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# Wisconsin Briefs

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## THE WISCONSIN JURY PROCESS

The sixth and seventh amendments to the U.S. Constitution guarantee citizens the right to a trial by jury in all criminal and civil matters. This right is further protected by Article I, Section 5 of the Wisconsin Constitution. This right, however, depends on the willingness of people to participate in the jury process. Serving on a jury can impose a significant burden in terms of lost income and time away from job and family. Reducing that burden has been the focus of several proposals to reform the process.

In Wisconsin, 2003 Assembly Bill 171, sponsored by Representative Pedro C6lon and 12 other representatives, proposed the creation of an income tax deduction for trial jury service. However, the bill was not acted upon by either house.

The American Legislative Exchange Council (ALEC), a self-described bipartisan association of conservative state lawmakers, proposed a model act in April 2003, entitled the "Jury Patriotism Act", which recommended several reforms. Several states have adopted some or all of the act's provisions. Other groups, including the American Judicature Society and the American Bar Association have also begun looking at ways to make the jury system more responsive. This brief discusses the current jury process in Wisconsin, and various proposals designed to reform the jury process.

### TYPES OF JURIES

Wisconsin's judicial system provides for three types of juries: the grand jury, trial jury, and the coroner's inquest jury. Each jury performs specific tasks designed to ensure

and preserve fairness and impact objectivity before and during trial.

### Responsibilities and Compensation of Jurors

Whether serving on a grand jury, trial jury, or coroner's inquest jury, jurors receive not less than \$16 per day of attendance, and are reimbursed for mileage. A person may be required to be available for jury service once during a four-year period, however, jurors are not required to serve on a jury for more than five days, unless more time is needed to complete a trial. In some counties, jurors are only required to serve one day or for one trial. Failure to report for jury duty without an acceptable excuse results in a \$40 fine.

### Grand Jury

The function of the grand jury is to determine if sufficient evidence exists to charge a person with a crime. If the grand jury determines a crime has been committed, an indictment is presented to the court, charging the accused of wrongdoing, and outlining the specific charges punishable by law.

The selection of a grand jury begins when a judge submits a written request to the clerk of circuit court, under Section 968.40 (1), Wisconsin Statutes, ordering the creation of a grand jury list of names from within the county, within a specified time frame. The clerk then chooses not less than 75 and not more than 150 names from the list of prospective jurors. After the completion of the preliminary selection, the judge and the district attorney examine the prospective jurors under oath in regard to their qualifica-

tions for service on the grand jury. The judge may excuse anyone for any reason.

Under Section 968.40 (6), grand jurors serve for 31 consecutive days, unless more time is necessary to complete the proceeding. Members of the grand jury are required to take an oath (Section 968.41) pledging the following:

- Inquire about all evidence presented.
- Keep all information, including testimony and evidence, secret.
- Promise not to indict someone for envy, hatred, or malice.
- Promise not to leave any person unindicted for love, favor, fear, affection, or hope of reward.
- Indict honestly to the best of their ability.

**Trial Jury**

The responsibility of the trial jury is to determine guilt or innocence at the conclusion of the civil or criminal trial. The jury is to be impartial, with its members randomly selected.

Every resident who is at least 18 years old, a U.S. citizen and able to understand the English language, is qualified to serve on a jury in circuit court. However, convicted felons who have not been released by the Department of Corrections are not eligible for jury service. To ensure that everyone has an equal opportunity to be chosen for duty, all qualified citizens are selected at random from a variety of sources.

*Jury Selection*

Every year, the Department of Transportation (DOT) distributes to each clerk of circuit court a list of people living in the area served by the court. The clerk of circuit court then compiles a list of prospective jurors by randomly choosing names from the DOT list only, or from a master list created with the DOT list and any of the following sources:

- voter registration list,
- telephone and municipal directories,
- utility company list,

- lists of payers of property taxes,
- lists of high school graduates age 18 or older, and
- lists of persons participating in *Wisconsin Works*.

The same percentage of names is required from each source used in creating the master list. As the DOT list is the primary source, names selected from that list are compared to an additional source to remove duplicates. The remaining names constitute the master list. If more than two sources are used, the process is repeated.

At least 12 days prior to the first day that a jury is needed, the clerk issues a jury summons by mail requiring prospective jurors to appear before the court at a specified time for jury service. In addition to the summons, prospective jurors receive a juror qualification form that requests the race of the prospective juror, information necessary to determine the prospective juror’s qualifications to serve, and the prospective juror’s affirmation that their responses are accurate. Failure to return the form within 10 days may result in a fine of not more than \$500.

*Jury Composition*

Juries in a felony case have 12 members unless both parties agree to less. Juries must have six members if the crime is a misdemeanor. Juries in civil cases have six members, unless a party requests more, not to exceed 12. If there is not a sufficient number of prospective jurors compiled from the clerk’s list, the court has the authority to order the sheriff to bring people before the court that are in the immediate area to determine if they are qualified to serve as jurors for the particular trial.

*Voir Dire*

Voir Dire means “to speak the truth”. It is an examination process in which the judge, district attorney, and defense attorney question prospective jurors. Its purpose is to determine the ability of the prospective jurors to make a judgment without bias for or against any of the parties in the trial.

The judge begins the voir dire process by informing prospective jurors of the issues involved in the case, and then proceeds to ask questions to determine if a legal reason exists to excuse prospective jurors from service. When a judge dismisses a prospective juror for a reason required or allowed by law, it is known as a challenge for cause.

