

1991 Assembly Bill 306

Date of enactment: **April 29, 1992**
Date of publication*: **May 13, 1992**

1991 WISCONSIN ACT 271

AN ACT to repeal 756.02 (1) and 756.04 (5m); to renumber 756.02 (2) (c) and 756.04 (1); to amend 345.43 (3) (c), 756.01 (1), 756.02 (2) (a), 756.03 (1), 756.04 (2) (a), 756.04 (2) (b) 1, 756.04 (3) and 756.25 (3); and to create 756.001, 756.02 (4), 756.03 (5), 756.04 (1) and (1r), 756.04 (2) (am) and 756.28 of the statutes, relating to: jury service as a civic duty, exemptions and excuses for jury service, jury commissioners, sources for jury lists, juror qualification forms, forfeiture for failure to attend as a juror, length of juror service, periods of juror eligibility, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LEGISLATIVE COUNCIL PREFATORY NOTE: **This bill is the product of the legislative council's special committee on jury service.**

The special committee was established by a legislative council mail ballot on June 28, 1990, and directed to review state law and local practice concerning the eligibility and selection of persons for prospective jury service, the extent and frequency of service by persons chosen for jury service and the fees and compensation received for jury service, to determine if revisions in state law are necessary to: 1) broaden and enhance participation in jury service; 2) make more uniform the opportunity for jury service among eligible persons; and 3) provide a more representative pool of persons for prospective jury service.

In its study, the special committee determined that the current laws relating to jury lists and jury service should be revised as follows:

State Policy on Jury Service

This bill contains a provision, not found in current law, setting forth the state's policy regarding jury service and emphasizing jury service as a civic duty.

Jury Commissioners

Under current law, 3 jury commissioners must be appointed in each county. Their primary responsibility is to prepare jury lists to be used by the court system for the selection of individual jurors.

This bill provides that the appointment of jury commissioners in each county is optional and that, in a county in which jury commissioners are not appointed, the functions of the jury commissioners are to be performed by the clerk of circuit court.

Sources for Jury Lists

Under current law, every year before the first Monday in April, the county jury commissioners are required to provide to the circuit court one countywide list of at least 200 names of persons to be drawn from the county to serve as trial jurors. The list must include a verified statement describing the manner in which the list was compiled or modified, including an enumeration of all public or

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private sources from which the names of the jurors on the list were derived. After striking the names of persons found by the commissioners to be ineligible for jury service, the commissioners must present a certified copy of the list to the clerk of circuit court.

Although the list prepared by the commissioners may consist of the names of persons known to the commissioners or discovered by personal investigation or review of documents, such as voter registration lists, the statutes also provide that the selection of jurors may be accomplished by electronic, automated systems, wherever appropriate.

This bill:

1. *Requires the jury list to be drawn from: a) the department of transportation's (DOT) driver's license and personal identification cardholder list (DOT list) or; b) a master list consisting of the DOT list and one or more other lists of county residents, examples of which are set forth in the bill (e.g., voter registration lists).*
2. *Requires DOT to transmit annually, on a date established by the secretary, a current copy of the DOT list. The list must be provided to each county at no cost.*
3. *Sets forth a procedure for establishing a master jury list from 2 or more sources to avoid duplication of names.*
4. *Eliminates the current requirement that jury commissioners provide the jury list to the court by the first Monday in April. Instead, the bill requires the commissioners or, if there are no commissioners, the clerk of circuit court to provide the jury list annually to the court.*

Qualification Forms

Under current law, the jury commissioners are required to determine eligibility for jury service by mailing to every prospective juror on the jury list a juror qualification form that elicits information specified under s. 756.01.

This bill requires the juror qualification form to contain a question requesting the race of the prospective juror.

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Juror Service and Eligibility

Under current law, in any 2-year period, no person may serve or attend a court for service as a trial juror for a total of more than 5 days of actual court attendance unless: 1) it is necessary to act for more than 5 days in order to complete service in a particular case; or 2) a majority of the county's circuit court judges adopt, by rule, a longer time period not to exceed 10 days.

It also appears that current law permits a county to establish a system in which jurors are summoned to serve for only one day or one trial in any 2-year period.

This bill authorizes a county, at its option, to establish one-day or one-trial responsibility for a person summoned to serve as a trial juror. The bill specifies that a county with a population of less than 325,000 may not require a person to serve as a juror or to attend a court for more than one day or one trial in a 2-year period, while a county with a population of 325,000 or more may not require a person to serve as a juror or to attend a court for more than one day or one trial in a 4-year period.

