



1995 SENATE BILL 403

November 7, 1995 - Introduced by Senators HUELSMAN, DARLING, BUETTNER, PANZER, DRZEWIECKI and FITZGERALD, cosponsored by Representatives GOETSCH, GREEN, MUSSER, PORTER, DOBYNS, OTTE, KREIBICH, RYBA, ALBERS, HANDRICK, URBAN, LADWIG, HAHN, WALKER, OLSEN, F. LASEE, SCHNEIDERS, OWENS, GUNDERSON and KAUFERT. Referred to Committee on Judiciary.

1 **AN ACT to repeal** 23.77 (2), 345.43 (2) and 756.096 (3) (b) 2.; **to renumber and**
2 **amend** 756.096 (3) (b) 1.; **to amend** 23.77 (1), 23.77 (3) (a), 80.48 (3), 345.43 (1),
3 345.43 (3) (a), 345.43 (3) (b), 756.096 (3) (a), 972.02 (1), 972.02 (2), 972.03 and
4 972.04 (1); and **to create** 756.096 (3) (am) of the statutes; **relating to:** juries
5 in civil and misdemeanor cases.

Analysis by the Legislative Reference Bureau

Currently, crimes are either felonies or misdemeanors. A crime that is punishable by imprisonment in a state prison is a felony; any other crime is a misdemeanor. A jury in any criminal case, whether a felony or a misdemeanor, consists of 12 persons unless both parties agree to a lesser number. This bill provides that misdemeanor juries must consist of 6 persons.

Currently, in civil cases, the jury consists of 6 persons unless a party requests a greater number or unless the court, on its own motion, requires a greater number. In neither case may the jury exceed 12 persons. In traffic cases involving forfeitures, the jury consists of 6 persons. This bill sets the number of jurors at 6 for all civil cases unless the court, on its own motion, requires a greater number, not to exceed 12.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

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

6 **SECTION 1.** 23.77 (1) of the statutes is amended to read:

1 23.77 (1) If in circuit court either party files a written demand for a jury trial
2 within 20 days after the court appearance date and immediately pays the fee
3 prescribed in s. 814.61 (4), the court shall place the case on the jury calendar. The
4 number of jurors shall be determined under s. 756.096 (3) (b). If no party demands
5 a trial by jury of 12, the right to trial by jury of 12 is permanently waived forever.

6 **SECTION 2.** 23.77 (2) of the statutes is repealed.

7 **SECTION 3.** 23.77 (3) (a) of the statutes is amended to read:

8 23.77 (3) (a) If there is a demand for a trial by jury of ~~6~~, the provisions of s.
9 345.43 (3) (a) and (b) are applicable.

10 **SECTION 4.** 80.48 (3) of the statutes is amended to read:

11 80.48 (3) JURORS. At the time and place specified in the notice the circuit judge
12 of the county, the president of the village or the chairperson of the town in which the
13 land sought to be taken lies shall issue a precept directed to the sheriff of the county
14 or to any constable, naming the sheriff or constable, which precept shall direct the
15 officer to write the names of ~~36~~ 18 freeholders of the county who are qualified to serve
16 as jurors in the circuit court and to return the list. After being sworn to perform the
17 duties required to the best of his or her ability, without partiality, the officer shall
18 immediately write the names and deliver the list thereof to the officer who issued the
19 precept; and from the list each party, in person or by an agent or attorney,
20 commencing with the petitioner, shall strike out alternately, ~~12~~ 6 names, and if either
21 party is absent or refuses to strike out, the officer who issued the precept shall
22 appoint some person to strike ~~12~~ 6 names for the absent person. The officer shall then
23 summon the ~~12~~ 6 persons whose names remain on the list in the manner prescribed
24 under s. 756.08 to appear at the time and place mentioned in the summons for the
25 purpose of determining the necessity of taking for the public use the land described

1 in the petition; if any of the persons summoned fail to attend others may be drawn
2 in the same mode to fill the vacancy, and for that purpose the proceedings may be
3 adjourned from time to time. When ~~12~~ 6 persons are thus secured they shall be sworn
4 by the officer who issued the precept to faithfully and impartially discharge the
5 duties imposed upon them, which oath shall be filed with the city, village or town
6 clerk. ~~The number of persons listed and summoned shall be proportionately reduced~~
7 ~~if the jury is to consist of a number less than 12.~~

8 **SECTION 5.** 345.43 (1) of the statutes is amended to read:

9 345.43 (1) If a case has been transferred under s. 800.04 (1) (d), or if in circuit
10 court either party files a written demand for a jury trial within 10 days after the
11 defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee
12 prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the
13 circuit court. The number of jurors shall be determined under s. 756.096 (3) (b). If
14 no party demands a trial by a jury of ~~12~~, the right to trial by a jury of ~~12~~ is
15 permanently waived forever.

