

CHAPTER 756

JURORS

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756.001 State policy on jury service; opportunity and obligation to serve. (1) The legislature recognizes that trial by jury is a cherished constitutional right and that jury service is a civic duty.

(2) All persons selected for jury service shall be selected at random from a fair cross section of the population of the area served by the court. All qualified persons shall have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose. The judges, the clerk of circuit court and the jury commissioners, if any, in each county shall manage all jury systems in an efficient, equitable and cost-effective manner, in accordance with this chapter.

History: 1991 a. 271.

NOTE: 1991 Wis. Act 271, which created this section, contains extensive legislative council notes.

756.01 Qualifications of jurors. (1) Persons who are U.S. citizens, who are electors of the state, who are possessed of their natural faculties, who are not infirm, who are able to read and understand the English language, and who have not been summoned to attend for prospective service as petit jurors for the time periods applicable under s. 756.28, 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; 1977 c. 187 s. 95; 1977 c. 318; 1977 c. 447 s. 210; 1977 c. 449; Stats. 1977 s. 756.01; 1991 a. 271.

Purpose of (2) is to protect jurors, not litigants. See note to 756.04, citing *State v. Coble*, 95 W (2d) 717, 291 NW (2d) 652 (Ct. App. 1980); aff'd 100 W (2d) 179, 301 NW (2d) 221 (1981).

Law enforcement officers should not be automatically excused for cause from venire on grounds of implied bias. *State v. Louis*, 156 W (2d) 470, 457 NW (2d) 484 (1990).

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.

State v. Louis: A Missed Opportunity to Clarify when Law Enforcement Officials May Serve as Petit Jurors in Criminal Cases. 1992 WLR 757.

756.02 Exemptions and excuses from jury service.

(2) (a) Any person or group of persons may be excluded from the jury panel or excused from service as jurors by order of the judge or, if authorized under sub. (4), by a determination made by the clerk of circuit court based on a finding that jury service would

entail undue hardship, including undue hardship caused by the aging process, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice. The exclusion or excuse shall continue for a period deemed necessary by the judge or the clerk of circuit court, at the conclusion of which the person or group of persons shall reappear for jury service in accordance with the order of the judge or the determination made by the clerk of circuit court. If the clerk of circuit court excludes or excuses a person under this subsection, the clerk of circuit court shall secure from the person a sworn statement that provides evidence of the grounds for the exclusion or excuse.

(b) A state legislator or full-time elected official shall be excused from service as a juror if the official states to the court that jury service would interfere with the performance of his or her official duties.

(3) No citizen may 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. 756.01 (2).

(4) A majority of the circuit court judges in the county may authorize the clerk of circuit court to grant exclusions or excuses under sub. (2). The authorization may limit the grounds on which the clerk may grant the exclusion or excuse.

History: 1975 c. 275; 1977 c. 26; 1977 c. 187 ss 95, 135; 1977 c. 318; 1977 c. 447 s. 210; Stats. 1977 s. 756.02; 1991 a. 271.

NOTE: 1991 Wis. Act 271, which affected this section, contains extensive legislative council notes.

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

756.025 Parties to actions disqualified. Every person summoned as a juror shall be paid and discharged if it appears that the person is a party to any action triable by jury at that time.

History: Sup. Ct. Order, 67 W (2d) 585, 757 (1975); 1975 c. 218; 1977 c. 187 s. 95; 1977 c. 449; Stats. 1977 s. 756.025.

756.03 Jury commissioners. (1) The county board shall determine if the selection of jurors shall be by the clerk of circuit court or by jury commissioners appointed by the circuit court judges. If jury commissioners are appointed, there shall be 3 jury commissioners in the county. They must be qualified electors of the county and possess the qualifications required for jurors by s. 756.01. Jury commissioners shall be appointed by the joint action of the judges of the circuit court for the county. One commissioner shall be appointed each year for a term of 3 years commencing on July 1 following the appointment. Appointments shall be made in writing and shall be filed in the office of the clerk of circuit court.

(2) Before entering upon the duties of 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 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 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 of less than 500,000 the commissioners shall be paid for each day's service at the same rate as fixed by the county board for the payment of grand and petit jurors under s. 756.25 and 15 cents for each mile traveled in the discharge of their duties. 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. In counties having a population of 500,000 or more, the county board shall fix the salary of the commissioners. 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 where the 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 or her fitness for jury service. All public officers and employes shall furnish the commissioners, upon their request, the records and assistance which the commissioners deem proper to perform their duties.

