

No. 532, S.]

[Published July 21, 1949.

CHAPTER 488.

AN ACT to repeal 255.10 and 255.12; to amend 255.01, 255.02 (9), 255.05, 255.06, 255.07, 255.13, 270.19 and 346.55; and to repeal and recreate 255.03, 255.04, 255.14 and 270.15 of the statutes, relating to jurors in courts of record.

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

SECTION 1. 255.01 of the statutes is amended to read:

255.01 * * * Citizens of the United States who are * * * electors of this state, who are possessed of their natural faculties, who are not infirm * * *, who are esteemed in their communities as * * * of good character * * * and sound judgment, and who are able to read and write the English language understandingly, *and who are not exempted or disqualified from jury service under section 255.02*, shall be liable to be drawn as jurors * * *.

SECTION 2. 255.02 (9) of the statutes is amended to read:

255.02 (9) Every person drawn and summoned and having served as a grand or petit juror at any regular term of the court of record shall be disqualified from serving again as a grand or petit juror in the same county for * * * 2 years thereafter, * * * *unless* summoned on a special venire or as a talesman.

SECTION 3. 255.03 of the statutes is repealed and recreated to read:

255.03 JURY COMMISSIONERS. (1) There shall be 3 jury commissioners in each county appointed as provided in this section. They must be freeholders of the county and possess the qualifications required for jurors by section 255.01. In counties where there is but one court within the provisions of section 255.04, the circuit judge shall appoint the jury commissioners. In a county where there is more than one court or judge within the provisions of said section, the jury commissioners shall be appointed by the joint action of the judges of such court or courts. One commissioner shall be appointed each year for a term of 3 years commencing on the first day of July following such appointment. Appointments shall be made in writing and shall be filed in the offices of the clerks of circuit courts.

(2) Before entering upon the duties of his office each commissioner shall take and subscribe the following oath: "I do solemnly swear that I will honestly and faithfully discharge the duties of a jury commissioner without fear or favor; and that I will not consent to the selection of a person as juror whom I have been solicited to name as a juror, or whom I believe to be unfit for jury duty, or likely to render a partial verdict; and that I will report to the court the names of all persons who seek by request, hint or suggestion to influence me in the selection of jurors." The oath shall be filed in the office of the clerk of the circuit court of the county.

(3) The commissioners shall be paid the compensation fixed by the county board and 10 cents for each mile traveled in the discharge of their duties. Such compensation and mileage shall be paid by the county treasurer upon the order of a circuit judge of the county. The commissioners shall be provided with such articles, books, postage, sta-

tionery, office space and assistants as shall be required by them to properly discharge their duties, upon the recommendation of the circuit judge, or circuit judges, of the several counties.

(4) The commissioners shall meet on the second Monday in each January and at such other times as the judges direct or the discharge of their duties requires. Two commissioners shall constitute a quorum. They may subpoena any person to appear before them within the town, village or city wherein such person resides for examination as to any person's qualifications for jury service, and may compel the person to give testimony under oath. The commissioners may investigate by inquiries at any person's place of business, residence, or elsewhere, or by other means, his reputation, character and fitness for jury service. The department of public welfare, sheriffs, clerks of towns, villages and cities, and the police officials shall furnish the commissioners, upon their request, such records and assistance as the commissioners deem proper to perform their duties.

SECTION 4. 255.04 of the statutes is repealed and recreated to read:

255.04 PETIT JURORS; LISTS; NUMBER; HOW DRAWN. (1) Petit jurors for all circuit courts, the municipal courts of Milwaukee and Racine counties, the district court of the city and county of Milwaukee, the superior court of Douglas county and all other courts of record when exercising civil or criminal jurisdiction shall be drawn and obtained as prescribed in this and sections 255.05 to 255.07; but this section shall not apply to any court for which the method of drawing jurors is prescribed by any law applicable to it.

(2) (a) The commissioners shall annually before the first Monday in April provide one list of not less than 300 nor more than 500 names of persons to be drawn from the county and apportioned as equally as may be among towns, villages and wards of cities thereof in proportion to population according to the last national census, to serve as petit jurors in the courts specified in subsection (1). They shall not place the name of any person on such list who is exempted or disqualified under section 255.02, nor unless such person is determined to have the qualifications specified in section 255.01 upon the knowledge of the commissioners or upon the receipt by them of reliable information indicating that the person is so qualified. The commissioners may, from time to time, revise said list by striking from it the names of persons found by them to be exempt or ineligible for jury service, and to add thereto the names of additional persons as provided in section 255.05. Such list shall be subscribed and sworn to by the commissioners as having been prepared in strict conformity with the statutes thereto appertaining.