Exemptions from and Excuses for Jury Service

Under current law, no qualified juror is exempt or may be excused from jury service except that:

1. *Judges and attorneys who claim an exemption must be exempted from jury service.*
2. *Any person or group of persons may be excluded from the jury panel or excused from service as jurors by order of the judge, based on a finding that jury service would entail: a) undue hardship; b) extreme inconvenience; or c) serious obstruction or delay in the fair and impartial administration of justice. The exclusion or excuse continues for a period considered necessary by the judge.*
3. *A state legislator or full-time elected official must be excused from service as a juror if the official states to the court that the jury service would interfere with the performance of his or her official duties.*

This bill eliminates exemptions from jury service for judges and attorneys. These individuals will be treated as all other prospective jurors for whom jury service creates an undue hardship or extreme inconvenience.

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In addition, the bill specifies that:

- 1. A clerk of circuit court also may exclude or excuse a person from jury service upon securing from that person a sworn statement that provides evidence of the grounds for the exclusion or excuse.**
- 2. An undue hardship may include an undue hardship caused by the aging process.**

SECTION 1. 345.43 (3) (c) of the statutes is amended to read:

345.43 (3) (c) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a countywide jury. For this purpose a municipal jury list may be established, known as the “.... (name of municipality) jury list”, which shall be constituted as follows: The clerk of circuit court, or the jury commissioners if appointed by the circuit court of the county in which the municipality is located, shall, from time to time as required by the court, provide and furnish a list containing the names of 200 jurors selected by them the clerk or commissioners from citizens residing within the municipality involved. The judge or judges of the court may by court order direct the clerk of circuit court or the jury commissioners to furnish a list of less than 200 jurors, but in no event shall such list contain less than 50 names. Except as herein provided, the provisions of s. 756.04, relating to the preparation of jury lists for the circuit court, so far as applicable, shall apply to and govern the preparation of such list, but the slips containing the names of jurors so selected shall be deposited in a box designated the “.... name of municipality) jury list”.

SECTION 2. 756.001 of the statutes is created to read:

756.001 State policy on jury service; opportunity and obligation to serve. (1) The legislature recognizes that trial by jury is a cherished constitutional right and that jury service is a civic duty.

(2) All persons selected for jury service shall be selected at random from a fair cross section of the population of the area served by the court. All qualified persons shall have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose. The judges, the clerk of circuit court and the jury commissioners, if any, in each county shall manage all jury systems in an efficient, equitable and cost-effective manner, in accordance with this chapter.

NOTE: Current law does not contain a specific provision setting forth the state's policy regarding its citizens' service on juries. Proposed s. 756.001, which is based on s. 191, California code of civil procedure, sets forth the state's policy, emphasizing that jury service is a civic duty to be performed by all qualified citizens of this state.

SECTION 3. 756.01 (1) of the statutes is amended to read:

756.01 (1) Persons who are U.S. citizens, who are electors of the state, who are possessed of their natural faculties, who are not infirm, who are able to read and understand the English language, and who have not been summoned to attend for prospective service as a petit juror jurors for the time period periods applicable under s. 756.04 (5m) within 2 years 756.28, shall be liable to be drawn as grand or petit jurors.

NOTE: See NOTE to s. 756.28 in this bill for a discussion of the limits on length of juror service and periods of juror eligibility.

SECTION 4. 756.02 (1) of the statutes is repealed.

NOTE: See NOTE to s. 756.02 (2) (c) in this bill.

SECTION 5. 756.02 (2) (a) of the statutes is amended to read:

756.02 (2) (a) Any person or group of persons may be excluded from the jury panel or excused from service as jurors by order of the judge or, if authorized under sub. (4), by a determination made by the clerk of circuit court based on a finding that jury service would entail undue hardship, including undue hardship caused by the aging process, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice. The exclusion or excuse shall continue for a period deemed necessary by the judge or the clerk of circuit court, at the conclusion of which the person or group of persons shall reappear for jury service in accordance with the order of the judge or the determination made by the clerk of circuit court. If the clerk of circuit court excludes or excuses a person under this subsection, the clerk of circuit court shall secure from the person a sworn statement that provides evidence of the grounds for the exclusion or excuse.

NOTE: See NOTE to s. 756.02 (2) (c) in this bill.

SECTION 6. 756.02 (2) (c) of the statutes is renumbered 756.02 (3).