(5) The clerk of circuit court shall perform the functions of the jury commissioners set forth in this chapter in a county in which jury commissioners are not appointed.

History: 1977 c 187 ss 95, 135; 1977 c 199, 273, 318; 1977 c 447 ss 182, 210; 1977 c 449; Stats. 1977 s. 756.03; 1991 a 271

NOTE: 1991 Wis. Act 271, which affected this section, contains extensive legislative council notes.

Sections 756.03 and 756.031 do not unconstitutionally restrict free expression. 69 Atty Gen 19.

756.031 Official malfeasance in preparing jury list.

Any person who asks or solicits any jury commissioner appointed under s. 756.03, or the sheriff or other officer to select him or her or any other person, or place his or her 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 selects the person or places his or her name upon any such list upon such solicitation may be fined not more than \$100 or imprisoned not more than 6 months.

History: 1977 c 187 s 95; 1977 c 318, 447; Stats. 1977 s 756.031

Sections 756.03 and 756.031 do not unconstitutionally restrict free expression. 69 Atty Gen 19.

756.04 Petit jurors; lists; number; how drawn. (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 names, addresses, dates of birth, race and gender of persons who are licensed as motor vehicle operators under ch. 343 or who have received identification cards under s. 343.50 or 343.51.

(c) "Race" means African American, Caucasian, Hispanic, native American or other racial category.

(1g) Petit jurors for all circuit courts when exercising civil or criminal jurisdiction shall be drawn and obtained as prescribed in ss. 756.04 to 756.06.

(1r) The department shall transmit annually, on a date established by the secretary of transportation, to the clerk of circuit court of each county, at no charge, a department list of persons residing in that county. The department shall establish uniform specifications regarding the size, format and content of computer tapes or other media used to prepare the department list.

(2) (a) The jury commissioners shall annually provide for each court covered by sub. (1g), unless the judge or judges of the county order more frequently, one countywide list of at least 200 names of persons to be drawn from the county to serve as petit jurors. The commissioners shall revise the list by striking from it the names of persons found by them to be ineligible for jury service, as provided in s. 756.01, and add to the list the names of additional persons as provided in s. 756.05. The list shall be certified by the commissioners as having been prepared in strict conformity with statutory requirements. The list shall also include a verified statement describing the manner in which the list was compiled or modified, including an enumeration of all public or private sources from which the names of the prospective jurors on the list were derived.

(am) 1. The jury commissioners shall select randomly the names under par. (a) from the department list or from a master list that is established under subd. 2. and that consists of the department list and one or more other lists of county residents, including but not limited to the following:

- a. Voter registration lists.
- b. Telephone and municipal directories.
- c. Utility company lists.
- d. Lists of real property tax payers.
- e. Lists of high school graduates 18 years of age or older.
- f. Lists of persons on general relief under ch. 49 and persons on aid to families with dependent children under ch. 49.

2. If more than the department list is used, the jury commissioners 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 designated a primary source, and the names selected from that source shall be compared with the list of names from the 2nd source. Duplicate names shall be removed from the 2nd source sample and the remaining names shall be combined with the sample of names selected from the primary source to form the master list. If more than 2 source lists are used, this process shall be repeated, using the previously combined list for comparison with the new source list.

(b) 1. The commissioners shall determine eligibility for jury service by mailing to every prospective juror on the list a juror qualification form accompanied by instructions to fill out and return the form to the commissioners within 10 days after its receipt. The form shall elicit the information specified under s. 756.01, shall elicit the race of the prospective juror and shall contain a declaration that the responses are true to the best of the person's knowledge and an acknowledgment that upon a wilful misrepresentation of a material fact or failure to return the completed form within 10 days after its receipt the person may forfeit not more than \$500. If the prospective juror is unable to fill out the form, another person may complete it and shall indicate that he or she has done so and the reason therefor. If it appears there is an omission, ambiguity or error in a returned form, the commissioners shall send the incomplete form back to the person with instructions to make the necessary addition, clarification or correction and to return the form to the commissioners within 10 days after its receipt.

2. Whoever wilfully misrepresents any material fact on a juror qualification form or fails to return the completed form within 10 days after its receipt may forfeit not more than \$500.

(c) A certified copy of the list, containing the name and the address and occupation of each person named in the list, shall be furnished to the clerk of circuit court, to be kept by him or her 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. The tumbler shall have only 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. The tumbler shall be kept secure by the clerk of circuit court against unauthorized entry therein.

