

**As Passed by the House**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. H. B. No. 265**

**Representatives Slaby, O'Brien**

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

**Stebelton, Amstutz, Uecker**

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**A B I L L**

To amend sections 1901.24, 1907.29, 2152.67, 2938.04, 1  
2938.05, 2945.05, and 2945.06 of the Revised Code 2  
to authorize prosecuting attorneys to demand a 3  
jury trial in a felony case, notwithstanding a 4  
defendant's waiver of trial by jury and over a 5  
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, 2938.04, 7  
2938.05, 2945.05, and 2945.06 of the Revised Code be amended to 8  
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 felony case before a municipal court may demand a jury trial in any felony 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 in a felony case notwithstanding a defendant's failure to demand a jury trial and over the objection of the defendant.

**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.

(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.

(C) The prosecuting attorney, village solicitor, city director of law, or similar chief legal officer for a municipal corporation responsible for prosecuting a felony case before a county court may demand a jury trial in any felony 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 in a felony case notwithstanding a defendant's failure to demand a jury trial and over the objection of the defendant.

(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.

~~(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

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.~~ In any felony case, the 76  
prosecuting attorney may demand a trial by jury notwithstanding a 77  
defendant's failure to demand a trial by jury and over the 78  
objection of the defendant. The juvenile judge upon the judge's 79  
own motion may call a jury. A demand for a jury trial shall be 80

made in writing in not less than three days before the date set 81  
for trial, or within three days after counsel has been retained, 82  
whichever is later. Sections 2945.17 and 2945.23 to 2945.36 of the 83  
Revised Code, relating to the drawing and impaneling of jurors in 84  
criminal cases in the court of common pleas, other than in capital 85  
cases, shall apply to a jury trial under this section. The 86  
compensation of jurors and costs of the clerk and sheriff shall be 87  
taxed and paid in the same manner as in criminal cases in the 88  
court of common pleas. 89

**Sec. 2938.04.** (A) In courts of record, the right to trial by 90  
jury as defined in section 2945.17 of the Revised Code shall be 91  
claimed by making demand in writing ~~therefor~~ for a jury trial and 92  
filing the ~~same~~ demand with the clerk of the court not less than 93  
three days prior to the date set for trial or on the day following 94  
receipt of notice whichever is the later. Failure to claim jury 95  
trial as provided in this section is a complete waiver of right 96  
~~thereto~~ to a jury trial. In courts not of record, a jury trial may 97  
not be had, but a failure to waive a jury trial in writing where 98  
right to a jury trial may be asserted shall require the magistrate 99  
to certify ~~such~~ the case to a court of record as provided in 100  
section 2937.08 of the Revised Code. 101

(B) The prosecuting attorney, city director of law, village 102  
solicitor, or similar chief legal officer responsible for 103  
prosecuting a felony case before a court of record under this 104  
chapter may demand a jury trial in any felony case in which a 105  
defendant may demand a jury trial. The prosecuting attorney, 106  
village solicitor, city director of law, or similar chief legal 107  
officer may demand a jury trial in a felony case notwithstanding a 108  
defendant's failure to demand a jury trial and over the objection 109  
of the defendant. 110

~~Sec. 2938.05. Claim of~~ A defendant's claim for a jury trial, 111  
once made, may be withdrawn by a defendant by a written waiver of 112  
a jury but in such case the court may, if trial. A defendant's 113  
withdrawal of a claim for a jury trial in a felony case does not 114  
affect a demand for a jury trial in that case by a prosecuting 115  
attorney, city director of law, village solicitor, or similar 116  
chief legal officer under section 2938.04 of the Revised Code. If 117  
a jury has been summoned, pursuant to the defendant's claim for a 118  
jury trial, the court may require ~~accused~~ the defendant to pay all 119  
costs of mileage and fees of members of the venire for one day's 120  
service, notwithstanding the outcome of the case. No withdrawal of 121  
a claim for a jury trial shall effect any re-transfer of a case, 122  
once it has been certified to a court of record. 123

**Sec. 2945.05. (A)** In all criminal cases pending in courts of 124  
record in this state, the defendant may waive a trial by jury ~~and~~ 125  
~~be tried by the court without a jury. Such~~ A waiver of a trial by 126  
jury by a defendant, shall be in writing, signed by the defendant, 127  
and filed in said cause and made a part of the record thereof. It 128  
shall be entitled in the court and cause, and in substance as 129  
follows: "I ....., defendant in the above cause, hereby 130  
voluntarily waive and relinquish my right to a trial by jury, and 131  
elect to be tried by a Judge of the Court in which the said cause 132  
may be pending. I fully understand that under the laws of this 133  
state, I have a constitutional right to a trial by jury." 134

~~Such~~ A waiver of trial by jury must be made in open court 135  
after the defendant has been arraigned and has had an opportunity 136  
to consult with counsel. ~~Such~~ The waiver may be withdrawn by the 137  
defendant at any time before the commencement of the trial. 138

(B) The prosecuting attorney, city director of law, village 139  
solicitor, or similar chief legal officer responsible for 140  
prosecuting a felony case may demand a trial by jury in any felony 141

case that is pending in a court of record in this state in which a 142  
defendant may demand a trial by jury. The prosecuting attorney, 143  
city director of law, village solicitor, or similar chief legal 144  
officer responsible for prosecuting the felony case may demand a 145  
trial by jury notwithstanding the defendant's waiver of a trial by 146  
jury and over the objection of the defendant. 147

**Sec. 2945.06.** In any case in which a defendant waives ~~his~~ the 148  
right to trial by jury and elects to be tried by the court under 149  
section 2945.05 of the Revised Code, if the prosecuting attorney, 150  
city director of law, village solicitor, or similar chief legal 151  
officer responsible for prosecuting the case has not demanded a 152  
trial by jury in that case any judge of the court in which the 153  
cause is pending shall proceed to hear, try, and determine the 154  
cause in accordance with the rules and in like manner as if the 155  
cause were being tried before a jury. If the accused is charged 156  
with an offense punishable with death, he shall be tried by a 157  
court to be composed of three judges, consisting of the judge 158  
presiding at the time in the trial of criminal cases and two other 159  
judges to be designated by the presiding judge or chief justice of 160  
that court, and in case there is neither a presiding judge nor a 161  
chief justice, by the chief justice of the supreme court. The 162  
judges or a majority of them may decide all questions of fact and 163  
law arising upon the trial; however the accused shall not be found 164  
guilty or not guilty of any offense unless the judges unanimously 165  
find the accused guilty or not guilty. If the accused pleads 166  
guilty of aggravated murder, a court composed of three judges 167  
shall examine the witnesses, determine whether the accused is 168  
guilty of aggravated murder or any other offense, and pronounce 169  
sentence accordingly. The court shall follow the procedures 170  
contained in sections 2929.03 and 2929.04 of the Revised Code in 171  
all cases in which the accused is charged with an offense 172  
punishable by death. If in the composition of the court it is 173

necessary that a judge from another county be assigned by the 174  
chief justice, the judge from another county shall be compensated 175  
for ~~his~~ the judge's services as provided by section 141.07 of the 176  
Revised Code. 177

**Section 2.** That existing sections 1901.24, 1907.29, 2152.67, 178  
2938.04, 2938.05, 2945.05, and 2945.06 of the Revised Code are 179  
hereby repealed. 180