

## **AMENDED PLAN FOR THE SELECTION OF PROSPECTIVE JURORS NUECES COUNTY, TEXAS**

Whereas, Texas Government Code §62.011 provides that on the recommendation of a majority of the district and criminal district judges of a county, the commissioners court, by order entered in its minutes, may adopt a plan for the selection of names of persons for jury service with the aid of electronic or mechanical equipment instead of drawing the names from a jury wheel;

Whereas, the Commissioners Court approved a plan for the Selection of Persons for Jury Service in 1993;

Whereas, the District Judges reviewed and recommended a revised plan in 1999, but no record of its adoption by Commissioners Court was located;

Whereas, Texas Government Code §62.0111 provides that a plan under §62.011 of the Texas Government Code may allow for a prospective juror to appear in response to a summons by contacting the county officer responsible for summoning jurors by (1) computer; (2) calling an automated telephone system; or (3) appearing before the court in person;

Whereas, the District Judges have met to consider recommended changes to the last adopted 1993 plan, including the addition of allowing jurors the ability to respond to the a summons in the manner allowed under §62.0111 of the Texas Government Code;

Whereas the following amended plan ("Plan") has been approved by a majority of the District Judges of Nueces County, Texas.

Now therefore it is recommended to the Commissioners' Court of Nueces County, Texas, by a majority of the Judges of the District Courts of Nueces County, pursuant to § 62.011 of the Texas Government Code and § 35.03 of the Code of Criminal Procedure, that the following Plan for the Selection of Prospective Jurors be adopted, replacing the 1993 Plan in its entirety:

### **1.0 Authority**

This Plan is adopted under the authority of Texas Government Code §62.011 and Texas Code of Criminal Procedure §35.03.

### **1.1 Statutes**

This Plan is established in accordance with the provisions for electronic or mechanical method of selection of names of persons for jury service contained in Texas Government Code §62.011 and the Texas Code of Criminal Procedure § 35.02 or their successor statutes, and all other statutes which govern the selection of names of persons for jury service.

## **1.2 Court Rules**

The most recent local court rules, civil and criminal, adopted by the District Judges in Nueces County shall also govern the jury system where applicable.

## **1.3 Applicability**

This Plan shall be used to select the names of persons for jury service in Nueces County in all courts of general and limited jurisdiction which conduct jury trials. When impaneled, the prospective jurors constitute a general jury panel for service as jurors in all justice, county, and district courts in the county and shall be used interchangeably in all of those courts.

## **1.4 Officer in Charge**

The District Clerk of Nueces County, Texas is designated as the officer in charge of the selection process and shall do so by electronic means. This Plan sets out the District Clerk's duties with regard to the jury selection process. The District Clerk's duties regarding jury selection under this Plan include:

1. the selection of prospective jurors for a jury pool, accounting for the jurors' attendance with the help of the Judges,
2. ensuring the accuracy of the Record of Names (as described herein) by making certain that a juror's contact information is updated by delivering to the voter registrar a list of those with proper permanent exemptions or disqualifications as provided by law,
3. keeping the electronic system maintained through proper software upgrades and additions ,
4. Assigning prospective jurors to specific courts on trial dates utilizing a combination of those that respond by computer, automated telephone system, and those that appear in person.
5. Cooperating with the sheriff in communicating with prospective jurors by computer or automated telephone system;
6. Maintaining statistics as to the effectiveness of the online jury system, and communicating those statistics to the District Judges.

The Justices of the Peace, County, and District Judges shall notify the District Clerk of the number of prospective jurors they anticipate needing for any particular week with as much notice as practicable.

The Sheriff, on receipt of the jury pool from the District Clerk, shall immediately notify the persons whose names are on the list to appear for jury service.

The District Judges, unless otherwise decided, shall designate from time to time a judge to whom the jury pool reports for jury service. The judge for the designated period shall organize, control, and supervise the members of the jury pool. The judge or the judge's authorized representative shall hear the excuses of the prospective jurors and swear them in for jury service for the week for which they are to serve as jurors. (Texas Government Code §62.016)

The voter registrar shall maintain the source list of those who are properly and permanently exempted or disqualified that shall be provided to the Texas Secretary of State.