(d) 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.

(3) At least once each year or more often if the clerk of circuit court so requests or the chief judge of the judicial administrative district so directs, the clerk, in the presence of at least 2 of the commissioners, if any, shall draw a sufficient number of names from the tumbler. The clerk shall rotate the tumbler before each name is drawn. The commissioners shall write the person's name, occupation and address 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 a sufficient number of names of additional persons to be recorded upon a reserve-panel list. Persons 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, those persons become a part of the regular panel. The commissioners, if any, shall keep the regular and reserve-panel lists and furnish the clerk with a signed duplicate of those lists. If there are no commissioners, the clerk shall keep the regular and reserve-panel lists.

(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) The names in the master tumbler shall be discarded each year prior to the introduction of new names under sub. (2) (a).

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.

NOTE: 1991 Wis. Act 271, which affected this section, contains extensive legislative council notes.

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.

Commissioner exceeded authority by striking potential jurors for reasons not provided in 756.01 (1), but no prejudice inured to parties involved. *State v. Coble*, 95 W (2d) 717, 291 NW (2d) 652 (Ct. App. 1980); aff'd 100 W (2d) 179, 301 NW (2d) 221 (1981).

Sub. (3) does not require selection of new jury panel before every jury trial. "Specialized" panels upheld. *In re Paternity of S.M.S.* 129 W (2d) 310, 384 NW (2d) 709 (Ct. App. 1986).

756.041 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 or her place, or in any other way, or in the drawing of jurors, he or she shall forfeit for each offense not less than \$50 nor more than \$500.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.041.

756.05 Insufficient number of jurors. If after the expiration of the time prescribed for the drawing of petit jurors there is a partial or entire absence of jurors of the regular or reserve-panel or both, from any cause whatever, or if 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, the court or judge may order the clerk, in his or her presence, to draw immediately from the tumbler a sufficient number of names, specifying the number, to fill the regular panel

or a lesser or larger number as the public interest and the condition and character of the business requires. 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 names in the tumbler at the time any drawing of jurors takes place. The names shall be placed on cards as prescribed in s. 756.04 (2) (c) and placed in the master tumbler.

History: 1977 c. 187 s. 95; 1977 c. 318, 447, 449; Stats. 1977 s. 756.05.

756.06 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.06.

756.08 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 shall summon the persons drawn as jurors to appear before the court at such time as is fixed by the presiding judge of the court, to serve as petit jurors. The summons may be served by mail or another method chosen by the clerk. When ordered to draw a grand jury, the clerk shall summon the persons so drawn as grand jurors to appear before the court at the time specified in the order. The summons may be served by mail or another method chosen by the clerk.

History: 1977 c. 187 s. 95; 1977 c. 318, 447, 449; Stats. 1977 s. 756.08.

756.095 Fine for official neglect in impaneling jury. When, by neglect of any of the duties required in this chapter 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.

History: 1977 c. 187 ss. 95, 135; Stats. 1977 s. 756.095.

756.096 Drawing of petit jury. (1) When jurors are drawn as provided in s. 756.04 the clerk shall place in a tumbler only the names of the petit jurors who have been drawn and summoned according to law for service. The names shall be written upon separate cards and enclosed in opaque envelopes as required by s. 756.04 (2) (c).

(2) (a) Except as provided in par. (b), if 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.

(b) If automated systems are being used under s. 756.27, the names shall be selected in a random manner until the desired number is obtained.

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

(b) A jury in civil and traffic cases 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) This subsection does not apply to juries under ch. 979.

(d) Notwithstanding par. (b), a jury in civil actions under s. 800.14 (4) shall consist of 6 persons.

(4) Any person who is excused or whose name has been set aside regarding service with a jury shall be eligible for other jury service as soon as the jury is sworn.

(5) 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 under subs. (1) and (2). In any other case all the cards containing the names of the petit jurors, returned at and attending, shall be placed in the tumbler before a jury is drawn.

History: Sup. Ct. Order, 67 W (2d) 585, 760 (1975); 1975 c. 218; 1977 c. 187 ss. 95, 135; 1977 c. 318; 1977 c. 418 s. 929 (8m); 1977 c. 447 s. 210; 1977 c. 449; Stats. 1977 s. 756.096; 1987 a. 389.

