

## CHAPTER 972

## CRIMINAL TRIALS

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**972.01 Jury; civil rules applicable.** The summoning of jurors, the impaneling and qualifications of the jury, the challenge of jurors for cause and the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as in civil actions, except that s. 270.18 shall not apply.

**972.02 Jury trial; waiver.** (1) Except as otherwise provided in this chapter, criminal cases shall be tried by a jury of 12, drawn as prescribed in ch. 270, unless the defendant waives a jury in writing or by statement in open court, on the record, with the approval of the court and the consent of the state.

(2) At any time before verdict the parties may stipulate in writing or by statement in open court, on the record, with the approval of the court, that the jury shall consist of any number less than 12.

(3) In a case tried without a jury the court shall make a general finding and may in addition find the facts specially.

(4) No member of the grand jury which found the indictment shall be a juror for the trial of the indictment.

**972.03 Peremptory challenges.** Each side is entitled to only 4 peremptory challenges except as otherwise provided in this section. When the crime charged is punishable by life imprisonment the state is entitled to 6 peremptory challenges and the defendant is entitled to 6 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. If the crime is punishable by life imprisonment, the total peremptory challenges allowed the defense shall not exceed 12 if there are only 2 defendants and 18 if there are more than 2 defendants; in other cases 6

challenges if there are only 2 defendants and 9 challenges if there are more than 2.

**972.04 Exercise of challenges.** (1) The number of jurors called shall total 12 plus the number of peremptory challenges available to all the parties, and that number, exclusive of those challenged for cause, shall be maintained in the jury box until all jurors have been examined. The parties shall thereupon exercise in their order, the state beginning, the peremptory challenges available to them, and if any party declines to challenge, such challenge shall be made by the clerk by lot.

(2) A party may waive in advance any or all of its peremptory challenges and the number of jurors called pursuant to sub. (1) shall be reduced by this number.

**972.05 Alternate jurors.** If the court is of the opinion that the trial of the action is likely to be protracted, it may, immediately after the jury is impaneled and sworn, call one or 2 alternate jurors. They shall be drawn in the same manner and have the same qualifications as regular jurors and shall be subject to like examination and challenge. Each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the oath or affirmation and shall be seated next to the regular jurors and shall attend the trial at all times. If the regular jurors are kept in custody, the alternates shall also be so kept. If before the final submission of the cause a regular juror dies or is discharged, the court shall order an alternate juror to take his place in the jury box. If there are 2 alternate jurors, the court shall select one by lot. Upon entering the jury box, the alternate juror becomes a regular juror.

**972.06 View.** The court may order a view by the jury.

**972.07 Jeopardy.** Jeopardy attaches:

(1) In a trial to the court without a jury when a witness is sworn;

(2) In a jury trial when the selection of the jury has been completed and the jury sworn.

**972.08 Incriminating testimony compelled; immunity.**

(1) Whenever any person refuses to testify or to produce books, papers or documents when required to do so before any grand jury, in a proceeding under s. 968.26 or at a preliminary examination, criminal hearing or trial for the reason that the testimony or evidence required of him may tend to incriminate him or subject him to a forfeiture or penalty, he may nevertheless be compelled to testify or produce such evidence by order of the court on motion of the district attorney. No person who testifies or produces evidence in obedience to the command of the court in such case shall be liable to any forfeiture or penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, but no person shall be exempted from prosecution and punishment for perjury or false swearing committed in so testifying.

(2) Whenever a witness attending in any court trial or appearing before any grand jury or John Doe investigation fails or refuses without just cause to comply with an order of the court under this section to give testimony in response to a question or with respect to any matter, the court, upon such failure or refusal, or when such failure or refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or until such trial, grand jury term or John Doe investigation is concluded but in no case exceeding one year. No person confined under this section shall be admitted to bail pending the determination of an appeal taken by him from the order of his confinement.

**972.09 Hostile witness in criminal cases.**

Where testimony of a witness at any preliminary examination, hearing or trial in a criminal action is inconsistent with a statement previously made by him and reduced to writing and approved by him or taken by a phonographic reporter, he may, in the discretion of the court, be regarded as a hostile witness and examined as an adverse witness, and the party producing him may impeach him by evidence of such prior contradictory statement. When called by the defendant, a law enforcement officer who was involved in the seizure of evidence shall be regarded as a hostile witness and may be examined as an adverse witness at any hearing in which the legality of such seizure may properly be raised.

**972.10 Order of trial.** (1) After the selection of a jury, the court may instruct it as to its duties. Such general instructions shall be furnished the parties before they are given and either party may object to any specific instruction or propose instructions of its own to be given prior to trial.

(2) In a trial where the issue is mental responsibility of a defendant, the defendant may make an opening statement on such issue prior to his offer of evidence. The state may make its opening statement on such issue prior to the defendant's offer of evidence or reserve the right to make such statement until after the defendant has rested.

(3) The state first offers evidence in support of the prosecution. The defendant may offer evidence after the state has rested. If the state and defendant have offered evidence upon the original case, the parties may then respectively offer rebuttal testimony only, unless the court in its discretion permits them to offer evidence upon their original case.

