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]

Wisconsin law does not permit a court to deliberately summon a greater number of potential jurors from some geographic areas than from others in an attempt to ensure that the racial and ethnic makeup of juries better reflects a representative cross-section of the community served by the court. Wisconsin law requires that all qualified persons have an equal opportunity to be randomly summoned for jury service. It does not permit a jury selection system that gives some persons greater, some lesser, opportunities to be summoned, depending on the area of the community where they live. OAG 3-08.

756.01 Definitions.

In this chapter:

(1) "Juror" means a person summoned in compliance with this chapter or who has taken an oath or affirmation under s. 756.08 (1).

(2) "Jury" means the jurors and alternates sworn to hear a trial.

(3) "Jury array" means the annual list of prospective jurors in each county qualified as eligible to serve under s. 756.02.

(4) "Jury panel" means the jurors present for voir dire in a specific case.

(5) "Jury venire" means the jurors summoned for a date-specific term of service.

(6) "Jury year" means the calendar year beginning January 1 and ending December 31.

History: Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv.

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.

That a father and son had the same first and last names, middle initial, phone number, and address, the jury summons did not include any specific identifying information, and the son appeared and served on the jury when the summons was intended for the father, did not make the son an improper juror. State v. Turner, 2013 WI App 23, 346 Wis. 2d 229, 827 N.W.2d 654, 12-0297.

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, 00-1821.

756.04 Prospective juror lists; number; how com-

piled. (2) Jurors for all circuit courts shall be selected under ss. 756.04 to 756.07, subject to all of the following:

(a) Each year, the office of the director of state courts shall compile a master list of potential jurors for use by the circuit courts of each county during the coming year. The master list shall be compiled as described in this section.

(b) Each year, on a date agreed upon with the office of the director of state courts, the department of transportation shall compile a list that includes the name, address, county, date of birth, race, gender, identification number and renewal date of each person residing in the state 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, and social security number, as permitted by law and any record sharing agreement between the department of transportation and the office of the director of state courts. The office of the director of state courts shall establish the format of the list by agreement with the department of transportation. The department of transportation shall transmit the list to the office of the director of state courts, without charge.

(c) The office of the director of state courts may use any of the following lists in addition to the list provided by the department of transportation under par. (b) in order to create the master list of potential jurors compiled under par. (a). The director may each year request any of the following information from the custodians of that information:

1. A list of registered voters from the elections commission.

2. A list of all natural persons that may have filed a state income tax return with the department of revenue.

3. A list of child support payors and payees from the department of workforce development.

4. A list of recipients of unemployment compensation from the department of workforce development.

5. A list of residents of this state issued approvals or licenses from the department of natural resources.

(d) If the records listed in par. (c) are requested, the director of state courts may enter into a record sharing agreement with the custodian of the records. Any record sharing agreement shall be in writing for a prescribed period of time and shall identify data that would allow for a match of personally identifiable information on the list maintained by that custodian with personally identifiable information in the master list of potential jurors to the extent required to identify duplicate names and to determine current addresses of prospective jurors. Any list provided under par. (c) shall contain no data other than the data provided in par. (b). The agreement shall establish the format of the list and date of transmission of the list.

(e) The lists of prospective jurors provided to the clerks of circuit courts shall contain only the name, address, gender, date of birth, race and county of residence of each prospective juror.

(f) All social security numbers shall be kept secure from unauthorized access and shall not be provided to the clerk of circuit court and shall not be open to the public.

(3m) From the statewide master list of potential jurors created under sub. (2), the office of the director of state courts shall provide each clerk of circuit court with a list of prospective jurors residing in the clerk's county to be used during the following jury year. The list for each county shall be created by randomly selecting from the master list of potential jurors the number of names of residents of the county requested by the clerk of circuit court for that year. The office of the director of state courts shall transmit the list of prospective jurors to each clerk, with a certification that the list was prepared in strict conformity with this chapter.

(6) (am) Using the list of prospective jurors provided by the office of the director of state courts under sub. (3m), the clerk of circuit court shall mail to every juror to be summoned, separately or together with the summons under s. 756.05, a juror qualification form requesting all of the following:

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

2. The race of the prospective juror.

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

(bm) The juror qualification form shall be accompanied by instructions requiring the person to complete and return the form to the clerk of circuit court within 10 days of receiving it. The form shall include a notice that, if the person willfully misrepresents a material fact or willfully fails to return the completed form within 10 days after its receipt, or willfully fails to attend court without being excused by the court, the person may be sanctioned not more than $500.