Court misused its discretion when it ordered an African-American to be placed in a jury array and voir dire panel when he had not been randomly selected. *Oliver v. Heritage Mutual Ins. Co.* 179 W (2d) 1, 505 NW (2d) 452 (Ct. App. 1993)

756.098 Oaths. (1) JUROR'S OATH (a) In every case and in all courts the jurors selected to try the issues in the action or proceeding, civil or criminal, shall be sworn; and the oath may be administered in substantially the following form: Do you and each of you swear (or affirm) that you will well and truly try the issue joined between _____, plaintiff, and _____, defendant, and, unless discharged by the court, a true verdict give, according to law and the evidence given in court, so help you God.

(b) The juror's assent to the oath may be manifested by the uplifted hand.

(2) OATH OF OFFICER IN CHARGE OF JURY When the issues have been submitted to the jury the jurors shall be under the charge of a proper officer subject to the direction of the court until they agree upon a verdict or are discharged by the court; the officer shall be sworn for that purpose and the following oath may be administered to the officer: You do swear that you will, to the utmost of your ability, keep all jurors sworn on this trial together in some private and convenient place, subject to the direction of the court, until they have agreed on their verdict or are discharged by the court, and that you will not, before they render their verdict, communicate to any person the state of their deliberations or the verdict they have agreed upon, so help you God.

History: Sup. Ct. Order, 67 W (2d) vii (1975); 1983 a 192 ss. 255, 280, 281; Stats 1983 s. 756.098; 1993 a 486

Where the jury is sworn during the trial but prior to deliberations, a mistrial is not warranted in the absence of prejudice. *State v. Block*, 170 W (2d) 676, 489 NW (2d) 715 (Ct. App. 1992)

756.10 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. 756.04, 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 The grand jury panel shall be selected in the manner prescribed for drawing the petit jury panel in s. 756.04.

(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 jurors for a grand jury shall be drawn in the manner prescribed for drawing petit jurors in s. 756.096. Seventeen names shall be drawn.

(6) TIME GRAND JURORS TO SERVE Grand jurors shall serve for a period of 6 months and the judge may order them to serve for a 2nd period of 6 months but not any longer. 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 appropriation under s. 20.455 (1) (d).

History: 1971 c. 125 s. 522 (1); 1977 c. 29 s. 1656 (27); 1977 c. 187 ss. 95, 135; 1977 c. 318; 1977 c. 447 s. 210; 1977 c. 449; Stats 1977 s. 756.10; 1991 a 39.

Claim of grand jury discrimination necessitates federal habeas corpus review. *Rose v. Mitchell*, 443 US 545 (1979).

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

756.11 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); 1977 c. 187 s. 95; Stats 1977 s. 756.11

756.12 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.

History: 1977 c. 187 s. 95; Stats 1977 s. 756.12

756.13 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 prescribed in this section, each reporter shall make and file an oath faithfully to record and transcribe all the proceedings before the grand jury and to keep secret the matters relative to the proceedings. He or she shall be paid out of the county treasury of the county in which the service is rendered such sum for compensation and expenses as shall be audited and allowed as reasonable by the court ordering the grand jury. Each reporter may employ on his or her own account the assistance of a competent typist to transcribe the testimony and proceedings of the grand jury, but before entering upon duties under this section the 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 by this section, shall, upon conviction thereof, be imprisoned not less than one nor more than 5 years.

History: 1977 c. 187 s. 95; Stats 1977 s. 756.13

756.14 Oaths to witnesses. The foreman of every grand jury, district attorney or other prosecuting officer who is before the grand jury may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the jury for the purpose of testifying in any matter of which they have cognizance. At the request of the court, the foreman shall return to the court a list, under his or her hand, of all witnesses who are sworn before the grand jury, and the list shall be filed by the clerk.

History: 1977 c. 187 s. 95; 1977 c. 449; Stats 1977 s. 756.14

756.145 Witnesses rights; transcripts. (1) Any witness appearing before a grand jury may have counsel present, but the counsel shall not be allowed to examine his or her client, cross-examine other witnesses or argue before the judge. Counsel may consult with his or her client while before a grand jury. If the prosecuting officer, attorney for a witness or a grand juror believes that a conflict of interest exists for an attorney or attorneys to represent more than one witness before a grand jury, the person so believing may make a motion before the presiding judge to disqualify the attorney from representing more than one witness

before the grand jury. A hearing shall be held upon notice with the burden upon the moving party to establish the conflict.

(2) No grand jury transcript may be made public until the trial of anyone indicted by the grand jury and then only that portion of the transcript that is relevant and material to the case at hand. This subsection does not limit the defendant's rights to discovery under s. 971.23.