(b) A verified copy of such list, containing the address and occupation of each person named therein shall be furnished to the clerks of the respective courts, to be kept by them for the use of the court and for public inspection. The name of each person listed shall be written by a commissioner on separate cards of like weight, size and color and measuring not more than one by 3 inches. Each card shall be placed in separate opaque envelopes of like weight, size and color and only large enough to admit the cards. The commissioners shall provide a master tumbler of hexagonal shape into which all the cards shall be placed. Such tumbler shall have but one opening, and that only large enough to admit the clerk's hand, and be kept locked at all times, except when the list is being revised or when the jury panel is being drawn therefrom. Such tumbler shall be kept secure against unauthorized entry therein in some repository to be designated by the commissioners.

(3) At least 15 and not more than 30 days before the sitting of any court at which a jury is required to attend, the clerk thereof shall in the presence of the trial judge and of at least 2 of the commissioners draw 36 names from such tumbler. For the purpose of any drawing of names of jurors a box shall not be deemed equivalent to the tumbler herein specified. Before drawing each name, the tumbler shall be rotated at least 6 times. The clerk shall read each name aloud when drawn, pass the card on which it appears to the judge, and the commissioners shall then cause the name to be written, together with the person's address and occupation, in the order in which it was drawn, upon a panel list provided for that purpose, at the bottom of which the commissioners shall certify that the drawing was in accordance with law. The clerk shall then draw the names of 18 additional persons, which names shall be recorded in like manner upon a reserve-panel list. They shall be summoned in the order in which their names appear on the reserve-panel list in the event and to the extent that the regular panel is inadequate. When summoned, they shall become a part of the regular panel. Whenever there shall be a deficiency of jurors of the regular and reserve panels at any time the court may order the drawing and preparation of additional reserve-panel lists as the condition and character of the business require. Such regular and reserve-panel lists shall be kept by the commissioners; and a verified copy thereof shall be furnished the clerk of the court.

(4) No advertisement of the drawing need be given, but the clerk shall fix the date of the drawing and give 5 days' notice thereof to the commissioners and the judge. If the

judge be absent from the county or unable to attend, then the county judge shall attend the drawing. If any court be held by more than one judge the action required in this section may be taken by them jointly or severally; and they may by order provide the length of service, and the number in which the jurors shall be required to serve in the different branches of such court.

(5) The cards containing the names appearing on any regular or reserve-panel list shall be kept separately by the commissioners and shall be returned to the tumbler upon report from the clerk that such person did not attend and serve as a juror at the term for which drawn.

SECTION 5. 255.05 of the statutes is amended to read:

255.05 Whenever at any term of either such court there shall be a partial or entire absence of jurors of the regular panel, from any cause whatever, the court may direct that the clerk, in his presence, immediately draw from the names so furnished and provided such number of names of persons as may be required to serve as jurors during the term; and whenever there shall be a deficiency of jurors of the regular panel at any time during the term the court may order a sufficient number to be so drawn, to fill the regular panel, or a less or larger number as the public interest and the condition and character of the business shall require. Whenever it becomes apparent to the court or the trial judge that the regular panel will not be sufficient to provide a jury for a particular cause to be tried at the current or next term of court, the court or judge may direct the clerk to draw and summon a sufficient additional number of jurors, specifying the number. Whenever the list of names furnished any such court shall have been depleted the commissioners shall supply other names so that there will be not less than 150 nor more than 500 names in the * * * tumbler at the time any drawing of jurors takes place. Such names shall be written on slips of paper which shall be put into the * * * tumbler as hereinbefore provided.

SECTION 6. 255.06 of the statutes is amended to read:

255.06 BYSTANDERS * * *, WHEN CALLED. * * * When a sufficient number of jurors, so drawn and summoned, cannot be obtained for * * * any trial * * * the court may * * * order persons qualified to serve as jurors to be returned from the bystanders * * * for the trial thereof * * *.

SECTION 7. 255.07 of the statutes is amended to read:

255.07 * * * HOW JURORS EXCUSED. * * * Any such court may, whenever it * * * seems proper and necessary * * *, having regard to the length of term * * * and an equitable distribution of the duties of jurors, excuse any panel or number of jurors after a service of 2 weeks or more and order another panel or additional jurors to be drawn * * * to complete the business of the term.

SECTION 8. 255.10 of the statutes is repealed.

