

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 265**

**Representatives Slaby, O'Brien**

**Cosponsors: Representatives Grossman, Huffman, Blessing, Blair,  
Stebelton**

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**A B I L L**

To amend sections 1901.24, 1907.29, 2152.67, 2937.08, 1  
2938.04, 2938.05, 2945.05, and 2945.06 of the 2  
Revised Code to authorize prosecuting attorneys to 3  
demand a jury trial in a criminal case, 4  
notwithstanding a defendant's waiver of trial by 5  
jury and over a defendant's objection. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1901.24, 1907.29, 2152.67, 2937.08, 7  
2938.04, 2938.05, 2945.05, and 2945.06 of the Revised Code be 8  
amended to read as follows: 9

**Sec. 1901.24.** (A) A jury trial in a municipal court shall be 10  
demanded in the manner prescribed in the Rules of Civil Procedure 11  
or the Rules of Criminal Procedure. The number of persons 12  
composing a jury and the verdicts of jurors shall be governed by 13  
those rules. 14

(B) The right of a person to a jury trial in a municipal 15  
court is waived under the circumstances prescribed in the Rules of 16  
Civil Procedure or the Rules of Criminal Procedure. 17

(C) The prosecuting attorney, a village solicitor, a city 18

director of law, or a similar chief legal officer for a municipal corporation responsible for prosecuting a criminal case before a municipal court may demand a jury trial in any criminal case in which a defendant may demand a jury trial. The prosecuting attorney, village solicitor, city director of law, or similar chief legal officer may demand a jury trial notwithstanding a defendant's failure to demand a jury trial and over the objection of the defendant. 19  
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**Sec. 1907.29.** (A) A jury trial shall be demanded in the manner prescribed in the Rules of Civil Procedure or the Rules of Criminal Procedure. The number of persons composing a jury and the verdicts of jurors shall be governed by those rules. 27  
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(B) The right of a person to a jury trial is waived under the circumstances prescribed in the Rules of Civil Procedure or the Rules of Criminal Procedure. 31  
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(C) The prosecuting attorney, village solicitor, city director of law, or similar chief legal officer for a municipal corporation responsible for prosecuting a criminal case before a county court may demand a jury trial in any criminal case in which a defendant may demand a jury trial. The prosecuting attorney, city director of law, village solicitor, or similar chief legal officer may demand a jury trial notwithstanding a defendant's failure to demand a jury trial and over the objection of the defendant. 34  
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(D) If, as a result of challenges or other causes, a jury panel is not full, the deputy sheriff or constable who is in attendance at a trial before a county court may fill the panel in the same manner as the sheriff fills a panel in the court of common pleas. 43  
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~~(D)~~(E) The judge of the county court involved in a case shall administer an oath to the jury to try the matters in difference 48  
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between the parties that are to be determined by the jury, and to 50  
give a verdict in accordance with the evidence. 51

~~(E)~~(F) After the jurors are sworn in a case before a county 52  
court, they shall sit together and hear the proofs and allegations 53  
of the parties. After the hearing, the jury shall be kept together 54  
in a convenient place until they have agreed upon their verdict or 55  
have been discharged by the county court judge involved in the 56  
case. 57

~~(F)~~(G) If an action being tried to a jury in a county court 58  
is continued, the jurors shall attend at the time and place 59  
appointed for trial without further notice. 60

~~(G)~~(H) The judge of a county court involved in a case may 61  
punish as for contempt any juror who neglects or refuses to attend 62  
when properly summoned or who, although in attendance, refuses to 63  
serve. 64

~~(H)~~(I) If, in a civil action before a county court, the judge 65  
is satisfied that the number of jurors required by Civil Rule 48 66  
for concurrence purposes cannot concur in a verdict, and the jury 67  
has deliberated upon the verdict for a reasonable time, the judge 68  
may discharge the jury and continue the action. If either party 69  
requests a new jury, the judge shall cause the selection of 70  
another jury. If the action is continued, it shall be continued to 71  
a time that the judge considers reasonable unless the parties or 72  
their attorneys agree on a longer or shorter time. 73