History: 1979 c. 291.

756.147 Secrecy. Notwithstanding s. 757.14, all motions, including but not limited to those for immunity or a privilege, brought by a prosecuting officer or witness appearing before a grand jury shall be made, heard and decided in complete secrecy and not in open court if the prosecuting officer or witness bringing the motion or exercising the immunity or privilege so requests.

History: 1979 c. 291.

756.15 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.15.

756.16 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 or her discretion as good and sufficient cause for the excuse. No business may 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 may be found by any grand jury unless at least 12 of their number shall concur in the indictment.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.16.

756.17 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.17.

Grand jury performs a judicial rather than legislative function; therefore, progress report unconnected to an indictment may not be made public. *State ex rel. Caledonia v. Racine County Ct.* 78 W (2d) 429, 254 NW (2d) 317.

756.18 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.18.

756.19 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.19.

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

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.20.

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

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.21.

756.22 May serve twice. When the grand jury attending any court is dismissed before the court is adjourned they may be summoned to attend again, at such time as the court directs, for the dispatch of any business that may come before the grand jury.

History: 1977 c. 187 s. 95; 1977 c. 449; Stats. 1977 s. 756.22.

756.23 Fine for nonattendance. If any person lawfully summoned to attend as a juror in any court of record neglects to attend, without any sufficient excuse, he or she 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.

History: 1977 c. 187 s. 95; Stats. 1977 s. 756.23.

756.24 Jurors, how paid. Within 30 days of the day that a juror has completed the service specified in s. 756.04, the clerk of the court shall prepare an order under s. 59.77 (8) (a).

History: 1977 c. 187 s. 95; 1977 c. 318, 447; Stats. 1977 s. 756.24; 1987 a. 146.

756.25 Juror's 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's actual attendance upon any circuit court, and an amount equal to the mileage rate set under s. 20.916 (8) for each mile actually traveled each day in going and returning by the most usual route. A juror shall not be paid for a day when the court is not in session unless payment is specially ordered by the court. An employer shall grant an employe 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 employe shall be considered uninterrupted by the service. No employer may use absence due to jury service as a basis for the discharge of an employe or for any disciplinary action against the employe. An employer who discharges or disciplines an employe in violation of this subsection may be fined not more than \$200 and may be required to make full restitution to the aggrieved employe, including reinstatement and back pay. Except as provided in this subsection, restitution shall be in accordance with s. 973.20.

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

(3) Notwithstanding subs. (1) and (2), if a county has established a system under s. 756.28 (1) 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 actual attendance and the amount to be paid jurors for traveling to and from the court for the first day of actual attendance.

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.

756.26 Talesmen's compensation. Every talesman, summoned and acting as a juror, shall receive the same compensation as jurors, as provided in s. 756.25.

History: 1977 c. 187 ss. 95, 135; Stats. 1977 s. 756.26.

756.27 Automation of jury selection. The procedures for selection of jurors and juries under ss. 756.04 to 756.10 may be accomplished by electronic automated systems, wherever appropriate.

History: 1977 c. 318; Stats. 1977 s. 255.27; 1977 c. 447; Stats. 1977 s. 756.27.

756.28 Length of juror service; periods of juror eligibility. (1) ONE DAY OR ONE TRIAL. A county with a population of less than 325,000 may establish a system in which a person summoned under s. 756.08 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a 2-year period, unless more days are necessary to complete service in a particular case. A county with a population of 325,000 or more may establish a system in which a person summoned under s. 756.08 may not be required to serve or attend court for prospective service as a petit juror for more than one day in a 4-year period, unless more days are necessary to complete service in a particular case. In a system established under this subsection, 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 the com-

mencement of the 2nd trial.

(2) GENERAL 2-YEAR ELIGIBILITY. In a county that does not establish a system under sub. (1), a person may be summoned under s. 756.08 to serve as a petit juror during a period not exceeding 6 months in any 2-year period. During the period in which a person may be summoned, the person may not be required to serve or attend court for prospective service as a petit juror for a total of more than 5 days of actual court attendance unless more days are necessary to complete service in a particular case or unless a majority of the judges of courts of record for the county adopt by rule a longer time period that does not exceed 10 days. In any 2-year period, no person may be required to serve both as a grand and petit juror.

History: 1991 a. 271.

NOTE: 1991 Wis. Act 271, which created this section, contains extensive legislative council notes.