

CHAPTER 255

JURORS

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255.01 Qualifications of jurors. (1) Persons who are citizens of the United States, who are electors of the 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, who are able to read and write the English language understandingly, and who have not been sworn on voir dire as grand or petit jurors in the same county within 2 years of the end of the last term during which such person was sworn on voir dire as a juror, shall be liable to be drawn as grand or petit jurors.

(2) Subsection (1) shall not exempt, exclude or disqualify a person from jury service on the ground of infirmity because of a physical condition unless the judge finds that the person clearly cannot fulfill the responsibilities of a juror. The judge shall not consider the structural, physical or architectural limitations or barriers of a building, courtroom, jury box or other facility in making such a finding.

History: 1975 c. 275

Persons 18, 19 and 20, who are electors of this state, must be included within that class of citizens from which jurors are chosen for service in the courts of our state. 61 Atty Gen. 137.

255.02 Who are exempt. (1) The following persons are exempt from serving as jurors:

(a) All officers of the United States; elective state officers; members and officers of the legislature during the session thereof; city and county officers; constables; judges and clerks of courts; and officers of fire departments and active members of fire companies organized according to law.

(b) Attorneys at law; physicians; surgeons; dentists; Christian Science practitioners and

readers; and ministers of the gospel or any religious society.

(c) Students who are attending or have attended a law school or medical school.

(2) The following persons shall be exempted upon their request or upon the judge's own motion:

(a) All administrators, professors, instructors and teachers and their assistants of public and private primary and secondary schools and institutions of higher education.

(b) One dispensing druggist in each prescription drugstore and one embalmer holding license issued by the department of health and social services in each undertaking establishment.

(c) Officers and employes of the several state and county institutions.

(d) Any person over 65.

(3) (a) A judge for good cause may excuse or exclude from jury service any person called as a juror.

(b) Any class or group of persons may, for the public interest, be excluded from the jury panel or excused from service as jurors by order of the judge based on a finding that such jury service would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

(c) No citizen shall be excluded from service as grand or petit juror in any court of this state on account of race or color or because of a physical condition, except as provided in s. 255.01 (2).

History: 1975 c. 275

See note to art. I, sec. 7, citing *Brown v. State*, 58 W (2d) 158, 205 NW (2d) 566.

255.025 Parties to actions disqualified.

Every person summoned as a juror for any term shall be paid and discharged whenever it appears that the person is a party to any action triable by jury at that term.

History: Sup. Ct. Order, 67 W. (2d) 757; 1975 c. 218.

255.03 Jury commissioners. (1) There shall be 3 jury commissioners in each county appointed as provided in this section. They must be qualified electors of the county and possess the qualifications required for jurors by s. 255.01. Jury commissioners shall be appointed by the joint action of the judges of the circuit and county courts. One commissioner shall be appointed each year for a term of 3 years commencing on July 1 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) In all counties having a population not exceeding 100,000 the commissioners shall be paid not less than \$4 nor more than \$16 for each day's service as fixed by the county board and 10 cents for each mile traveled in the discharge of their duties. In all counties having a population exceeding 100,000 the commissioners shall be paid such salary as fixed by the county board, and also \$1 for each meeting of the commission attended in any city or incorporated village in the county, other than the city in which the courthouse is located; provided, that the payments last mentioned shall not exceed \$2 per annum to each commissioner for attendance in any one city or village and shall be made only upon the presentation of an affidavit of the commissioner who is to receive such payment, in which there shall be stated the cities and villages in which he attended such meetings and the dates of such attendance. Such compensation and mileage shall be paid by the county treasurer upon order of the judge of the court for which the jury commissioners discharged their duties, upon certification of the clerk of the court. The commissioners shall be provided with such articles, books, postage, stationery, 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 at such times as the discharge of their duties requires and at such times as the appointing judge or judges or any of them shall direct. 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. All public officers and employes shall furnish the commissioners, upon their request, such records and assistance as the commissioners deem proper to perform their duties.