NOTE: Under current law, no qualified juror is exempt or may be excused from jury service except that:

1. Judges and attorneys who claim an exemption must be exempted from jury service.

2. Any person or group of persons may be excluded from the jury panel or excused from service as jurors by order of the judge, based on a finding that jury service would entail: a) undue hardship; b) extreme inconvenience; or c) serious obstruction or delay in the fair and impartial administration of justice. The exclusion or excuse continues for a period considered necessary by the judge, at the conclusion of which the person or group of persons must reappear for jury service in accordance with the order of the judge.

3. A state legislator or full-time elected official must be excused from service as a juror if the official states to the court that the jury service would interfere with the performance of his or her official duties [s. 756.02].

1 The changes proposed in s. 756.02 in this bill:

1. Eliminate exemptions from jury service for judges and attorneys. These individuals will be treated as all other prospective jurors in that, in order for any such person to be excluded or excused, a finding or determination must be made that service would entail: a) undue hardship; b) extreme

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inconvenience; or c) serious obstruction or delay in the fair and impartial administration of justice.

2. Specify that a clerk of circuit court also may exclude or excuse a person from jury service. If a clerk of circuit court excludes or excuses a person from jury service, the clerk must secure from that person a sworn statement that provides evidence of the grounds for the exclusion or excuse.

3. Specify that an undue hardship may include an undue hardship caused by the aging process.

SECTION 6m. 756.02 (4) of the statutes is created to read:

756.02 (4) A majority of the circuit court judges in the county may authorize the clerk of circuit court to grant exclusions or excuses under sub. (2). The authorization may limit the grounds on which the clerk may grant the exclusion or excuse.

SECTION 7. 756.03 (1) of the statutes is amended to read:

756.03 (1) There The county board shall determine if the selection of jurors shall be by the clerk of circuit court or by jury commissioners appointed by the circuit court judges. If jury commissioners are appointed, there shall be 3 jury commissioners in each the county appointed as provided in this section. They must be qualified electors of the county and possess the qualifications required for jurors by s. 756.01. Jury commissioners shall be appointed by the joint action of the judges of the circuit court for the county. One commissioner shall be appointed each year for a term of 3 years commencing on July 1 following the appointment. Appointments shall be made in writing and shall be filed in the office of the clerk of circuit court.

NOTE: See NOTE to s. 756.03 (5) in this bill.

SECTION 8. 756.03 (5) of the statutes is created to read:

756.03 (5) The clerk of circuit court shall perform the functions of the jury commissioners set forth in this chapter in a county in which jury commissioners are not appointed.

NOTE: Under current law, 3 jury commissioners must be appointed in each county. The primary responsibility of the jury commissioners is to prepare jury lists to be used by the court system for the selection of individual jurors.

Sections 756.03 (1) and (5) and 756.04 (3) in this bill provide that the appointment of jury commissioners in each county is optional and that, in a county in which jury commissioners are not appointed, the functions of the jury commissioners are to be performed by the clerk of circuit court.

SECTION 9. 756.04 (1) of the statutes is renumbered 756.04 (1g).

SECTION 10. 756.04 (1) and (1r) of the statutes are created to read:

756.04 (1) In this section:

(a) “Department” means the department of transportation.

(b) “Department list” means a compilation of information prepared by the department that includes the names, addresses, dates of birth, race and gender of per-

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sons who are licensed as motor vehicle operators under ch. 343 or who have received identification cards under s. 343.50 or 343.51.

(c) “Race” means African American, Caucasian, Hispanic, native American or other racial category.

(1r) The department shall transmit annually, on a date established by the secretary of transportation, to the clerk of circuit court of each county, at no charge, a department list of persons residing in that county. The department shall establish uniform specifications regarding the size, format and content of computer tapes or other media used to prepare the department list.

SECTION 11. 756.04 (2) (a) of the statutes is amended to read:

756.04 (2) (a) The jury commissioners shall annually before the first Monday in April provide for each court covered by sub. (4) (1g), unless the judge or judges thereof otherwise of the county order more frequently, one countywide list of at least 200 names of persons to be drawn from the county to serve as petit jurors. The commissioners shall revise the list by striking from it the names of persons found by them to be ineligible for jury service, as provided in s. 756.01, and add to the list the names of additional persons as provided in s. 756.05. The list shall be certified by the commissioners as having been prepared in strict conformity with statutory requirements. The list shall also include a verified statement describing the manner in which the list was compiled or modified, including an enumeration of all public or private sources from which the names of the prospective jurors on the list were derived.

NOTE: See NOTE to s. 756.04 (2) (am) in this bill.

