

CHAPTER 756

JURIES

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NOTE: See s. 805.08 and Article I, Section 7, for notes on court decisions related to jurors and jury trials.

756.001 State policy on jury service; opportunity and obligation to serve as juror. (1) Trial by jury is a cherished constitutional right.

(2) Jury service is a civic duty.

(3) No person who is qualified and able to serve as a juror may be excluded from that service in any court of this state on the basis of sex, race, color, sexual orientation as defined in s. 111.32 (13m), disability, religion, national origin, marital status, family status, lawful source of income, age or ancestry or because of a physical condition.

(4) All persons selected for jury service shall be selected at random from the population of the area served by the circuit court. All qualified persons shall have an equal opportunity to be considered for jury service in this state and the obligation to serve as jurors when summoned under this chapter for that purpose. Any manual or automated method of selection that provides each qualified person with an equal probability of selection for jury service or that provides each prospective juror with an equal opportunity for assignment to a particular trial may be used.

(5) The presiding judge of each circuit court, or, if there is none, the circuit judge designated by the chief judge to supervise the jury system, shall be responsible for administering the jury system in that court and shall discharge that duty in an efficient, equitable and cost-effective manner, in accordance with this chapter. The clerk of circuit court, if delegated by and under the supervision of the judge responsible for administering the jury system, may select and manage juries under policies and rules established by the judges in that circuit court.

History: 1991 a. 271; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Subsections (1) and (2) are based on prior s. 756.001(1). Subsection (3) implements ABA Standard 4 by expanding the nondiscrimination clause of prior s. 756.01(3) to all classes protected under the state equal rights statute, s. 101.22. Subsection (4) implements ABA Standard 3 and is based on prior s. 756.001(2). Subsection (5), based on the same prior statute, implements ABA Standard 10. [Re SCO No. 96–08 eff. 7–1–97]

756.02 Juror qualifications. Every resident of the area served by a circuit court who is at least 18 years of age, a U.S. citizen and able to understand the English language is qualified to serve as a juror in that circuit unless that resident has been convicted of a felony and has not had his or her civil rights restored.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: This section, based on prior s. 756.01 (1), implements ABA Standard 4. [Re SCO No. 96–08 eff. 7–1–97]

An ability to understand the English language is necessary in order to satisfy the statutory requirements of ss. 756.02 and 756.04. If a juror cannot meet the statutory requirements, then the entire trial process may be nothing more than an “exercise in futility.” A defendant was prejudiced when a juror was allowed to serve who was not qualified under the statutes and did not have a sufficient understanding of English to meaningfully participate in the trial process. *State v. Carlson*, 2003 WI 40, 261 Wis. 2d 97, 661 N.W.2d 51, 01–1136.

756.03 Excuse; deferral. (1) **EXCUSE.** The court to which a person is summoned for jury service may excuse the person from jury service if the court determines that the person cannot fulfill the responsibilities of a juror. The court shall not consider any structural limitations of a facility when making that determination.

(2) **DEFERRAL.** The court to which a person is summoned for jury service may, upon request of that person, defer to a later date set by the court the period in which the person must serve if the court determines that service as a juror would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

(3) **CLERK AUTHORIZED TO GRANT.** The judge responsible for administering the jury system in the circuit court may authorize the clerk of circuit court to grant excuses or deferrals under this section. The authorization may limit the grounds on which the clerk of circuit court may grant the excuse or deferral and may require persons seeking an excuse or deferral to document the basis for any excuse or deferral.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: This proposal, implementing ABA Standard 6, repeals the concept of exclusions and exemptions under prior s. 756.02. Instead, it allows judicial excuses for persons who clearly cannot fulfill the duties of a juror and deferrals for undue hardship. Periods of required availability for jury service are set forth in s. 756.28, [Re SCO No. 96–08 eff. 7–1–97]

Excusing and deferring prospective jurors under this section is one component of a circuit judge’s obligation to administer the jury system. The judge may delegate the authority to the clerk of circuit court under sub. (3). The task need not be by a judge in court or with the prospective juror present in person, and may take place in advance of a particular trial. A defendant’s presence cannot be required when the judge or clerk is acting in an administrative capacity under this section. *State v. Gribble*, 2001 WI App 227, 248 Wis. 2d 409, 636 N.W.2d 488.