Each party then has the opportunity to question prospective jurors individually. Either party may ask to have a prospective juror excused for cause, with the judge determining if the reason is valid. Both parties can also issue peremptory challenges, in which the jurors are excused without any reason. The number of peremptory challenges allowed is limited and depends upon the circumstances of the case. There is no limit to the number of jurors that can be excused for cause. (See Section 805.08, Wisconsin Statutes.)

### **Coroner's Inquest Jury**

The purpose of a coroner's inquest is to investigate certain deaths. If there is reason to believe a death was a homicide or the result of some other unexplained circumstances, and no warrant for arrest has been issued, the district attorney is required to order an inquest. The coroner may conduct the inquest with or without a six-member coroner's jury. However, if a jury is requested by the coroner, selection takes place in the same manner as for a trial jury. Prospective jurors must participate in a qualification process and, if chosen, take an oath. A circuit judge or circuit court commissioner conducts the inquest.

## **PROPOSALS FOR CHANGE**

### **2003 Assembly Bill 171**

Under 2003 AB-171, a person could subtract from their adjusted gross income \$125 for each day of jury duty and for each day of jury service if selected to serve. Had the bill been enacted into law, state revenues would have decreased by an estimated \$809,000

annually, at a 5.5% tax rate, according to the Department of Revenue's fiscal estimate.

### **The American Judicature Society Jury Center: Juries in Depth**

The American Judicature Society (AJS) launched a website in October 2004, dedicated to issues surrounding jury service. AJS offers several suggestions for improving jury selection, participation, and involvement during a trial.

Using more sources to compile lists of possible jurors and eliminating exemptions from jury service are suggested as ways to improve selection. In an effort to improve participation, AJS recommends increasing compensation and improving courthouse facilities to include workstations and child-care. Other improvements include using juror time more efficiently, and making jurors more involved in the process. More details are available at their website: [www.ajs.org](http://www.ajs.org).

### **The American Bar Association's Initiative**

The American Bar Association (ABA) established the American Jury Initiative in 2004. The initiative has two components – the American Jury Project and the Commission on the American Jury – both of which were created to improve the justice system by making improvements to the jury system. The stated goal of the American Jury Project is to develop reforms to the process for use as a model proposed by the ABA. The Commission on the American Jury is focused on outreach to the legal profession, the courts, and the community. The ABA website is: [www.abanet.org](http://www.abanet.org).

### **Jury Patriotism Act: A Model**

In April 2003, the American Legislative Exchange Council (ALEC) promulgated a model act entitled the Jury Patriotism Act. The model has four primary components: postponements of jury participation, excuses from jury service, rights of jurors, and a lengthy trial fund.

### *Postponements of Jury Participation*

The model act automatically grants prospective jurors a one-time postponement of service. Upon receiving the jury summons, prospective jurors may contact the court to obtain a postponement without giving a reason, while agreeing to jury service within the following six months. The court may grant subsequent postponements under special or extreme circumstances defined by the act.

The act also requires the court to postpone and reschedule the jury service of a prospective juror if another employee employed by the same business is currently serving and the business has five or fewer full-time employees. This postponement would not count towards the one-time postponement. Prospective jurors who fail to appear for service without obtaining a postponement, or fail to appear within six months after receiving the postponement, will be guilty of a misdemeanor and subject to the penalties of the state.

### *Excuses from Jury Service*

Under the model act, a court may excuse a prospective juror from service for a 24 month period instead of a six-month postponement if the prospective juror has a mental or physical condition preventing service, or if jury service would cause unnecessary or extreme physical or financial hardship to the prospective juror or someone in his or her care. The court may require proof of the physical or mental condition by requesting a report from a physician. To prove financial hardship, the prospective juror would have to submit documents to the court, such as federal and state income tax returns. The judge has the sole authority to determine if a physical or financial hardship existed. After two years, the prospective juror would be eligible for service, unless the judge ruled that the original reasons for being excused were of a permanent nature.

### *Rights of Jurors*

As provided under Section 756.255, Wisconsin Statutes, the model act offers employ-

ment and employee benefit protection by making it illegal for employers to fire or otherwise penalize an employee summoned for duty if the employee gave ample notification of service. Any employer who fires or disciplines an employee for serving on a jury is subject to a fine of not more than \$200 and may be required to make restitution.

Under the model act, the employer may not require the use of vacation, personal, or sick leave while the employee is serving. As is the law in Wisconsin, prospective jurors would only be required to serve one day in actual attendance, or for the entire length of one trial. After that service, the juror would not be required to serve again for a certain number of years.

### *Lengthy Trial Fund*

The model act requires the rulemaking authority responsible for state courts to create rules to establish and govern a lengthy trial fund, designed to compensate trial jurors serving more than three days on a civil litigation case. The model act suggests specific provisions.

On the fourth day of the trial, jurors would be eligible for compensation from the fund if they are eligible to be excused for financial hardship. The amount could not exceed \$100 per day per juror, with a maximum increase of \$300 per day per juror on the 10th day of service. Any qualified juror could submit a request, and the amount received would be the difference between the state's payment level and the amount of wages a juror earns, minus any amount the juror actually receives from an employer during jury service. The model act exempts government attorneys, pro se litigants, and parties participating in certain types of cases from paying fees to support the fund.

### *State Action*

Louisiana, Mississippi, Oklahoma, Utah, Colorado, Arizona, Missouri, and Vermont have enacted legislation modeled after the Jury Patriotism Act. The complete model, can be viewed on line at: [www.A-LEC.org](http://www.A-LEC.org).