**Sec. 2152.67.** Any adult who is arrested or charged under any 74  
provision in this chapter and who is charged with a crime may 75  
demand a trial by jury, ~~or the.~~ The prosecuting attorney may 76  
demand a trial by jury notwithstanding a defendant's failure to 77  
demand a trial by jury and over the objection of the defendant. 78  
The juvenile judge upon the judge's own motion may call a jury. A 79  
demand for a jury trial shall be made in writing in not less than 80

three days before the date set for trial, or within three days 81  
after counsel has been retained, whichever is later. Sections 82  
2945.17 and 2945.23 to 2945.36 of the Revised Code, relating to 83  
the drawing and impaneling of jurors in criminal cases in the 84  
court of common pleas, other than in capital cases, shall apply to 85  
a jury trial under this section. The compensation of jurors and 86  
costs of the clerk and sheriff shall be taxed and paid in the same 87  
manner as in criminal cases in the court of common pleas. 88

**Sec. 2937.08.** Upon a plea of not guilty or a plea of once in 89  
jeopardy, if the charge be a misdemeanor in a court of record, the 90  
court shall proceed to set the matter for trial at a future time, 91  
pursuant to Chapter 2938. of the Revised Code, and shall let 92  
accused to bail pending such trial. Or ~~he~~ the court may, but only 93  
if both prosecutor and accused expressly consent, set the matter 94  
for trial forthwith. 95

Upon the entry of such pleas to a charge of misdemeanor in a 96  
court not of record, the magistrate shall forthwith set the matter 97  
for future trial or, with the consent of both state and defendant 98  
may set trial forthwith, both pursuant to Chapter 2938. of the 99  
Revised Code, ~~provided that if.~~ If the nature of the offense is 100  
such that right to jury trial exists, such matter shall not be 101  
tried before ~~him~~ the magistrate unless the accused, by writing 102  
subscribed by ~~him~~ the accused, waives a jury and consents to be 103  
tried by the magistrate and the prosecutor does not request a 104  
trial by jury. The prosecutor may demand a jury trial in any 105  
matter that the defendant has the right to jury trial. If the 106  
prosecutor demands a jury trial, the matter shall not be tried 107  
before the magistrate, notwithstanding the defendant's waiver of a 108  
jury trial or the objection of the defendant. 109

If the defendant in such event does not waive right to jury 110  
trial or if the prosecutor requests a trial by jury, then the 111

magistrate shall require the accused to enter into recognizance to appear before a court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. Such transfer shall not require the filing of indictment or information and trial shall proceed in the transferee court pursuant to Chapter 2938. of the Revised Code.

**Sec. 2938.04.** (A) In courts of record, the right to trial by jury as defined in section 2945.17 of the Revised Code shall be claimed by making demand in writing ~~therefor~~ for a jury trial and filing the ~~same~~ demand with the clerk of the court not less than three days prior to the date set for trial or on the day following receipt of notice whichever is the later. Failure to claim jury trial as provided in this section is a complete waiver of right ~~thereto~~ to a jury trial. In courts not of record, a jury trial may not be had, but a failure to waive a jury trial in writing where right to a jury trial may be asserted shall require the magistrate to certify ~~such~~ the case to a court of record as provided in section 2937.08 of the Revised Code.

(B) The prosecuting attorney, city director of law, village solicitor, or similar chief legal officer responsible for prosecuting a criminal case before a court of record under this chapter may demand a jury trial in any case in which a defendant may demand a jury trial. The prosecuting attorney, village solicitor, city director of law, or similar chief legal officer may demand a jury trial notwithstanding a defendant's failure to demand a jury trial and over the objection of the defendant.