SECTION 9. 255.12 of the statutes is repealed.

SECTION 10. 255.13 of the statutes is amended to read:

255.13 * * * GRAND JURORS; LISTS. On or before the last Monday of November in each year said commissioners shall select * * *, in the manner prescribed in section 255.04, the names of not less than 75 nor more than 150 persons to serve as grand jurors in the county for the ensuing year * * *. * * * The grand jury list so made shall be securely kept by the commissioners so that the same shall not become known and no cards shall be prepared for such names unless and until a grand jury is directed to be summoned as provided in section 255.14.

SECTION 11. 255.14 of the statutes is repealed and recreated to read:

255.14 DRAWING GRAND JURY. Whenever any court or judge thereof shall direct a grand jury to be summoned as provided by section 255.13, said commissioners shall write the names of all the persons selected as aforesaid on separate cards and enclose each card in a separate opaque envelope and place them in a tumbler, all as provided in section 255.04. Seventeen names shall be drawn therefrom in the manner prescribed for drawing a panel of petit jurors. Thereupon the presiding judge shall order that the persons whose names are so drawn be summoned, in the manner provided in section 255.04, to serve as a grand jury. The commissioners shall furnish to the presiding judge an additional copy of the names of grand jurors so drawn.

SECTION 12. 270.15 of the statutes is repealed and recreated to read:

270.15 DRAWING OF PETIT JURY. (1) At every term of any court for which jurors are drawn as provided in section 255.04 the clerk shall place in a tumbler only the names of the petit jurors in attendance who have been drawn and summoned according to law for service at such term. The names shall be written upon separate cards of like weight, size and color; measuring not more than one by 3 inches; and enclosed in opaque en-

envelopes of like weight, size and color and of such size only as to conveniently admit the cards, all as required by section 255.04.

(2) When a jury issue is to be tried the clerk shall, in the presence and under the direction of the court, openly draw out of the tumbler, one at a time, as many cards as are necessary to secure a jury. Before drawing each card he shall close the tumbler and rotate it at least 6 times and then draw out one.

(3) The jury may consist of any number of persons less than 12 that the parties agree upon. If there be no such agreement it shall consist of 12 persons so drawn who are not lawfully challenged and who are approved as indifferent between the parties.

(4) During the trial the cards containing the names of the jurors shall be kept separately until the jury is discharged, and then they shall be returned, properly enclosed in envelopes, to the tumbler, and the same course shall be taken as often as a jury is required.

(5) The card containing the name of the juror who is set aside or excused for any cause shall be replaced in its envelope and returned to the tumbler as soon as the jury is sworn.

(6) If a jury issue is brought to trial while a jury is trying another cause, the court may order a jury for the trial of the former to be drawn out of the tumbler in the ordinary way; but in any other case all the cards containing the names of the petit jurors, returned at and attending the term, shall be placed in the tumbler before a jury is drawn.

(7) Not less than 30 days prior to the sitting of such court the clerk shall report to the commissioners the names of all jurors whose names appear upon the panel lists drawn for the preceding term of such court and who did not serve as jurors at that term.

SECTION 13. 270.19 of the statutes is amended to read:

270.19 If any jury issue shall require trial at a time when the panel of jurors for the then current term is not in attendance a jury may, in the discretion of the trial judge, be obtained in the following manner: At least 3 days before the day fixed by the presiding judge for such trial, the clerk of the court shall, in the presence of the presiding judge, and the attorneys for the respective parties, who shall be first given reasonable notice in time to attend, draw from the panel of jurors for the current term, *as provided in section 255.04 (3)*, a number of jurors such as the court may specify so that not less than 14 nor more than 18 will remain after the exercise of all the peremptory challenges to which the parties are entitled under section 270.18; said challenges shall be then and there exercised as provided in said section * * *. The remaining jurors shall be summoned to attend at the time fixed for the trial * * *. If after examination and all excuses for cause there shall remain more than 12 jurors, the first 12 on the list shall constitute the trial jury * * *. If less than 12 remain the court may require the return of bystanders to fill the vacancy, unless the parties stipulate to try the case with a jury of less than 12.

SECTION 14. 346.55 of the statutes is amended to read:

346.55 If the clerk of any court shall be guilty of any fraud, either by practicing on a jury * * * *tumbler* previously to a draft, or in drawing a juror, or in returning into the * * * *tumbler* the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way, or in the drawing of jurors, he shall forfeit for each such offense not less than \$50 nor more than \$500.

Approved July 18, 1949.