255.031 Official malfeasance in preparing jury list.

Any person who shall ask or solicit any jury commissioner appointed pursuant to s. 255.03; or the sheriff or other officer to select him or any other person, or place his name or the name of any other person on any list as a grand or petit juror in any court, and any such jury commissioner or sheriff or other officer who shall select such person or place his name upon any such list upon such solicitation shall be punished by imprisonment in the county jail not more than 6 months or by fine not exceeding \$100.

255.04 Petit jurors; lists; number; how drawn.

(1) Petit jurors for all circuit and county courts when exercising civil or criminal jurisdiction shall be drawn and obtained as prescribed in ss. 255.04 to 255.07.

(2) (a) The commissioners shall annually before the first Monday in April provide for each court covered by sub. (1), unless the judge or judges thereof otherwise order, one list of not less than 300 nor more than 1,000 names of persons to be drawn from the county and apportioned as nearly as practicable among towns, villages and wards of cities thereof in proportion to population according to the last national census, to serve as petit jurors. The commissioners may revise said list by striking from it the names of persons found by them to be ineligible for jury service, and add thereto the names of additional persons as provided in s. 255.05. Such list shall be certified by the commissioners as having been prepared in strict conformity with the statutes thereto appertaining.

(b) 1. A certified copy of such list, containing the address and occupation of each person

named therein, shall be furnished to the clerk of circuit court, to be kept by him for the use of the courts 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 1 by 3 inches. All cards 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 into which all the cards shall be placed. Such tumbler shall have but one opening, and shall 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 by the clerk of circuit court against unauthorized entry therein.

(c) The commissioners shall furnish, upon periodic request of the sheriff, a current list of the names of persons available for jury duty in mental inquiries and reexaminations, inquests of the dead and for such other purposes as the sheriff is required by law to summon or select a jury, which list shall contain not less than 100 nor more than 200 names of persons drawn and apportioned under par. (a).

(3) At least 15 and not more than 30 days before the sitting of any court at which a jury is required to attend, and for which a panel is not available under sub. (6), the clerk of circuit court shall in the presence of at least 2 of the commissioners draw 36 names from such tumbler. Before each name is drawn, the tumbler shall be rotated. The clerk shall read each name aloud when drawn and pass the card on which it appears to the commissioners, who 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. In like manner the clerk shall then draw the names of 18 additional persons, to be recorded 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. Such regular and reserve-panel lists shall be kept by the commissioners; and a signed duplicate thereof shall be furnished the clerk of circuit 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.

(5) If any person whose name appears on a regular or reserve-panel list is not impaneled and sworn on voir dire as a juror at the term for which drawn the card containing the name of such

person shall be returned to the tumbler by the clerk at the end of the term and the jury commissioners shall be notified thereof.

(6) The judges of the circuit and county courts (or the senior judges thereof in the case of courts having more than one judge) may by joint order direct that the jury lists, panel lists, and reserve-panel lists of their respective courts, or any one or more of such lists, be combined into one or more lists, and that the number of names on the combined list be as specified in the order. The order shall designate such modifications of the time of issuance of venirens under s. 255.08 and time of appearance as are suitable to the needs of the respective courts. The order may also provide the length of service and the number for each court, or if there is more than one branch of a court, for each branch of that court. The order may be modified from time to time or revoked by the same authority by which it was promulgated.

History: 1973 c. 267, 272.

The Milwaukee system of separate jury panels is not improper in the absence of a showing of bias. *McKissick v. State*, 49 W (2d) 537, 182 NW (2d) 282.

Defendants' contention that the jury panel had to have more black people on it to insure them an impartial trial has no validity, no claim being made of intentional elimination of blacks from the panel or discrimination against blacks in any way. *Nelson v. State*, 54 W (2d) 758, 196 NW (2d) 710.

