

State of Wisconsin



1995 Assembly Bill 211

Date of enactment: **June 7, 1996**
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1995 WISCONSIN ACT 427

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

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

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

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

SECTION 1f. 23.77 (2) of the statutes is repealed.

SECTION 1h. 23.77 (3) (a) of the statutes is amended to read:

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

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

345.43 (1) If a case has been transferred under s. 800.04 (1) (d), or if in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the cir-

cuit court. The number of jurors shall be determined under s. 756.096 (3) (b). If no party demands a trial by a jury of 12, the right to trial by a jury of 12 is permanently waived forever.

SECTION 1k. 345.43 (2) of the statutes is repealed.

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

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

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

345.43 (3) (b) If a timely demand for a jury of less than 12 persons is made, the judge shall direct the clerk of the court to select by lot from the current jury panel the names of a sufficient number of residents of the county qualified to serve as jurors in courts of record, from which lists either party may strike 5 names. If either party

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

neglects to strike out names, the clerk shall strike out names for the party. The judge shall permit voir dire examinations and challenges for cause. The clerk shall summon a sufficient number of persons whose names are not struck out, to appear at the time and place named in the summons.

SECTION 1w. 756.096 (3) (a) of the statutes is amended to read:

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

SECTION 2. 756.096 (3) (am) of the statutes is created to read:

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

SECTION 2m. 756.096 (3) (b) 2. of the statutes, as created by 1995 Wisconsin Act 27, is amended to read:

756.096 (3) (b) 2. A jury in cases involving ~~traffic regulations, as defined in s. 345.20 (1) (b), an offense for which a forfeiture may be imposed~~ shall consist of 6 persons.

SECTION 2t. 756.096 (3) (b) 3. of the statutes is created to read:

756.096 (3) (b) 3. This paragraph does not apply to cases under ch. 938.

SECTION 3. 972.02 (1) of the statutes is amended to read:

972.02 (1) Except as otherwise provided in this chapter, criminal cases shall be tried by a jury of ~~12~~, drawn as prescribed in s. 756.096 (3) (a) or (am), whichever is applicable, and ch. 805, unless the defendant waives a jury in writing or by statement in open court or under s. 967.08 (2) (b), on the record, with the approval of the court and the consent of the state.

SECTION 4. 972.02 (2) of the statutes is amended to read:

972.02 (2) At any time before the verdict in a felony case, 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. If the case is a misdemeanor case, the jury shall consist of 6 persons.

SECTION 5. 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 felony cases 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2. In misdemeanor cases, the state is entitled to 3 peremptory challenges and the defendant is entitled to 3 peremptory challenges, except that if there are 2 defendants, the court shall allow the defense 4 peremptory challenges, and if there are more than 2 defendants, the court shall allow the defense 6 peremptory challenges. Each side shall be allowed one additional peremptory challenge if additional jurors are to be impaneled under s. 972.04 (1).

SECTION 6. 972.04 (1) of the statutes is amended to read:

972.04 (1) The number of jurors impaneled shall be ~~12~~ prescribed in s. 756.096 (3) (a) or (am), whichever is applicable 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, 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, the challenge shall be made by the clerk by lot.

SECTION 7. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.