756.04 Prospective juror lists; number; how compiled.

(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 name, address, date of birth, race and gender of each person who is licensed as a motor vehicle operator under ch. 343 or who has received an identification card under s. 343.50 or 343.51.

(c) “Race” means African American, American Indian or Alaskan Native, Asian or Pacific Islander, Caucasian, Hispanic, or other racial category.

(2) Jurors for all circuit courts shall be selected under ss. 756.04 to 756.07.

(3) Annually, on a date established by the secretary of transportation, the department shall transmit, without charge, to each clerk of circuit court a department list of persons residing in the area served by that circuit court. The department shall establish, by rule, uniform specifications regarding the size, format and content of computer tapes or other media used to prepare the department list.

(4) The clerk of circuit court shall compile the list of prospective jurors by selecting names at random from the department list or from a master list created under this subsection and sub. (5).

(5) (a) The clerk of circuit court may create a master list using the department list and any of the following:

1. Voter registration lists.
2. Telephone and municipal directories.
3. Utility company lists.
4. Lists of payers of real property taxes.
5. Lists of high school graduates who are 18 years of age or older.

6. Lists of persons who are receiving aid to families with dependent children under subch. III of ch. 49.

(b) To create a master list, the clerk of circuit court 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 the primary source, and the names selected from the department list shall be compared with the names from the 2nd source. Duplicate names shall be removed from the 2nd source sample and the remaining names shall be combined with the names selected from the department list to create the master list. If more than 2 source lists are used, this process shall be repeated, using the previously compiled master list for comparison with any additional source list.

(6) The clerk of circuit court shall mail to every prospective juror, separately or together with the summons under s. 756.05, a juror qualification form accompanied by instructions requiring the person to complete and return the form to the clerk within 10 days after receiving it. The form shall request all of the following:

(a) Information necessary to determine if the person is qualified to serve as a juror in that circuit court.

(b) The race of the prospective juror.

(c) The prospective juror's declaration that the responses are true to the best of his or her knowledge.

(7) The form under sub. (6) may request other information that the court needs to manage the jury system in an efficient manner, including information ordinarily sought during voir dire examination. The form under sub. (6) shall include a notice that, if the person willfully misrepresents a material fact or fails to return the completed form within 10 days after its receipt, the person may be required to forfeit not more than \$500.

(8) If a prospective juror is unable to fill out the form under sub. (6), another person may complete the form and shall indicate why the person has done so. If it appears that there is an omission, ambiguity or error in a returned form, the clerk of circuit court shall return the form to the person with instructions to correct and return the form to the clerk within 10 days after receiving the form.

(9) During each year, the clerk of circuit court shall provide the court with a sufficient number of names of prospective jurors to meet the needs of the court. The clerk shall randomly select names from the department list or master list and strike the name of any person randomly selected whose returned juror qualification form shows that the person is not qualified for jury service under s. 756.02. The clerk shall certify that the names were selected in strict conformity with this chapter. The clerk shall include a verified statement with the list of names describing the manner in which the names were selected, including an identification of all sources used in the preparation of the list. The clerk shall keep a certified copy of the names of prospective jurors, including the address of each prospective juror, for public inspection.

(10) The clerk of circuit court shall keep computerized juror lists secure against unauthorized access.