See note to Art. I, sec. 7, citing *Wilson v. State*, 59 W (2d) 269, 208 NW (2d) 134.

255.041 Penalty upon clerk for fraud. 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.

255.05 Insufficient number of jurors. Whenever after the expiration of the time prescribed for the drawing of petit jurors for the next regular term or during any term of court there is a partial or entire absence of jurors of the regular or reserve-panel or both, from any cause whatever, or whenever it becomes apparent to the court or the trial judge that the regular panel and the reserve-panel as drawn 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 order the clerk, in his presence, to draw immediately from the tumbler a sufficient number of names, specifying the number, 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 the list of names furnished any such court has been depleted the commissioners shall

supply other names so that there will not be less than 150 nor more than 1,000 names in the tumbler at the time any drawing of jurors takes place. Such names shall be written on cards which shall be placed in envelopes and put into the tumbler as hereinbefore provided.

While 255.04 (3) prescribes that the clerk of the circuit court draw a jury panel from 36 names, the decision to draw names of additional jurors where that number has not been drawn is within the discretion of the trial court. *Nelson v. State*, 54 W (2d) 758, 196NW (2d) 710.

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.

255.07 How jurors excused. Any court or the presiding judge thereof may, whenever it seems proper, excuse any juror temporarily or for the term; and having regard to the length of the term and an equitable distribution of the duties of jurors, the court may 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 in the manner specified in s. 255.05 to complete the business of the term.

255.08 Venires, when and how issued. The clerk shall, at least 12 days before the first day of the term or at least 12 days before the first day on which a jury is required to be present, issue and deliver to the sheriff of said county a venire for the petit jury, under the seal of the court, commanding him to summon the persons so drawn as jurors to appear before the said court at 10 o'clock in the forenoon on the first day of the term thereof or at such other time as has been fixed by the presiding judge of said court, to serve as petit jurors. And when ordered to draw a grand jury, as provided by law, he shall in like manner issue and deliver a venire commanding the sheriff to summon the persons so drawn as grand jurors to appear before the said court at the time specified in the order.

255.09 Jurors; how summoned; sheriff's return. The sheriff shall summon the persons named in such venires to attend such court as grand or petit jurors, as the case may be, by giving personal notice to each person or by leaving a written notice at his place of residence with some person of proper age or by sending a written notice to each person by registered mail. He shall return such venires to the court at the opening thereof, specifying those who were summoned and the manner in which each person was notified. Petit jurors on the regular panel and grand jurors shall be summoned at least 4

days before the sitting of the court. Petit jurors on the reserve-panel and additional petit and grand jurors drawn shall be summoned within such time as the court shall direct and all special venires shall be executed by the officer to whom delivered according to the command thereof.

255.095 Fine for official neglect in impaneling jury. When, by neglect of any of the duties required in ch. 255 to be performed by any of the officers or persons therein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding \$20, to be imposed by the same court, into the treasury of the county in which the offense is committed.

255.096 Drawing of petit jury. (1) At every term of any court for which jurors are drawn as provided in s. 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 and enclosed in opaque envelopes as required by s. 255.04 (2) (b).

(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 envelopes containing cards as are necessary to secure a jury. Before drawing each card the clerk shall close the tumbler and rotate it.

(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.

History: Sup. Ct. Order, 67 W (2d) 760; 1975 c. 218.

255.10 Grand jury. (1) **SELECTION OF GRAND JURY LIST.** Any judge may in writing order the jury commissioners to select a grand jury list within a specified reasonable time. The commissioners shall select, as provided in s. 255.04, the names of not less than 75 nor more than 150 persons to constitute such list. They shall notify the judge in writing within the time fixed in the order that they have complied therewith. They shall keep the list secret.