The District Judges, District Clerk, and Sheriff shall provide input to Commissioners Court regarding any recommended amendments to the Plan which may be required to conform to changes in technology, the law, or county procedures.

## 2.0 Selection Process

### 2.1 Source List

The source of names of persons for jury service shall be as provided in § 62.001 of the Texas Government Code. The source of names shall be the current voter registration lists from all precincts in Nueces County as contained in the voter registration electronic file of all precincts in Nueces County excluding the names of persons who are disqualified or who are exempt from jury service as provided by the Texas Government Code § 62.108 and §62.109. The source of names shall also include all names on a current list to be furnished by the Texas Department of Public Safety, showing the citizens of Nueces County holding a valid Texas driver's license and the citizens of Nueces County, other than those who are disqualified from jury service, who hold a valid personal identification card or certificate issued by the Texas Department of Public Safety.

The District Clerk of Nueces County shall notify the Texas Secretary of State not later than ninety (90) days before a combined list of names is needed to reconstitute the list of names of persons for jury service in Nueces County, when such a list will be required, and the format required. The District Clerk shall also notify the voter registrar of Nueces County of when to send the required information to the Texas Secretary of State, and shall provide to the voter registrar a certified list containing the names of person convicted of felonies in Nueces County.

Upon notification by the District Clerk, the Voter Registrar shall certify and provide to the Texas Secretary of State a current voter registration list from all precincts in Nueces County containing the information required by § 62.001(c) of the Texas Government Code. The names of convicted felons and persons exempt from jury service under § 62.108 and 62.109 of the Texas Government Code shall be excluded from the list unless the Texas Secretary of State requests that the names of convicted felons and those persons exempt from jury service be included on the list and be marked in a manner which will indicate which persons are exempt or are convicted felons. If the Voter Registrar excludes names from the voter registration list, a list or lists of the excluded names shall also be sent to the Texas Secretary of State.

The Voter Registrar shall include on the list or lists, if possible, any information requested by the Secretary of State which would aid in the elimination of duplicate names from the combined list or which would aid in the elimination of the names of persons exempt or disqualified from jury service from the list provided by the Texas Department of Public Safety.

The Voter Registrar shall cooperate, where feasible, with the Texas Secretary of State in providing requested information and the required lists and data to the Texas Secretary of State in a manner and in the format requested by the Texas Secretary of State.

After the lists have been combined as provided in § 62.001 of the Texas Government Code, the District Clerk or their designee shall receive the certified combined list from the Texas Secretary of State. The names on the combined list from the Texas Secretary of State, in such a form as they are received, shall become the "master list" for the electronic selection system and the term "Master List" shall be used interchangeably with the term "Record of Names" referred to in Texas Government Code Chapter 62.

## **2.2 Randomization**

Prospective jurors shall be selected from the "Record of Names," as nearly as practicable, and in such a manner to provide a fair, impartial, and objective method of selecting the names of persons for jury service. The method of selection will use the same Record of Names for the selection of persons for jury service until that record is exhausted or for a period of time specified by the Plan. Every potential juror in the Record of Names must have an equal and opportune chance of being selected to appear in court. The generated list of prospective jurors selected must be randomized to the extent that it is not possible to predict any of the prospective jurors that appear in the list at any time. Prospective jurors will be selected randomly from the Record of Names to create a "pool" that will be summoned for a specific time and date. Jurors in the pool with exemptions, disqualifications and proper excuses as outlined in Texas Government Code §62.110 and the Texas Code of Criminal Procedure §35.03 shall be removed from that pool. Then each pool member will be randomly assigned to a court.

The selection of persons for jury service will be accomplished electronically with the aid of computer equipment. Jurors shall be selected from the Record of Names by a computer program which shall operate as nearly as practicable, in such a manner that each prospective juror has the same possibility of selection as any other not previously selected prospective juror has each time the program selects a prospective juror. The computer program selection method is outlined in Attachment "A" herein attached and incorporated in its entirety.

