

1983 Senate Bill 320

Date of enactment: **April 20, 1984**
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1983 Wisconsin Act 226

AN ACT *to repeal 972.05; to amend 805.08 (3), 972.03 and 972.04 (1); to repeal and recreate 805.08 (2); and to create 972.10 (7) of the statutes, relating to impaneling additional jurors in civil and criminal trials.*

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

SECTION 1. 805.08 (2) of the statutes is repealed and recreated to read:

805.08 (2) NUMBER OF JURORS DRAWN. A sufficient number of jurors shall be called in the action so that the number applicable under s. 756.096 (3) (b) remains after the exercise of all peremptory challenges to which the parties are entitled under sub. (3). The court may order that additional jurors be impaneled. In that case, if the number of jurors remains more than required at the time of the final submission of the cause, the court shall determine by lot which jurors shall not participate in deliberations and discharge them.

NOTE: Subsection (2) is amended by replacing the concept of "alternate" jurors with a provision allowing the court to order the impaneling of additional jurors. The panel is then reduced to the proper size by lot immediately prior to final submission of the cause. These changes are intended to promote an attentive attitude and a collegial relationship among the members of the jury.

SECTION 2. 805.08 (3) of the statutes is amended to read:

805.08 (3) (title) PEREMPTORY CHALLENGES. ~~A sufficient number of jurors shall be called in the action so that the number applicable under s. 756.096 (3) (b) shall remain after the exercise of all peremptory challenges to which the parties are entitled as provided in this subsection.~~ Each party shall be entitled to 3 such peremptory challenges which shall be exercised alternately, the plaintiff beginning; and when any party declines to challenge in turn, the challenge shall be made by the clerk by lot. The parties to the action shall be deemed 2, all plaintiffs being one party and all defendants being the other party, except that in case where 2 or more defendants have adverse interests, the court, if satisfied that the due protection of their interests so requires, in its discretion, may allow peremptory challenges to the defendant or defendants on each side of the adverse interests, not to exceed 3. Each side shall be entitled to one peremptory challenge in addition to those otherwise allowed by law if ~~alternate~~ additional jurors are to be impaneled under sub. (2).

NOTE: The first sentence of prior sub. (3) is moved to sub. (2) for more logical placement in the statutes. The reference to “alternate” jurors in the final sentence is changed to “additional” jurors to reflect the modification of sub. (2).

SECTION 3. 972.03 of the statutes is amended to read:

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. Each side shall be allowed one additional peremptory challenge if additional jurors are to be impaneled under s. 972.04 (1).

NOTE: This section is amended by allowing one additional peremptory challenge when additional jurors are to be impaneled. This approximates the right of each side under prior s. 972.05 to one additional peremptory challenge for each alternate juror. Since abolition of the concept of “alternate” jurors permits the additional peremptory challenge to be made to any member of the panel, only one additional challenge is permitted.

SECTION 4. 972.04 (1) of the statutes is amended to read:

972.04 (1) The number of jurors ~~called~~ impaneled shall ~~total~~ be 12 unless a lesser number has been stipulated and approved under s. 972.02 (2) or the court orders that additional jurors be impaneled. That number, plus the number of peremptory challenges available to all the parties, ~~and that number, exclusive of those challenged for cause,~~ shall be called initially and maintained in the jury box by calling others to replace jurors excused for cause 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~~ the challenge shall be made by the clerk by lot.

NOTE: Subsection (1) is amended by allowing the court to order that additional jurors be impaneled. The size of the panel is then reduced to the appropriate number by lot immediately before final submission if that has not already occurred through death or discharge of a juror. See s. 972.10 (7), stats.

Abolition of the concept of “alternate” jurors is intended to promote an attentive attitude and a collegial relationship among all jurors.

SECTION 5. 972.05 of the statutes is repealed.

NOTE: This bill abolishes the concept of “alternate” jurors and substitutes provisions allowing additional jurors to be impaneled to hear the evidence in protracted trials. The panel is then reduced to the appropriate size by lot immediately prior to final submission of the case to the jury. These changes are intended to promote an attentive attitude and collegial relationship among all jurors.

SECTION 6. 972.10 (7) of the statutes is created to read:

972.10 (7) If additional jurors have been impaneled under s. 972.04 (1) and the number remains more than required at final submission of the cause, the court shall determine by lot which jurors shall not participate in deliberations and discharge them.

NOTE: Subsection (7) requires the court to reduce the size of the jury panel to the proper number immediately prior to final submission of the cause. Unneeded jurors must be determined by lot and these may not participate in deliberations. *State v. Lehman*, 108 Wis. 2d 291 (1982).

SECTION 7. **Initial applicability.** This act applies to actions commenced on or after the effective date of this act.

SECTION 8. **Effective date.** This act takes effect on the first day of the month commencing after its publication.