(2) **SELECTION OF GRAND JURY PANEL.** If the judge in writing orders the commissioners to draw a grand jury, the commissioners shall write on a separate card, the name of each person on the jury list, enclose each card in a separate opaque envelope, and place the envelopes in a tumbler as provided in s. 255.04. At the time fixed in the order 36 names shall be drawn as names are drawn for panels of petit jurors and such 36 names shall constitute the grand jury panel. The judge shall order the panel members to be summoned as provided in s. 255.04. The commissioners shall furnish the judge a copy of the names on the panel.

(3) **EXAMINATION OF PANEL.** At the time set for the panel to appear the judge shall and the district attorney or other prosecuting officer may examine the panel members under oath relative to their qualifications to serve as grand jurors and the judge shall excuse those who are disqualified or claim lawful exemptions, and may excuse others for any reason which seems proper to the judge.

(4) **ADDITIONAL PANEL MEMBERS.** If after such examination less than 20 panel members remain, additional names shall be drawn, summoned and examined as aforesaid. The number so drawn shall be 3 times the difference between 20 and the number remaining on the panel. This method shall be continued until there are at least 20 qualified members on the panel.

(5) **DRAWING GRAND JURORS FROM PANEL.** The cards with the names of all qualified panel members shall be deposited in a tumbler and the clerk shall draw, as provided in s. 255.04 (3), the names of 17 persons to constitute the grand jury.

(6) **TIME GRAND JURORS TO SERVE.** Grand jurors shall serve during the current term of court. The judge may order them to continue during the following term, but for no longer period. The judge may discharge the grand jury at any time.

(7) **ORDERS FILED WITH CLERK.** All orders mentioned in this section shall be filed with the clerk of court.

(8) **INTERCOUNTY RACKETEERING AND CRIME.** When a grand jury is convened pursuant to this section to investigate unlawful activity under s. 165.70, and such activity involves more than one county, including the county where the

petition for such grand jury is filed, then if the attorney general approves, all expenses of such proceeding shall be charged to the sum sufficient case account of the department of justice under s. 20.455 (2) (d).

History: 1971 c. 125 s. 522 (1).

The grand jury in Wisconsin Coffey, Richards, 58 MLR 518.

255.11 Oath of grand jurors. The judge shall administer the following oath to grand jurors before they begin performance of their duties: You, as grand jurors for the county of _____, do solemnly swear (or affirm, as the case may be) that you will diligently inquire as to all matters and things which come before this grand jury; that you will keep all matters which come before this grand jury secret; that you will indict no person for envy, hatred or malice, neither will you leave any person unindicted for love, fear, favor, affection or hope of reward; and that you will indict truly, according to the best of your understanding; so help you God. The clerk of court shall deliver forthwith to each grand juror a copy of such oath.

History: 1975 c. 94 s. 91 (12).

255.12 Foreman and clerk. The grand jury shall select from their number a foreman and a clerk. The clerk shall preserve the minutes of the proceedings before them and all exhibits.

255.13 Reporter; oath; salary; assistant.

(1) Every grand jury shall when ordered by the judge ordering such grand jury, employ one or more competent reporters to attend their sessions and to make and transcribe a verbatim record of all proceedings had before them.

(2) Before assuming the duties herein prescribed each reporter shall make and file an oath faithfully to record and transcribe all the proceedings before such grand jury and to keep secret the matters relative to such proceedings. He shall be paid out of the county treasury of the county in which the service is rendered such sum for his compensation and expenses as shall be audited and allowed as reasonable by the court ordering said grand jury. Each reporter may employ on his own account the assistance of a competent typist to transcribe the testimony and proceedings of the grand jury, but before entering upon his duties hereunder such typist shall be required to make and file an oath similar to that required of each reporter.

(3) Every stenographic reporter and every typewriter operator who takes and violates the oath required of him by s. 255.13, shall, upon conviction thereof, be punished by imprisonment in the state prison not less than one nor more than 5 years.