## **2.3 Duration**

The Record of Names shall be reconstituted every year or when the list is exhausted, or as soon as practicable within 30 days after receipt of the combined list from the Texas Secretary of State, whichever occurs first. No jury summons already issued from a duly established Record of Names will be invalidated by the subsequent reconstitution of the Record of Names. Upon the reconstitution of the Record of Names no additional jury summons shall be issued from any previous Record of Names. On a monthly basis, the District Clerk shall keep the County and District Judges apprised of the number of prospective jurors used and the number of names remaining on the Record of Names. The District Clerk, at their discretion, may order the supplementation of the Record of Names to assure that the Record of Names is not exhausted, such supplementation to be done in the same manner provided in Paragraph 2.2 above.

## **2.4. Disqualifications and Exemptions**

Disqualification and exemptions shall be as provided by law. The names of persons listed in a register of persons exempt from jury service may not be used in preparing the Record of Names from which a jury is selected, as provided in § 62.108 and 62.109 of the Texas Government Code.

## **3.0 Jury Service**

### **3.1 Method of Summoning**

Prospective jurors shall be summoned by the Sheriff with either a printed summons or oral notification (Texas Government Code §62.013). Prospective jurors may appear in response to a summons by contacting the Sheriff by, computer or an automated telephone system or may appear in person. As per §62.0111 of the Texas Government Code the Sheriff may notify the prospective jurors by electronic mail of the court they have been assigned to, whether the prospective juror is qualified for jury service; the status of the exemption, postponement, or judicial excuse request of the prospective juror. Pursuant to Texas Government Code §62.0111(c) the Sheriff shall purge the electronic mail

address of a prospective juror collected in response to a jury summons: 1) if the prospective juror serves on a jury, not later than the 30<sup>th</sup> day after the date that: (A) the County sends the person payment for jury service or (B) the county would otherwise send the person payment for jury service, if the person has donated the payment under Texas Government Code §61.003; or 2) if the prospective juror does not serve on a jury, not later than the 30<sup>th</sup> day after the date that the court releases the person from service.

### **3.2 Juror Summons**

The jury summons will notify prospective jurors to report to the Central Jury Room of the Nueces County Courthouse or to respond by computer or automated telephone system. The jury summons shall be in a format that complies with Texas Government Code chapter 62 and be approved by a majority of the District Judges with input from Judges in the County Courts at Law, Justices of the Peace, and the Nueces County's ADA Coordinator. The preferred notification method is via the U. S. Postal Service in writing; however a juror may also be summoned orally.

As provided by §62.412 of the Texas Government Code, pursuant to a jury summons issued in accordance with this Plan, a prospective juror may be instructed to report directly to a justice court in the precinct in which that person resides. The justice of the peace shall hear the excuses of the prospective jurors and swear them in for jury service.

### **3.4 Excusals and Postponements**

If a juror is excused for any reason or claims an exemption or disqualification, that juror will be summoned for service again only after the Record of Names has been reconstituted, and or exhausted.

### **3.5 Empaneling the Jury**

Procedures for requesting jury panels and the empaneling of jurors shall be as provided by law and as approved and adopted by the Board of District Judges.

### **3.6 Defaulting Jurors**

Penalties for failure to comply with a jury summons or filing a false claim of exemption from jury service shall be as provided by law.

### **3.7 Maintaining Integrity of System**

The statutory and equitable benefit of the random selection of jurors by electronic means using the computer program established in accordance with Paragraph 2.2 is capable of being frustrated or defeated by the subsequent human process of allocation or assignment.

Prospective jurors remaining after all allowable excusals and disqualifications are to be assigned to jury panels randomly. This is to prevent the specific assignment of any potential juror to accommodate a specific schedule, or for a potential juror to serve on a particular kind or length of case, and to ensure the equality, fairness, and integrity of the jury selection system.

## 4.0 Amendments

This Plan may be amended at any time by the Commissioners Court of Nueces County upon the recommendation of a majority of the District Judges of Nueces County. Should any change in the law render any portion of this Plan invalid, unlawful or otherwise in conflict with the new law, this Plan shall automatically be amended without further action of the District Judges or the Commissioners' Court to conform the affected provisions of this Plan to the law as amended.

