of final revised list which is known as the jurors' register.

Part V of the Bill provides for selection of a jury panel by the Registrar and thereafter the summoning of jurors. Provision is made for the manner of service of summons by a summoning officer on prospective jurors. The Part provides for the selection of, and empanelling of a jury. A jury summoned in compliance with the procedure prescribed under this Part is to be presumed to be correctly selected, regular and lawful. Other matters dealt with under this Part are the exercise of challenge by the parties to a trial; the counting of the jury and swearing in or affirming of the jury; the appointment of the foreman.

Part VI makes provision for the power of the Judge to discharge non-neutral jurors; the viewing by the jury on the Judge's order of any place etc. connected with the proceeding; the replacement of a juror in the event of death, absence or incapacity of any juror; the separation of the jury during an adjournment; and the provision of reasonable refreshment for the jury.

This Part also provides for the delivery of the verdict of the jury and conditions for its acceptance by the Judge; the discharge of the jury where there is no prospect of them agreeing; the power of the court to discharge the jury without verdict; the discharge of the jury where the trial proves abortive and the proceedings is to be tried by a new jury; the excusing of jurors; and the right to jury trials in civil proceedings.

Part VII of the Bill makes provision for the payment of fees to summoned jurors' on their attendance; for summoned jurors to be paid fees for extra expenses incurred as a result of their inability to go home upon their late discharge from court; the exercise of the Registrar's discretion to determine fees to be paid to jurors and the limit of a juror's claim for payment. It also provides for the Rules for payment of jurors out of public funds and the making of a return detailing the list of jurors and the fees paid thereto to be transmitted by the Registrar to the Auditor General.

Part VIII of the Bill provides for offences. It includes the prohibition against penalisation of jurors by their employers; failure of a juror to attend or to serve; making a false entry or representation; interfering, threatening or intimidating a juror among others. Provision is also made for the Judge to remit or reduce fines; levying by distress and sale of goods of the juror by order of the court.

Part IX of the Bill deals with miscellaneous provisions. Matters with respect to, the giving of directions that a juror may choose to swear or affirm; the fact that an irregularity as to the empanelling of the jury does not invalidate proceedings by the court; conferring of power on the Cabinet to make Regulations; the repeal of the Jury Act (Cap.36) and savings and transitional provisions are dealt with under this Part.

Attorney General