SECTION 12. 756.04 (2) (am) of the statutes is created to read:

756.04 (2) (am) 1. The jury commissioners shall select randomly the names under par. (a) from the department list or from a master list that is established under subd. 2 and that consists of the department list and one or more other lists of county residents, including but not limited to the following:

- a. Voter registration lists.
- b. Telephone and municipal directories.
- c. Utility company lists.
- d. Lists of real property tax payers.
- e. Lists of high school graduates 18 years of age or older.
- f. Lists of persons on general relief under ch. 49 and persons on aid to families with dependent children under ch. 49.
2. If more than the department list is used, the jury commissioners shall select randomly a sample of names from each source used. The same percentage of names shall be selected from each source used. The department list shall be designated a primary source, and the names selected from that source shall be compared with the list of names from the 2nd source. Duplicate names shall be

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removed from the 2nd source sample and the remaining names shall be combined with the sample of names selected from the primary source to form the master list. If more than 2 source lists are used, this process shall be repeated, using the previously combined list for comparison with the new source list.

NOTE: Under current law, every year before the first Monday in April, the county jury commissioners are required to provide to the circuit court in each county one countywide list of at least 200 names of persons to be drawn from the county to serve as trial jurors. The list must include a verified statement describing the manner in which the list was compiled or modified, including an enumeration of all public or private sources from which the names of the jurors on the list were derived. After revising the proposed list by striking the names of persons found by the commissioners to be ineligible for jury service, a certified copy of the list, containing the name, address and occupation of each person, must be presented to the clerk of the circuit court.

Although the list prepared by the commissioners may consist of names of persons known to the commissioners or discovered by personal investigation or review of documents, such as voter registration lists, the statutes also provide that the selection of jurors may be accomplished by electronic, automated systems, wherever appropriate [ss. 756.04 (2) (a) to (c) and 756.27].

Sections 756.04 (1), (1r) and (2) (a) and (am) in this bill:

1. Requires the jury list to be drawn from: a) the DOT list; or b) a master list consisting of the DOT list and one or more other lists of county residents (e.g., the voter registration lists, telephone and municipal directories, utility company lists, property tax payer lists, lists of high school graduates 18 years of age or older, lists of persons on general relief and persons on aid to families with dependent children).

2. Requires DOT to transmit annually, on a date established by the secretary, to the clerk of circuit court of each county a current copy of the DOT list. The DOT list must be provided to each county at no cost.

3. Sets forth a procedure for establishing a master jury list from 2 or more sources to avoid duplication of names. This procedure is based, in general, on a West Virginia statute [s. 52-1-5 (a), West Va. Code].

4. Eliminates the current requirement that jury commissioners provide the jury list to the court by the first Monday in April. Instead, the bill requires the commissioners or, if there are no commissioners, the clerk of circuit court, to provide the list annually.

SECTION 13. 756.04 (2) (b) 1. of the statutes is amended to read:

756.04 (2) (b) 1. The commissioners shall determine eligibility for jury service by mailing to every prospective juror on the list a juror qualification form accompanied by instructions to fill out and return the form to the commissioners within 10 days after its receipt. The form shall elicit the information specified under s. 756.01, shall elicit the race of the prospective juror and shall contain a declaration that the responses are true to the best of the person's knowledge and an acknowledgment that upon a wilful misrepresentation of a material fact or failure to return the completed form within 10 days after its receipt the person may forfeit not more than \$500. If the prospective juror is unable to fill out the form, another

person may complete it and shall indicate that he or she has done so and the reason therefor. If it appears there is an omission, ambiguity or error in a returned form, the commissioners shall send the incomplete form back to the person with instructions to make the necessary addition, clarification or correction and to return the form to the commissioners within 10 days after its receipt.

NOTE: This SECTION amends current s. 756.04 (2) (b) 1. to require that the juror qualification form mailed to every prospective juror contain a question requesting the race of the prospective juror.

SECTION 14. 756.04 (3) of the statutes is amended to read:

756.04 (3) At least once each year or more often if the clerk of circuit court so requests or the chief judge of the judicial administrative district so directs, the clerk, in the presence of at least 2 of the commissioners, if any, shall draw a sufficient number of names from the tumbler. The clerk shall rotate the tumbler before each name is drawn. The commissioners shall write the person's name, occupation and address in the order in which it was drawn, upon a panel list provided for that purpose, at the bottom of which the commissioners shall certify that the drawing was in accordance with law. In like manner, the clerk shall then draw a sufficient number of names of additional persons to be recorded upon a reserve-panel list. Persons shall be summoned in the order in which their names appear on the reserve-panel list in the event and to the extent that the regular panel is inadequate. When summoned, those persons become a part of the regular panel. The commissioners, if any, shall keep the regular and reserve-panel lists and furnish the clerk with a signed duplicate of those lists. If there are no commissioners, the clerk shall keep the regular and reserve-panel lists.

