

14-120. Voir dire of jurors by court.

LADIES AND GENTLEMEN:

This is a criminal case in which the defendant(s) _____ [is] [are]² charged with _____³ (*offense charged*). If chosen as jurors, you will decide whether _____ (*name of defendant*) is not guilty or guilty. _____ (*name of defendant*) is presumed innocent. The burden is on the state to prove guilt beyond a reasonable doubt.

At this time you will be asked some questions. You should remember that there are no right or wrong answers to these questions. The best answer is the most honest answer. If you would prefer not to answer any question in front of other people, please tell us and we will address your concern privately.

You have previously given answers on a questionnaire given you by the court clerk. You may also add to your answers to those questions if your memory is refreshed about those questions here in open court.⁴

[Though not required, before the attorneys ask questions, the court might ask preliminary questions. For example:

1. The state is represented by _____ (*name of attorney*). How many of you are familiar with _____ (*name of attorney*)? [What is your attitude about sitting on the case in which _____ (*name of attorney*) is representing one of the parties?]⁵

2. The defendant is represented by _____ (*name of attorney*). How many of you are familiar with _____ (*name of attorney*)? [What is your attitude about sitting on the case in which _____ (*name of attorney*) is representing one of the parties?]⁵

3. The defendant is _____ (*name of defendant*). How many of you are familiar with _____ (*name of defendant*)? What is your attitude about sitting on this case given your familiarity with _____ (*name of defendant*)?⁵

4. Without saying what you have seen or heard, how many of you have seen or heard anything about this case from any source whatsoever, including news media, radio, television, internet, or from any other person? (*Those jurors who have received information should be questioned privately.*)⁵

5. It is estimated that this case will last _____ (*length of trial*). Do any of you feel that you would be caused an undue hardship by sitting in this case for that time? [What is your hardship? What would be your attitude if chosen to sit in the case?]⁶

6. Is there any other reason that any of you feel you should not sit on this case?

The attorneys may question the jurors.]⁷

USE NOTES

1. For use before jury selection. The court may wish to address a group of prospective jurors about preliminary issues such as hardship excuses before the parties

address the jurors. The parties might address the jurors in smaller groups or individually as to more sensitive issues. Sample questions have been provided above. This instruction does not go to the jury room.

2. Use only the applicable bracketed alternative.
3. Fill in the charge as stated on the charging document.
4. There are three basic sources of information used by the court in jury selection:
 - a. the standard jury questionnaires given to all prospective jurors which contain basic demographic information;
 - b. case specific supplemental questionnaires which are given to the prospective jurors in the case in question;
 - c. voir dire questioning. The questioning by the attorneys is generally used for inquiry concerning the jurors' attitudes and opinions about case-related issues (*for example, burden of proof, self defense, alcohol use, etc.*) and as follow-up to specific information highlighted by the questionnaires (*for example, a juror's knowledge of a witness*).
5. It will sometimes be necessary to ask follow-up questions outside the hearing of the other prospective jurors. This is to avoid giving factual information to other jurors that they would not otherwise know and which might affect their view of the case.
6. If the answer to the question is yes, the bracketed additional questions may be given.
7. This instruction is an example of voir dire introduction, but the voir dire examination should be tailored to the particular needs of a specific case. The court should be sensitive to several factors about voir dire:
 - a. the size of group questioned as to a particular topic;
 - b. which party proceeds first;
 - c. the types of questions asked;
 - d. the length of time required for particular question areas.These factors will depend on a number of considerations:
 - a. the type of case tried;
 - b. the sensitivity of issues. For example sexual matters, publicity or knowledge of parties might give reason for individual voir dire;
 - c. the age, experience, intelligence, education, ability to articulate or timidity of a particular juror;
 - d. the degree of seriousness of the case;
 - e. the information gathered in juror questionnaires;
 - f. the party seeking to exclude a juror.

[As amended, effective January 1, 1995; October 15, 2002; as amended by Supreme Court Order No. 08-8300-60, effective February 2, 2009.]