History: 1973 c. 267, 272; 1977 c. 187 ss. 95, 135; 1977 c. 273, 318; 1977 c. 447 ss. 185, 210; 1977 c. 449; Stats. 1977 s. 756.04; 1979 c. 128; 1987 a. 151; 1991 a. 271; 1995 a. 27; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 2003 a. 214.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Judicial Council Note, 1996: This section, based on prior s. 756.04, implements ABA Standard 2, recommending regularly maintained source lists as inclusive as feasible of the adult population of the district. [Re SCO No. 96–08, eff. 7–1–97]

An ability to understand the English language is necessary in order to satisfy the statutory requirements of ss. 756.02 and 756.04. If a juror cannot meet the statutory requirements, then the entire trial process may be nothing more than an "exercise in futility." A defendant was prejudiced when a juror was allowed to serve who was not qualified under the statutes and did not have a sufficient understanding of English to meaningfully participate in the trial process. *State v. Carlson*, 2003 WI 40, 261 Wis. 2d 97, 661 N.W.2d 51, 01–1136.

756.05 Jury summons, when and how issued. At least 12 days before the first day on which a jury is required to be present, the clerk of circuit court shall summon sufficient prospective jurors to appear before the court at an appropriate time for jury ser-

vice. The summons may be served by 1st class mail or another method.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior s. 756.08, this provision implements ABA Standard 11. Under s. 756.04(6), the qualification questionnaire sent to prospective jurors may be sent at the same time as the summons. [Re SCO No. 96–08 eff. 7–1–97]

756.06 Jury selection. (1) Whenever an issue is to be tried before a jury, the clerk of circuit court shall randomly select names from the prospective juror list until the desired number is obtained.

(2) (a) A jury in a felony case shall consist of 12 persons unless both parties agree on a lesser number as provided in s. 972.02.

(am) A jury in a misdemeanor case shall consist of 6 persons.

NOTE: The provision that a jury in a misdemeanor case shall consist of 6 persons was held to violate Article I, s. 7 of the Wisconsin Constitution by the Supreme Court in *State v. Hansford*, 219 Wis. 2d 226 (1998).

(b) Except as provided in par. (c), a jury in a civil case shall consist of 6 persons unless a party requests a greater number, not to exceed 12. The court, on its own motion, may require a greater number, not to exceed 12.

(c) A jury in a case involving an offense for which a forfeiture may be imposed or in an inquest under s. 979.05 shall consist of 6 persons.

(d) This subsection does not apply to cases under ch. 938.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.06; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior s. 756.096, this section implements ABA Standard 17. [Re SCO No. 96–08 eff. 7–1–97]

756.07 Insufficient jurors. When a sufficient number of jurors cannot be obtained for a trial from the list supplied by the clerk of circuit court, the court may order the sheriff to bring before the court persons in the vicinity for determination by the court of their qualification and ability to serve as jurors for the particular trial.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior s. 756.06, this allows jurors to be chosen from those in the vicinity, whether or not "bystanders," for a particular trial. [Re SCO No. 96–08 eff. 7–1–97]

756.08 Oaths and affirmations. (1) The jurors selected to try the issues in the action or proceeding shall take an oath or affirmation to try the issues submitted to them and, unless discharged by the court, to give a verdict according to the law and the evidence given in court.

(2) When the issues have been submitted to the jury, a proper officer, subject to the direction of the court, shall swear or affirm that the officer will keep all jurors together in some private and convenient place until they have agreed on and rendered their verdict, are permitted to separate or are discharged by the court. While the jurors are under the supervision of the officer, he or she may not permit them to communicate with any person regarding their deliberations or the verdict that they have agreed upon, except as authorized by the court.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: This section is based on prior s. 756.098. The ABA Standards do not mention oaths or affirmations. [Re SCO No. 96–08 eff. 7–1–97]

756.25 Juror fees and mileage. (1) Every grand and petit juror summoned shall receive an amount, not less than \$16, as fixed by the county board, for each day of attendance, and an amount equal to the mileage rate set under s. 20.916 (8) for each mile traveled each day in going and returning by the most usual route. A juror may not be paid for a day when the court is not in session unless payment is ordered by the court.

(2) The county board may pay jurors by the half-day. The payment shall be for 50% of the established daily pay under sub. (1) and may not affect the payment for mileage.

(3) Notwithstanding subs. (1) and (2), if the judges in any circuit have established a system under s. 756.28 in which jurors are

summoned to serve for only one day or one trial, the county board may determine the amount to be paid jurors for the first day of attendance and the amount to be paid jurors for traveling to and from the court for the first day of attendance.