(cm) The juror qualification form mailed to prospective jurors under par. (am) may be supplemented to request other information that the court requires to manage the jury system in an efficient manner, including information that may be sought during voir dire examination.

(dm) If a prospective juror is unable to fill out the juror qualification form mailed to the prospective juror under par. (am) and (cm), 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 of circuit court within 10 days after receiving the form.

(9) (a) 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. To create a jury array, the clerk of circuit court shall strike from the list provided by the office of the director of state courts under sub. (3m) the name of any person whose returned juror qualification form shows that the person is not qualified for jury service under s. 756.02.

(b) The clerk of circuit court shall keep for public inspection a certified copy of the jury array under par. (a), indicating the city, village, or town of residence of each prospective qualified juror. Each year, the clerk of circuit court shall certify compliance with all provisions of this chapter that fall under the authority of the clerk of circuit court.

(c) Except for those individual jurors whose service has been deferred or postponed to a time that falls within a new jury year, names of prospective jurors not qualified or not summoned at the end of a jury year shall be discarded.

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

(11) (a) All completed juror qualification forms mailed to prospective jurors under sub. (6) (am) and supplemental information obtained under sub. (6) (cm) shall be confidential and shall be released only upon order of the court upon a showing of good cause. However, the completed juror qualification forms and supplemental information of jurors in the jury venire or jury panel when the trial is scheduled shall be made available to counsel and parties to the litigation upon request without a circuit court order. This information shall remain confidential and shall be used only for the purpose of the trial or any appeal. Counsel and parties may not retain copies of the qualification forms or supplemental information obtained under sub. (6) (am) and sub. (6) (cm).

(b) A list of the names and city, village, or town of residence of each juror sworn to hear a trial shall be retained in the court file.

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; Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv; 2015 a. 118.

NOTE: 2003 Wis. Act 214 contains 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.

Wisconsin law does not permit a court to deliberately summon a greater number of potential jurors from some geographic areas than from others in an attempt to ensure that the racial and ethnic makeup of juries better reflects a representative cross-section of the community served by the court. Wisconsin law requires that all qualified persons have an equal opportunity to be randomly summoned for jury service. It does not permit a jury selection system that gives some persons greater, some lesser, opportunities to be summoned, depending on the area of the community where they live. OAG 3-08.

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, to create the jury venire, the clerk of circuit court shall randomly select a sufficient number of prospective jurors from the jury array created under s. 756.04 (9) who shall be summoned to appear before the court at an appropriate time for jury service. The summons may be served by 1st class mail or another method.

History: Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv.

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 jury venire until the desired number is obtained to create the jury panel. The random selection of names may include the provision that jurors reporting for service who have not been considered for assignment to a panel be considered before other jurors are considered for a second panel.

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

(b) Except as provided in par. (c) and ss. 980.05 (2) and (2m) (c), 980.09 (3), and 980.095 (1), 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); 2005 a. 434; Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv; 2013 a. 164.

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 jury venire 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); Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv.

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 percent 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. (1m) JUROR CONTEMPT PROCEDURE. Whoever does any of the following is subject to sanctions for contempt of court:

(am) Willfully misrepresents any material fact on a juror qualification form under s. 756.04 (6).

(bm) Fails to return the completed juror qualification form within 10 days after receipt of the form.

(cm) Fails to attend court after being lawfully summoned without being excused by the court.

(2) CLERK OF CIRCUIT COURT; FRAUD. 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.

(2m) SANCTIONS. A circuit court may impose a sanction for violation of sub. (1m) in an amount not to exceed $500. The sanction may be imposed by the court after hearing on an order to show cause why the prospective juror should not be held in contempt for failure to comply with the obligation of jury service. No costs, fees, or surcharges shall be imposed and the sanction shall be retained by the clerk of circuit court to offset juror costs.

History: Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); Sup. Ct. Order No. 08-01, 2008 WI 104, 307 Wis. 2d xxxv.

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]