**Sec. 2938.05.** ~~Claim of~~ A defendant's claim for a jury trial, once made, may be withdrawn by a defendant by a written waiver of a jury ~~but in such case the court may, if~~ trial. A defendant's

withdrawal of a claim for a jury trial does not affect a demand 143  
for a jury trial by a prosecuting attorney, city director of law, 144  
village solicitor, or similar chief legal officer under section 145  
2938.04 of the Revised Code. If a jury has been summoned, pursuant 146  
to the defendant's claim for a jury trial, the court may require 147  
~~accused~~ the defendant to pay all costs of mileage and fees of 148  
members of the venire for one day's service, notwithstanding the 149  
outcome of the case. No withdrawal of a claim for a jury trial 150  
shall effect any re-transfer of a case, once it has been certified 151  
to a court of record. 152

**Sec. 2945.05.** (A) In all criminal cases pending in courts of 153  
record in this state, the defendant may waive a trial by jury ~~and~~ 154  
~~be tried by the court without a jury. Such~~ A waiver of a trial by 155  
jury by a defendant, shall be in writing, signed by the defendant, 156  
and filed in said cause and made a part of the record thereof. It 157  
shall be entitled in the court and cause, and in substance as 158  
follows: "I ....., defendant in the above cause, hereby 159  
voluntarily waive and relinquish my right to a trial by jury, and 160  
elect to be tried by a Judge of the Court in which the said cause 161  
may be pending. I fully understand that under the laws of this 162  
state, I have a constitutional right to a trial by jury." 163

~~Such~~ A waiver of trial by jury must be made in open court 164  
after the defendant has been arraigned and has had an opportunity 165  
to consult with counsel. ~~Such~~ The waiver may be withdrawn by the 166  
defendant at any time before the commencement of the trial. 167

(B) The prosecuting attorney, city director of law, village 168  
solicitor, or similar chief legal officer responsible for 169  
prosecuting the criminal case may demand a trial by jury in any 170  
criminal case that is pending in a court of record in this state 171  
in which a defendant may demand a trial by jury. The prosecuting 172  
attorney, city director of law, village solicitor, or similar 173

chief legal officer responsible for prosecuting the criminal case 174  
may demand a trial by jury notwithstanding the defendant's waiver 175  
of a trial by jury and over the objection of the defendant. 176

**Sec. 2945.06.** In any case in which a defendant waives ~~his~~ the 177  
right to trial by jury and elects to be tried by the court under 178  
section 2945.05 of the Revised Code, if the prosecuting attorney, 179  
city director of law, village solicitor, or similar chief legal 180  
officer responsible for prosecuting the criminal case has not 181  
demand a trial by jury in that case any judge of the court in 182  
which the cause is pending shall proceed to hear, try, and 183  
determine the cause in accordance with the rules and in like 184  
manner as if the cause were being tried before a jury. If the 185  
accused is charged with an offense punishable with death, he shall 186  
be tried by a court to be composed of three judges, consisting of 187  
the judge presiding at the time in the trial of criminal cases and 188  
two other judges to be designated by the presiding judge or chief 189  
justice of that court, and in case there is neither a presiding 190  
judge nor a chief justice, by the chief justice of the supreme 191  
court. The judges or a majority of them may decide all questions 192  
of fact and law arising upon the trial; however the accused shall 193  
not be found guilty or not guilty of any offense unless the judges 194  
unanimously find the accused guilty or not guilty. If the accused 195  
pleads guilty of aggravated murder, a court composed of three 196  
judges shall examine the witnesses, determine whether the accused 197  
is guilty of aggravated murder or any other offense, and pronounce 198  
sentence accordingly. The court shall follow the procedures 199  
contained in sections 2929.03 and 2929.04 of the Revised Code in 200  
all cases in which the accused is charged with an offense 201  
punishable by death. If in the composition of the court it is 202  
necessary that a judge from another county be assigned by the 203  
chief justice, the judge from another county shall be compensated 204  
for ~~his~~ the judge's services as provided by section 141.07 of the 205

Revised Code.	206
<b>Section 2.</b> That existing sections 1901.24, 1907.29, 2152.67,	207
2937.08, 2938.04, 2938.05, 2945.05, and 2945.06 of the Revised	208
Code are hereby repealed.	209