



PENNSYLVANIANS
FOR MODERN COURTS

**Testimony of Pennsylvanians for Modern Courts
Regarding Juror Compensation : House Bills 601 & 1356
Before the Subcommittee on Courts of the House Judiciary Committee
May 20, 2008**

Introduction

Pennsylvanians for Modern Courts (PMC) is a statewide nonprofit, nonpartisan organization founded to improve and strengthen the justice system in Pennsylvania by improving the jury system and court financing; eliminating bias; assisting citizens in navigating the courts and the justice system, whether as litigants, jurors, or witnesses; and reforming the judicial selection process.

Our work with the jury system includes increasing the numbers of citizens who serve, ensuring that jury pools reflect the diversity of the communities from which they are drawn, enhancing the juror experience and working with the courts to sponsor Juror Appreciation activities.

PMC Executive Director Lynn A. Marks chairs the Joint Jury Services Committee of the Interbranch Commission on Gender, Racial and Ethnic Fairness and the PA Commission on Justice Initiatives. Marks also serves on the American Bar Association's Commission on the American Jury System and served on the Pennsylvania Supreme Court Committee on Racial and Gender Bias. All of these bodies – in addition to PMC -- support increased compensation for jurors.

Jurors represent a unique group; they do not form a specific constituency that can advocate on their own behalf or that has a readily identifiable spokesperson. It is incumbent on our government leaders – our courts, our legislators and the Governor – to recognize the needs of jurors and to work to provide for them. These bills represent an important step in that direction.

Ensuring adequate juror compensation is not only “the right thing to do;” it also has measurable results that inure to the benefit of the justice system. Research shows that increasing juror compensation reduces the rate of citizens being excused for hardship or just not showing up. In addition, by enabling more people to serve, increases in juror compensation help to enhance the diversity of jury pools. Increasing juror compensation makes sense. The challenge is to make sure it is accomplished in a fiscally responsible way.

The Importance of Adequate Juror Compensation

The jury system must be preserved if our American justice system is to thrive. The whole notion of a jury--a group of randomly selected citizen decision-makers -- is a reflection of our communal trust in democracy in action. It embodies our historic reluctance to centralize power in any one source. The jury is a symbol of America.

Without dedicated jurors, our justice system would grind to a halt. Jurors are as important to the workings of justice as lawyers and judges. As such, we have an obligation to serve when summoned. Yet the courts and all involved in the litigation process have a corresponding obligation to make it as easy as possible for citizens to serve.

The Pennsylvania courts have taken steps to make jury duty more convenient and less burdensome. These include automated telephone systems that inform citizens in advance whether their service is still required; reduced waiting time during trials; and, in at least two counties, providing on-site child care services for jurors. These steps are efforts that each county can introduce and implement independently. There is one major issue the courts cannot address independently, but which must be dealt with if the jury system is to remain strong: juror compensation.

Currently in Pennsylvania, jurors receive \$9 per day for the first three days of service, and \$25 a day thereafter.¹ Pennsylvania's jurors are also paid 17 cents per mile in traveling fees in all districts except Philadelphia.² Currently, the counties pay for the first three days of service and the state funds 80 percent of all juror fees after that time.³ Federal courts currently pay jurors \$40 per day, which increases to \$50 per day after a juror has served 30 days.⁴ Federal travel allowances are also significantly higher than Pennsylvania's.⁵

By way of comparison, since 1960, the minimum wage has increased from \$2.30 an hour to \$7.15 an hour. The only change to juror compensation since 1959 was in 1980, when the General Assembly agreed to continue paying \$9.00 a day for the first three days and then to increase to \$25.00 a day for each subsequent day.⁶

Given the recent increases in the minimum wage, the current juror compensation rates cover just over one hour of work at the minimum wage level. This means juror compensation does not cover transportation costs, including tickets on public

¹ 42 Pa. C.S. §4561(a) (2002).

² *Id.*

³ *Id.* at § 4561 (b) (2002).

⁴ 28 U.S.C.A. § 1871 (2002).

⁵ *Id.*

⁶ 42 Pa. C.S.A. § 4561(a).

transportation, parking fees and fuel (the price of which has skyrocketed in recent months). Similarly, the current compensation would not fund any child or elder care arrangements made necessary by a juror's service. Simply put, for a minimum wage worker or someone who stays home caring for children or elderly or disabled relatives, jury duty means a direct financial loss. This imbalance flies in the face of the respect and veneration we profess to hold for the jury as an institution and for the citizens who serve. Certainly, jury duty should not be a financial windfall to anyone, but by the same token, it should not impose a financial hardship on anyone.

Our system does recognize that jury duty may provide an untenable burden on some members of the community. As a result, "extreme inconvenience" or "undue hardship" — including economic hardship — is one of four justifications for exemption from jury duty.⁷ The hardship exemption may provide an individual with a permanent excusal or it may provide an individual with an excusal for a time which the "court determines is necessary."⁸

Although the existence of an economic hardship exemption reflects an appreciation for the burden jury duty can impose on citizens, the operation of the exemption has resulted in some unintended consequences. Specifically, data suggest that the economic hardship exemption may lead to a disproportionate reduction in the numbers of minorities serving on juries. According to the 2000 census, only 8.2% of Caucasians fell below the poverty line in Pennsylvania; while 26.8% of Pennsylvania's African-Americans and 31.4% of Pennsylvania's Hispanics did.⁹ The 2003 Joint State

⁷ 42 Pa. C.S.A. § 4503.