16 **SECTION 6.** 345.43 (2) of the statutes is repealed.

17 **SECTION 7.** 345.43 (3) (a) of the statutes is amended to read:

18 345.43 (3) (a) If a jury of ~~less than 12~~ persons is demanded, in counties having
19 a population of 500,000 or more, the jury shall be drawn from the circuit court jury
20 panel and selected as set forth under chs. 801 to 847. In all other counties, such juries
21 shall be selected as provided in pars. (b) and (c), except that any party may demand
22 trial by a countywide jury and that the clerk shall select, by lot, the names of
23 sufficient persons qualified to serve as jurors as will provide to each party entitled
24 to peremptory challenges the number of challenges specified in par. (b).

25 **SECTION 8.** 345.43 (3) (b) of the statutes is amended to read:

1 345.43 (3) (b) If a timely demand for a jury of less than 12 persons is made, the
2 judge shall direct the clerk of the court to select by lot from the current jury panel
3 the names of a sufficient number of residents of the county qualified to serve as jurors
4 in courts of record, from which lists either party may strike 5 names. If either party
5 neglects to strike out names, the clerk shall strike out names for the party. The judge
6 shall permit voir dire examinations and challenges for cause. The clerk shall
7 summon a sufficient number of persons whose names are not struck out, to appear
8 at the time and place named in the summons.

9 **SECTION 9.** 756.096 (3) (a) of the statutes is amended to read:

10 756.096 (3) (a) A jury in ~~criminal~~ felony cases shall consist of 12 persons unless
11 both parties agree on a lesser number as provided in s. 972.02.

12 **SECTION 10.** 756.096 (3) (am) of the statutes is created to read:

13 756.096 (3) (am) A jury in misdemeanor cases shall consist of 6 persons.

14 **SECTION 11.** 756.096 (3) (b) 1. of the statutes, as affected by 1995 Wisconsin Act
15 27, is renumbered 756.096 (3) (b) and amended to read:

16 756.096 (3) (b) ~~Except as provided in subd. 2., a~~ A jury in civil cases shall consist
17 of 6 persons unless a party requests a greater number, not to exceed 12. ~~The the~~
18 court, on its own motion ~~may require~~ requires a greater number, not to exceed 12.

19 **SECTION 12.** 756.096 (3) (b) 2. of the statutes, as created by 1995 Wisconsin Act
20 27, is repealed.

21 **SECTION 13.** 972.02 (1) of the statutes is amended to read:

22 972.02 (1) Except as otherwise provided in this chapter, criminal cases shall
23 be tried by a jury of 12, drawn as prescribed in s. 756.096 (3) (a) or (am), whichever
24 is applicable, and ch. 805, unless the defendant waives a jury in writing or by

1 statement in open court or under s. 967.08 (2) (b), on the record, with the approval
2 of the court and the consent of the state.

3 **SECTION 14.** 972.02 (2) of the statutes is amended to read:

4 972.02 (2) At any time before the verdict in a felony case, the parties may
5 stipulate in writing or by statement in open court, on the record, with the approval
6 of the court, that the jury shall consist of any number less than 12. If the case is a
7 misdemeanor case, the jury shall consist of 6 persons.

8 **SECTION 15.** 972.03 of the statutes is amended to read:

9 **972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory
10 challenges except as otherwise provided in this section. When the crime charged is
11 punishable by life imprisonment the state is entitled to 6 peremptory challenges and
12 the defendant is entitled to 6 peremptory challenges. If there is more than one
13 defendant, the court shall divide the challenges as equally as practicable among
14 them; and if their defenses are adverse and the court is satisfied that the protection
15 of their rights so requires, the court may allow the defendants additional challenges.
16 If the crime is punishable by life imprisonment, the total peremptory challenges
17 allowed the defense shall not exceed 12 if there are only 2 defendants and 18 if there
18 are more than 2 defendants; in other felony cases 6 challenges if there are only 2
19 defendants and 9 challenges if there are more than 2. In misdemeanor cases, the
20 state is entitled to 3 peremptory challenges and the defendant is entitled to 3
21 peremptory challenges, except that if there are 2 defendants, the court shall allow
22 the defense 4 peremptory challenges, and if there are more than 2 defendants, the
23 court shall allow the defense 6 peremptory challenges. Each side shall be allowed
24 one additional peremptory challenge if additional jurors are to be impaneled under
25 s. 972.04 (1).