Not later than every three years from the effective date of this plan the Local Administrative District Judge shall call a meeting for the purpose of reviewing this Plan. The Local Administrative Judge shall appoint a committee consisting of persons involved in the jury selection process to attend said meeting and evaluate the jury plan, and make appropriate recommendations as needed.

## 4.5 Americans with Disabilities Act compliance

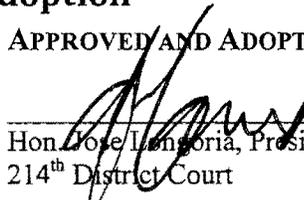
The jury selection process will seek to comply with all aspects of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.) and shall make reasonable accommodations of policies and procedures for prospective jurors.

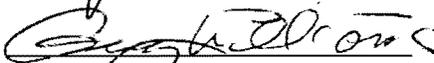
A person who is legally blind is not disqualified to serve as a juror in a civil case solely because of his legal blindness except as provided by § 62.104 of the Texas Government Code.

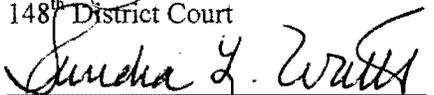
A deaf or hard of hearing person is not disqualified to serve as a juror solely because of hearing loss except as provided by § 62.1041 of the Texas Government Code. A deaf or hard of hearing person serving as a juror shall be reasonably accommodated in accordance with the Americans with Disabilities Act. An interpreter who is assisting a deaf or hard of hearing person serving as a juror may accompany the juror during all proceedings and deliberations in the case. If an interpreter is provided to a deaf or hard of hearing person serving as a juror in a district, county, or justice court, the county shall pay the cost of obtaining those services. In this section, "deaf or hard of hearing" means having a hearing impairment, regardless of the existence of a speech impairment that inhibits comprehension of an examination or proceeding or communication with others.

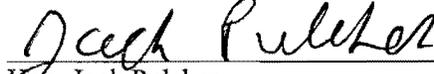
## 5.0 Adoption

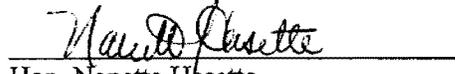
APPROVED AND ADOPTED, by the Council of District Judges on May 4, 2016.

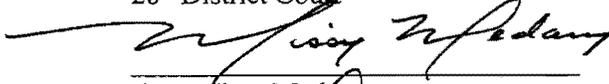
  
Hon. Jose Longoria, Presiding Judge  
214<sup>th</sup> District Court

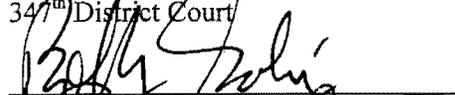
  
Hon. Gray Williams  
148<sup>th</sup> District Court

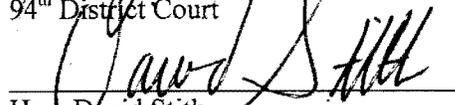
  
Hon. Sandra L. Watts  
117<sup>th</sup> District Court

  
Hon. Jack Pulcher  
105<sup>th</sup> District Court

  
Hon. Nanette Hasette  
28<sup>th</sup> District Court

  
Hon. Missy Medary  
347<sup>th</sup> District Court

  
Hon. Bobby Galvan  
94<sup>th</sup> District Court

  
Hon. David Stith  
319<sup>th</sup> District Court



## **JURY MANAGEMENT SOLUTIONS**

---

**WHITE PAPER - RANDOM SELECTION**

## Table of Contents

Table of Contents.....	2
Purpose.....	3
Random vs. pseudo-random .....	3
Randomness and Jury Selection.....	3
Random selection.....	4
Step by Step Process .....	5

## Purpose

The purpose of this document is to outline the random selection process used by Courthouse Technologies suite of Jury Management products. This paper details the step by step process used in Courthouse JMS to randomly select prospective jurors from the source list (sometimes referred to as the "master list") and includes information on the cryptographically strong random number generator provided by Microsoft's enhanced Cryptographic Service Provider (CSP) used in Courthouse JMS.