NOTE: This SECTION makes technical and minor substantive changes in jury list procedure to clarify the clerk of circuit court's responsibilities in a county which does not have jury commissioners. Under this bill, in a county without jury commissioners, the clerk, upon request or direction for more juror names, may draw those names by himself or herself; no other persons are required to be present. See, also, the NOTE to s. 756.03 (5) in this bill.

SECTION 15. 756.04 (5m) of the statutes is repealed.

NOTE: This SECTION repeals the current limits on trial juror service and court attendance for prospective service as a trial juror. See NOTE to s. 756.28 in this bill for a discussion of the limits proposed in this bill.

SECTION 17. 756.25 (3) of the statutes is amended to read:

756.25 (3) Notwithstanding subs. (1) and (2), if a county has established a system under s. 756.28 (1) in which jurors are summoned to serve for only one day or one trial in any 2-year period, the county board may determine the amount to be paid jurors for the first day of actual attendance and the amount to be paid jurors for traveling to and from the court for the first day of actual attendance.

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NOTE: Current s. 756.25 (3) provides special juror compensation in a county that has established a system in which jurors are summoned to serve for only one day or one trial in any 2-year period. The reference to a 2-year period is deleted because s. 756.28 in this bill provides, in part, for a one-day or one-trial system in a 2-year period and in a 4-year period.

SECTION 18. 756.28 of the statutes is created to read:

756.28 Length of juror service; periods of juror eligibility. (1) ONE DAY OR ONE TRIAL. A county with a population of less than 325,000 may establish a system in which a person summoned under s. 756.08 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a 2-year period, unless more days are necessary to complete service in a particular case. A county with a population of 325,000 or more may establish a system in which a person summoned under s. 756.08 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a 4-year period, unless more days are necessary to complete service in a particular case. In a system established under this subsection, a petit juror whose deliberation ends with a verdict may not be required to participate in a 2nd trial even though the juror may not have completed the first day of juror service at the time of the commencement of the 2nd trial.

(2) GENERAL 2-YEAR ELIGIBILITY. In a county that does not establish a system under sub. (1), a person may be summoned under s. 756.08 to serve as a petit juror during a period not exceeding 6 months in any 2-year period. During the period in which a person may be summoned, the person may not be required to serve or attend court for prospective service as a petit juror for a total of more than 5 days of actual court attendance unless more days are necessary to complete service in a particular case or unless a majority of the judges of courts of record for the county adopt by rule a longer time period that does not

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exceed 10 days. In any 2-year period, no person may be required to serve both as a grand and petit juror.

NOTE: Under current law, in any 2-year period, no person may serve or attend a court for service as a trial ("petit") juror for a total of more than 5 days of actual court attendance unless either of the following occurs:

1. It is necessary to act for more than 5 days in order to complete service in a particular case.
2. A majority of the judges of courts of record for the county adopt by rule a longer time period not to exceed 10 days.

It also appears that a county may establish a system in which jurors are summoned to serve for only one day or one trial in any 2-year period [see ss. 756.01 (1), 756.04 (5m) and 756.25 (3)].

This bill creates a county option to provide a one-day or one-trial responsibility for a person summoned to serve as a trial juror.

Proposed s. 756.28 (1) authorizes a county to establish a one-day or one-trial jury system. A county with a population of less than 325,000 that adopts the one-day or one-trial jury system may not require a person to serve as a juror or attend a court for more than one day or one trial in a 2-year period, while a county with a population of 325,000 or more that adopts the one-day or one-trial jury system may not require a person to serve as a juror or attend a court for more than one day or one trial in a 4-year period.

Subsection (2) of proposed s. 756.28 is a restatement of current s. 756.04 (5m).

SECTION 22. Effective dates. This act takes effect on the day after publication, except as follows:

(1) JURY SOURCE LISTS. The treatment of section 756.04 (2) (a) and (am) of the statutes and the creation of section 756.04 (1) of the statutes take effect on January 1, 1993.

NOTE: This SECTION creates a specific effective date for the provisions of the bill relating to jury source lists and the requirement for DOT to provide the DOT list free to counties on an annual basis.