⁸ *Id.* at 4503(a)(3).

⁹ Pennsylvania Joint Commission Report 2003, at 83.

Government Commission Report stated, "Since more minorities live below the poverty line than Caucasians, presumably more minorities would be excused from jury service for economic reasons."¹⁰ At the time of that report, minorities were less likely than Caucasians to ask for an excusal from service; however, minorities were more likely to ask for one because of an economic hardship than Caucasians.¹¹

This information demonstrates that the economic hardship excusal is not a satisfactory general solution to the challenge of providing adequate juror compensation. Although the hardship excusal will continue to be necessary for Pennsylvania's most financially challenged citizens, an increase in juror compensation will enable more citizens to serve.

House Bills 601 and 1356

PMC appreciates the consideration the sponsors of H.B. 601 and H.B.1356 have demonstrated for citizens and the recognition of the crucial service provided by our citizen jurors. Since juror compensation is funded by a combination of state and county funds, increasing juror compensation places an increased burden on both the state and county budgets.

H.B. 601 increases juror compensation to \$40 per day for each day served. The bill is silent regarding whether the county or state would bear the costs of the increased compensation; we therefore assume the county would continue to pay for the first three days of service and the state would reimburse the counties for 80% of the costs for the fourth day and thereafter. As a result, under this bill, the burden of the increased compensation will fall disproportionately upon the counties because (1) there is a greater increase from the county's \$9 per day payout and (2) many, if not most, jurors serve for three days or less.

¹⁰ *Id.* at 84.

¹¹ *Id.* at 83.

H.B. 1356 reduces the percentage of state funds going towards juror compensation, while increasing both the rate of compensation and the mileage reimbursement payment. This will place a heavy burden on the county court systems that must find ways to fund these increases.

Because these bills place heavy additional burdens on state and local budgets and thus may have difficulty passing, PMC recommends that these bills include, or be accompanied by additional legislation outlining, possible funding mechanisms for the compensation increases.

Possible Solutions for Funding Increases in Juror Compensation

We strongly believe that the government should increase juror pay. But assuming there will resistance by the state and county governments to increase juror compensation from their budgets, we suggest that Pennsylvania consider some innovative funding plans to cover the costs associated with increasing juror compensation. We enumerate below some possible solutions and recognize there may be others as well.

Some states have increased their juror compensation significantly in recent years. They have funded the increases in various ways, including:

- 1) not paying for the first day of service;
- 2) increasing filing fees;
- 3) increasing fines for those who do not show up for jury duty; and
- 4) implementing lengthy trial fund programs

Each of these models represent solutions that may work in Pennsylvania and we urge the legislature to consult with our colleagues from the National Center on State Courts for more detailed information about how other states have funded their juror compensation increases.

In addition, it may be productive to retain, but amend, the current practice of using different rates of compensation depending on length of service. This solution is workable if it ensures that even short periods of service do not result in an economic loss to the juror.

There are several ways to accomplish this. Pennsylvania could eliminate pay for the first day of service; and then establish one rate for days 2 and 3 with increases being implemented for trials lasting longer than three days. However, jurors serving only one day could receive reimbursement for reasonable out-of-pocket expenses (transportation, parking, meals, and childcare). For longer trials, jurors should be compensated for reasonable expenses, and in some states that includes lost wages. We recognize that a reimbursement system would place an additional responsibility on the court system.

Funding for such a system could be generated through: (1) the imposition of new fees on court users such as a \$5 civil case filing fee to be paid into a jury compensation fund or an increase in jury demand fees;¹² (2) usage of fees paid for the reinstatement of state driver's licenses; or (3) creation of a lengthy trial fund to cover juror compensation for longer trials.

Other Measures to Help Jurors Ease the Financial Burden for Jury Service

In addition to increasing juror compensation, there are other steps that can be taken to ease the financial burden on jurors.

1) Make employers responsible for part of juror compensation: Employers in Pennsylvania are not required to pay employees their regular salaries while they serve as jurors. In practice, many employers do so, including the state and many municipalities, as well as employers who have agreed to do so in collective bargaining

¹² Before imposing new filing fees, policy makers should consider the impact on low income people by increasing the price for access to justice.

agreements. Some states have defrayed some of the costs of juror compensation increases by mandating that employers of a certain size pay employees serving on jury duty their regular pay, at least for a portion of the jury service.

2) Help with child care costs: Because costs of child care make jury service difficult for many, county courts should consider establishing child care facilities in courthouses by utilizing the funding through Title 42 Pa.C.S.A. § 3721 for the start-up and operating costs of such facilities. In some jurisdictions across the country, courts have low-cost arrangements with off-site child care programs.

3) Reduce transportation and parking costs: Courts or other county officials should seek free or discounted parking and public transportation;

4) Offer meals for jurors: Courts could offer free breakfasts and/or lunches, as well as seek discounts with local restaurants.

Conclusion

PMC thanks the Committee for the opportunity to present this testimony and for its consideration of House Bills 601 and 1356. Increasing juror compensation will help keep Pennsylvania's jury system strong; these bills are an important step in the right direction.