(4) When a juror has completed his or her service, the clerk of circuit court shall promptly initiate the procedure for payment of the juror's fees and mileage under s. 59.64 (1) (g) 1.

History: 1973 c. 333; 1975 c. 224; 1977 c. 187 s. 95; 1977 c. 318, 449; Stats. 1977 s. 756.25; 1979 c. 128; 1987 a. 214, 398; 1991 a. 271; 1993 a. 16, 490; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior ss. 756.24 and 756.25, this section implements ABA Standard 15. The payment procedure applies regardless of whether the juror was selected under s. 756.07 or under s. 756.08. Prior s. 756.26 is repealed as unnecessary. [Re SCO No. 96–08 eff. 7–1–97]

756.255 Leave of absence. An employer shall grant an employee a leave of absence without loss of time in service for the period of jury service. For the purpose of determining seniority or pay advancement, the status of the employee shall be considered uninterrupted by the jury service. No employer may use absence due to jury service as a basis for discharging an employee or for any disciplinary action against the employee. An employer who discharges or disciplines an employee in violation of this section may be fined not more than \$200 and may be required to make full restitution to the aggrieved employee, including reinstatement and back pay. Except as otherwise provided in this section, restitution shall be in accordance with s. 973.20.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior s. 756.25(1), this section implements ABA Standard 15 (c). [Re SCO No. 96–08 eff. 7–1–96]

756.28 Length of juror service; periods of required availability. (1) ONE DAY OR ONE TRIAL. The judges in any circuit may establish a system in which a person summoned under s. 756.05 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a specified period, unless more days are necessary to complete service in a particular case. The specified period may not be less than 2 nor more than 4 years. In circuits where judges have established such a system, 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 commencement of the 2nd trial.

(2) **GENERAL 4–YEAR ELIGIBILITY.** In a county where a system has not been established under sub. (1), a person may be required to be available for service as a grand or petit juror only once in any 4–year period. The period for which any person may be required to be available for service may not exceed 31 consecutive days. No person may be required to serve, or attend court for prospective service, as a juror for a total of more than 5 days unless more days are necessary to complete service in a particular case.

History: 1991 a. 271; Sup. Ct. Order No. 95–11, 206 Wis. 2d xiii (1996); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Based on prior s. 756.28, this section implements ABA Standard 5. Subsection (1) is revised to allow greater flexibility than prior statutes with respect to the length of the period during which a juror who has served for one day/one trial cannot be summoned again.

The amendment to sub. (2) is identical to a Supreme Court rulemaking petition heard October 11, 1995. The Judicial Council Note to the proposal reads as follows: Subsection (2) is revised, effective January 1, 1997, to specify that a person may only be required to be available for jury service once in any 4–year period. The maximum term of jury availability is reduced to 31 consecutive days, and the maximum number of days of actual court attendance is limited to five, unless more are necessary to complete a particular trial. This change is intended to implement the recommendations of the American Bar Association that such periods be as short as possible, consistent with the needs of justice. [Re SCO No. 96–08 eff. 7–1–96]

756.30 Penalties. (1) Whoever willfully misrepresents any material fact on a juror qualification form under s. 756.04 (6) or whoever fails to return the completed qualification form within 10 days after receipt of the form may be required to forfeit not more than \$500.

(2) If the clerk of circuit court commits any fraud in the selection of jurors or prospective jurors, the clerk shall forfeit not more than \$500 for each offense.

(3) Any person lawfully summoned to attend as a juror who fails to attend without any sufficient excuse shall pay a fine not exceeding \$40, which shall be imposed by the court to which the person was summoned and shall be paid into the county treasury.

History: Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997).

Judicial Council Note, 1996: Subsection (1) carries forward the penalty in prior s. 756.04(2)(b). Subsection (2) is based on prior s. 756.041, and carries the same penalty. Subsection (3) is based on prior s. 756.23. [Re SCO No. 96–08 eff. 7–1–97]