(4) At the close of the state's case and at the conclusion of the entire case, the defendant may move on the record for a dismissal.

(5) When the evidence is concluded and the testimony closed, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, signed by the party or his attorney and filed with the clerk, unless the court otherwise directs. Counsel for the parties, or the defendant if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and to present and argue to the court objections to the adoption or rejection of any instructions requested by counsel. The court shall advise the parties of the instructions to be given. Counsel, or the defendant if he is not represented by counsel, shall specify and state the particular ground on which the instruction is objected to, and it shall not be sufficient to object generally that the instruction does not state the law, or is against the law, but the objection must specify with particularity wherein the instruction is insufficient, or does not state the law, or to what particular language there is an objection. All objections must be on the record.

(6) In closing argument, the state on the issue of guilt and the defendant on the issue of mental responsibility shall commence and may conclude the argument.

**972.11 Evidence and practice; civil rules applicable.** The rules of evidence and practice in civil actions shall be applicable in all criminal proceedings unless the context of a section or rule manifestly requires a different construc-

tion. No guardian ad litem need be appointed for a defendant in a criminal action. Title XLIII, except ss. 885.14, 887.05 to 887.12, 887.23 to 887.29, 889.22, 895.29 and 895.30, shall apply in all criminal proceedings.

**972.12 Conduct of jury after commencement of trial.** (1) The jurors sworn may, at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer, except in trials for crimes punishable by life imprisonment, where the jurors shall be kept together as provided in sub. (2) after they have been sworn.

(2) When the jury retires to consider its verdict, an officer of the court shall be appointed to keep them together and to prevent communication between the jurors and others.

**972.13 Judgment.** (1) A judgment of conviction shall be entered upon a verdict of guilty by the jury, a finding of guilty by the court in cases where a jury is waived, or a plea of guilty or no contest.

(2) Except in cases where ch. 975 is applicable, upon a judgment of conviction the court shall either impose or withhold sentence and, if the defendant is not fined or imprisoned, he shall be placed on probation as provided in s. 973.09. The court may adjourn the case from time to time for the purpose of pronouncing sentence.

(3) A judgment of conviction shall set forth the plea, the verdict or finding, and the adjudication and sentence. If the defendant is acquitted, judgment shall be entered accordingly.

(4) Judgments shall be in writing and signed by the judge or clerk.

(5) A copy of the judgment shall constitute authority for the sheriff to execute the sentence.

(6) The following forms may be used for judgments:

STATE OF WISCONSIN

.... County

In .... Court

The State of Wisconsin,

vs.

....(Name of defendant)

UPON ALL THE FILES, RECORDS AND PROCEEDINGS,

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty (not guilty and a verdict of guilty) (not guilty and a finding of guilty) (no contest) on the .... day of ...., 19..., of the crime of .... in violation of s. ....; and the court having asked the defendant whether he has anything to state why sentence should not be pronounced, and no sufficient grounds to the contrary being shown or appearing to the court.

IT IS ADJUDGED that the defendant is guilty as convicted.

\*IT IS ADJUDGED that the defendant is hereby committed to the Wisconsin state prisons (county jail of .... county) for an indeterminate term of not more than .....

\*IT IS ADJUDGED that the defendant is ordered to pay a fine of \$.... (and the costs of this action).

\*The .... at .... is designated as the Reception Center to which the said defendant shall be delivered by the sheriff.

\*IT IS ORDERED that the clerk deliver a duplicate original of this judgment to the sheriff who shall forthwith execute the same and deliver it to the warden.

Dated this .... day of ...., 19...

BY THE COURT .....

Date of Offense .....

District Attorney .....

Defense Attorney .....

\*Strike inapplicable paragraphs.

STATE OF WISCONSIN,

.... County

In .... Court

The State of Wisconsin

vs.

....(Name of defendant)

On the .... day of ...., 19..., the district attorney appeared for the state and the defendant appeared in person and by .... his attorney.

UPON ALL THE FILES, RECORDS AND PROCEEDINGS

IT IS ADJUDGED that the defendant has been found not guilty by the verdict of the jury (by the court) and is therefore ordered discharged forthwith.

Dated this .... day of ...., 19...

BY THE COURT ...

(7) The department shall prescribe and furnish forms to the clerk of each county for use as judgments in cases where a defendant is placed on probation or committed to the custody of the department pursuant to this title.

**972.14 Statements before sentencing.**

Before pronouncing sentence, the court shall inquire of the defendant why sentence should not be pronounced upon him and accord the district attorney, defense counsel and defendant an opportunity to make a statement with respect to any matter relevant to sentence.

**972.15 Presentence investigation.** (1) After conviction the court may order a presentence investigation.

(2) When a presentence investigation report has been received the judge shall disclose the contents of the report to the defendant's attorney.

ney and to the district attorney prior to sentencing. When the defendant is not represented by an attorney, the contents shall be disclosed to the defendant.

(3) The judge may conceal the identity of any person who provided information in the presen-

tence investigation report.

(4) After sentencing, unless otherwise ordered by the court, the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.