## Random vs. pseudo-random

Since software random number generators create random numbers using a definite mathematical algorithm wherein the previously selected value is used in calculating the next number, they are not truly random, rather they are pseudo-random. These pseudo-random number generators work in fundamentally the same way. They start with a random number known as the seed, and then use a mathematical algorithm to generate a pseudo-random sequence of bits based on it. An overly simplified example could be an algorithm that selects every third value in a list. Consider the following small list of numbers

1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Starting at the beginning, selecting every third value would give you

3, 6, 9, 2, 5, 8, 1, 4, 7, 10

By having an arbitrary starting point in the list, (random seed), the random number generator can produce a seemingly random stream of numbers. . The most difficult part of this process is to get a seed that is truly random. This is usually based on user input latency, or the jitter from one or more hardware components. Once the first value in the stream is known, we can predict the outcome of all the other values in the stream (if the mathematical algorithm to generate the stream is known).

## Randomness and Jury Selection

Any list of potential jurors that appears in court must conform to three basic standards.

1. Every potential juror on the master list must be eligible to serve
2. Every eligible candidate on the master list must have an equal and opportune chance of being selected to appear in court
3. The generated list of prospective jurors selected must be random to the extent that it is not possible to predict any of the candidates that appear in the list at any time.

Pseudo-random generators by their very nature pose a problem in meeting these requirements. By using a combination of Microsoft's security and cryptographically strong algorithms as well as numerous random streams to select jurors we can address these issues.

## Random selection

The Microsoft Enhanced cryptographic service provider (CSP) used in Courthouse JMS implements a cryptographically strong random number generator that uses many unpredictable inputs to create the random seed. By providing many unpredictable inputs to generate the random seed, the algorithm is able to generate an unpredictable, random starting point for any random number generator. Microsoft's System.Security.Cryptography.RNGCryptoServiceProvider, is the most cryptographically strong random number generator available on the Windows platform.

In Microsoft's CSP, the CryptGenRandom function uses the same random number generator used by other security components. This allows numerous processes to contribute to a system-wide seed. CryptoAPI stores an intermediate random seed with every user. To form the seed for the random number generator, a calling application supplies bits it might have--for instance, mouse or keyboard timing input--that are then added to both the stored seed as well as various system data and user data such as the process ID and thread ID, the system clock, the system time, the system counter, memory status, free disk clusters, the hashed user environment block, and potentially many others.

Courthouse JMS uses Microsoft's CSP to generate 512 random seeds which are then used to seed the Mersenne Twister algorithm to produce the random stream for Jury selection. The Mersenne Twister algorithm (developed in 1997 and updated in 2002), was designed with consideration of the flaws in various other generators. It is a twisted generalised feedback shift register (or TGFSR for short) and is considered to be the random number generator of choice for many software applications. The "twist" is a transformation which assures equidistribution of the generated numbers in 623 dimensions (linear congruential generators can at best manage reasonable distribution in 5 dimensions). The Mersenne Twister has the following desirable properties:

1. It was designed to have a colossal period of  $2^{19937} - 1$  (the creators of the algorithm proved this property). This period explains the origin of the name: it is a Mersenne prime, and some of the guarantees of the algorithm depend on internal use of Mersenne primes. In practice, there is little reason to use larger ones.
2. It has a very high order of dimensional equidistribution.. Note that this means, by default, that there is negligible serial correlation between successive values in the output sequence.
3. It is faster than all but the most statistically unsound generators.
4. It is statistically random in all the bits of its output, and passes the stringent Diehard tests (a battery of statistical tests for measuring the quality of a set of random numbers developed by George Marsaglia collectively considered one of the most stringent such tests known).

## Step by Step Process

The random selection process can be described in the following list of steps:

1. Use Microsoft's crypto random generator to generate 512 random values to be used as random seeds.
2. Generate a new random stream using the Mersenne Twister seeded with the 512 random numbers created in step 1.
3. Select the next number from the stream created in step 2 in the range of 1 to the total number of jurors in the jury source (or "master") list.
4. Get juror from the jury source list that corresponds to number created in step 3.
5. If Juror is valid for selection (as determined by local practice or legislation e.g. juror is not permanently disqualified) go to step 6 else go to step 1.
6. Add Juror to pool selection
7. If total number of required jurors has been selected then end else go to step 3.