255.14 Oaths to witnesses. The foreman of every grand jury, district attorney or other prosecuting officer who shall be before them shall have authority to administer all oaths and affirmations in the manner prescribed by law to witnesses who shall appear before such jury for the purpose of testifying in any matter of which they have cognizance; and the foreman shall return to the court a list, under his hand, of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed by the clerk.

255.15 District attorney, when to attend.

Whenever required by the grand jury it shall be the duty of the district attorney of the county to attend them for the purpose of examining witnesses in their presence or of giving them advice upon any legal matter, and to issue subpoenas and other process to bring up witnesses.

255.16 Attendance; absence; excuse; number required for grand jury session; number required to concur in indictment.

Each grand juror shall attend every session of the grand jury unless excused by the foreman. The foreman may excuse a grand juror from attending a grand jury session only for a reason which appears to the foreman in his discretion as good and sufficient cause for such excuse. No business shall be transacted at any session of the grand jury at which less than 14 members of the grand jury are in attendance and no indictment shall be found by any grand jury unless at least 12 of their number shall concur therein.

255.17 Report progress and return indictments. Said grand jury so selected may report progress and return indictments to the court from time to time during its session and until discharged.

255.18 Procedure upon discharge of grand jury. When the grand jury is discharged the clerk shall collect all transcripts of testimony, minutes of proceedings, exhibits and other records of the grand jury, and deliver them as the jury directs either to the attorney general or to the district attorney, or upon approval of the court deliver them to the clerk of the court who shall impound them subject to the further order or orders of the court.

255.19 Indictment not to be disclosed. No grand juror or officer of the court, if the court shall so order, shall disclose the fact that any indictment for a felony has been found against any person not in custody or under recognizance, otherwise than by issuing or executing process on

such indictment, until such person has been arrested.

255.20 Votes not to be disclosed. No grand juror shall be allowed to state or testify in any court in what manner he or any other member of the jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

255.21 When testimony may be disclosed. Members of the grand jury and any grand jury reporter may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before the grand jury by any person upon a complaint against such person for perjury, or upon his trial for such offense. Any transcript of testimony taken before the grand jury and certified by a grand jury reporter to have been carefully compared by him with his minutes of testimony so taken and to be a true and correct transcript of all or a specified portion of the same, may be received in evidence with the same effect as the oral testimony of such reporter to the facts so certified, but such reporter may be cross-examined by any party as to such matter.

255.22 May serve twice at same term.

When the grand jury attending any court shall have been dismissed before the court is adjourned without day they may be summoned to attend again in the same term, at such time as the court shall direct, for the dispatch of any business that may come before them.

255.23 Fine for nonattendance. If any person lawfully summoned to attend as a juror in any court of record shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding \$40, which shall be imposed by the court to which the juror was summoned and shall be paid into the county treasury.

255.24 Jurors, how paid. The clerk of the court whenever a juror shall be discharged, or at the end of each term of court, or within 10 days thereafter, shall make out a certificate to each juror attending the court, certifying the number of days' attendance, the number of miles traveled, and the amount of compensation due him, and every such juror shall make affidavit thereto and receipt for same, before it shall be delivered to him, and thereupon the county treasurer shall pay the amount thereof out of the county treasury. In counties having a population of 500,000 or more and containing an entire

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judicial circuit, for which more than one judge is provided by law, such affidavit may be executed and sworn to before the calendar clerk or one of his assistants.

255.25 Juror's fees and mileage. Every grand and petit juror summoned upon any venire shall receive an amount, not less than \$4, as fixed by the county board, for each day's actual attendance upon any circuit or county court, and an amount determined by the county board for

each mile actually traveled each day in going and returning by the most usual route; but shall be paid for no day when the court is not in session unless specially ordered by the presiding judge.

History: 1973 c. 333; 1975 c. 224.

255.26 Talesmen's compensation. Every talesman, summoned and acting as a juror, shall receive the same compensation as jurors, as provided in s. 255.25.