

1971 Assembly Bill 877

Date published:
May 12, 1972

CHAPTER 298, Laws of 1971

AN ACT to repeal 254.07, 270.125 (4) and 974.05 (1) (e); to renumber 968.17 and 969.06 (1) and (2); to amend 891.39 (1) (b), 967.02 (6), 968.12 (1), 969.02 (5), 969.03 (1) (d), 969.08 (1), 969.13 (4), 971.04 (3), 971.10 (2) (a), 973.03 (2), 973.09 (2) (a) and (4), 973.10 (1) and (2), 974.01 (1) and (2), 974.02 (1) and (4) and 974.03; to repeal and recreate 969.08 (2); and to create 345.19, 968.09 and 968.17 (2) of the statutes, relating to corrections, clarifications and changes in the criminal procedure code.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 254.07 of the statutes is repealed.

SECTION 2. 270.125(4) of the statutes is repealed.

SECTION 3. 345.19 of the statutes is created to read:

345.19 DEFENDANT TO PLEAD; MOTOR VEHICLE AND MUNICIPAL ORDINANCE VIOLATIONS. If a summons or citation is issued by a police officer for a violation of any municipal ordinance or of chs. 194 or 340 to 348 to a defendant who, if a natural person, resides or, if a corporation, has its principal place of business outside the county in which the judge or justice is located, the defendant may enter a plea of not guilty based on such summons or citation by registered letter to the judge or justice at the address indicated on the summons or citation, the letter to show the defendant's return address. Such letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge or justice shall reply by certified mail to the defendant's address setting forth a time and place for trial, such time to be during normal business hours if requested by the defendant. The reply shall include the warrant and complaint and the date of the trial shall be at least 10 days from the mailing by the judge or justice. Nothing in this section forbids the setting of the trial at any time convenient to all parties concerned.

NOTE: This section restores provisions which existed in former s. 960.09 and was inadvertently repealed by ch. 255, laws of 1969.

SECTION 4. 891.39 (1) (b) of the statutes is amended to read:

891.39 (1) (b) In actions affecting marriage, in which the question of paternity is raised, and in paternity proceedings, the court upon being satisfied that the parties to the action are unable to adequately compensate any such guardian ad litem for his services and expenses, shall then make an order specifying the guardian's fee and expenses, which fee and expenses shall be paid as provided in s. ~~256.65~~ 267.06.

SECTION 5. 967.02 (6) of the statutes is amended to read:

967.02 (6) "Judge" means judge of a court of record. For the purposes of issuing summonses ~~or~~ arrest warrants or search warrants, conducting initial appearances of persons arrested and setting bail, "judge" also includes a court commissioner.

NOTE: This section clarifies that court commissioners have the power to issue search warrants.

SECTION 6. 968.09 of the statutes is created to read:

968.09 WARRANT ON FAILURE TO APPEAR. (1) When a defendant or a witness fails to appear before the court as required, or violates a term of his bond or his probation, if any, the court may issue a bench warrant for his arrest which shall direct that he be brought before the court without unreasonable delay. The court shall state on the record at the time of issuance of the bench warrant the reason therefor.

(2) Prior to the defendant's appearance in court after his arrest under sub. (1), ch. 969 shall not apply.

SECTION 7. 968.12 (1) of the statutes is amended to read:

968.12 (1) A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property ~~and to deliver any property so seized to the clerk designated in the warrant.~~ A judge shall issue a search warrant if probable cause is shown. The warrant shall be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter, showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief.

NOTE: Present s. 968.12 (1) conflicts with s. 968.19 which is left intact and provides for the property to be kept by the officer or sheriff. See also s. 968.17 which requires an inventory to be filed with the clerk.

SECTION 8. 968.17 of the statutes is renumbered 968.17 (1).

SECTION 9. 968.17 (2) of the statutes is created to read:

968.17 (2) An affidavit or complaint made in support of the issuance of the warrant and the transcript of any testimony taken shall be filed with the clerk within 5 days after the date of the execution of any search warrant.

NOTE: This section is designed to insure that the material necessary to challenge the search warrant is made promptly available to all parties.

SECTION 10. 969.02 (5) of the statutes is amended to read:

969.02 (5) Subject to sub. (4), when the conditions of the bond have been performed and the person for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant 90% of the sum which had been deposited and shall retain as costs 10% of the amount deposited pursuant to sub. (2) (a). If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit pursuant to sub. (2) shall be returned to the person who made the deposit, his heirs or assigns, subject to sub. (4).

NOTE: Reference to par. (a) is added to clarify that retention of 10% of the deposit does not refer to a situation where 100% cash is posted.

SECTION 11. 969.03 (1) (d) of the statutes is amended to read:

969.03 (1) (d) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof of sureties. If a judgment for a fine or costs or both is entered, any deposit of cash shall be applied to the payment of the judgment.

NOTE: The change in the first sentence makes it clear that the statute does not permit a judge to require cash and not permit a surety bond. The addition of the second sentence makes the felony procedure consistent with the misdemeanor procedure. See s. 969.02 (4).

SECTION 12. 969.06 (1) of the statutes is renumbered s. 969.06.

SECTION 13. 969.06 (2) of the statutes is renumbered s. 969.02 (6).

SECTION 14. 969.08 (1) of the statutes is amended to read:

969.08 (1) Either party on reasonable notice may petition the judge of the court before whom the action is pending for an alteration in the amount of the bail or conditions of the bond.

SECTION 15. 969.08 (2) of the statutes is repealed and recreated to read:

969.08 (2) A judge before whom an action is pending may at any time amend the order for release of a person as provided in this chapter, to impose additional or different conditions of release.

NOTE: SECTIONS 14 and 15 are designed to make clear that a judge handling the preliminary examination may alter release provisions while the action is awaiting decision before him. He does, of course, lose this power upon bindover or waiver of preliminary examination.

SECTION 16. 969.13 (4) of the statutes is amended to read:

969.13 (4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and his sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture ~~or and~~ within such period he or his sureties do not satisfy the court that appearance and surrender by the defendant is at the time scheduled for his appearance was impossible and without his fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. Proceeds of the judgment shall be paid to the county treasurer. The motion and such notice of motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the defendant and his sureties at their last addresses.

SECTION 17. 971.04 (3) of the statutes is amended to read:

971.04 (3) If the defendant is present at the beginning of the trial and shall thereafter, during the progress of the trial or before the verdict of the jury has been returned into court, voluntarily absent himself from the presence of the court without leave of the court, the trial or return of verdict of the jury in the case shall not thereby be postponed or delayed, but the trial or submission of said case to the jury for verdict and the return of verdict thereon, if required, shall proceed in all respects as though the defendant were present in court at all times. A defendant need not be present at the pronouncement or entry of an order granting or denying relief under s. 974.02 or 974.06. If he is not present, the time for appeal from any order under ss. 974.02 and 974.06 shall commence after either a copy has been served upon him or upon his attorney, if any. Service on the defendant may be made in the manner provided for service in civil actions or by mailing a copy to the defendant's last-known address or under s. 53.02 (5), if applicable.

SECTION 18. 971.10 (2) (a) of the statutes is amended to read:

971.10 (2) (a) The trial of a defendant charged with a felony shall commence within 90 days from the date trial is demanded by any party in writing or on the record. If the demand is made in writing, a copy shall be served upon the opposing party. The demand may not be made until after the filing of the information or indictment.

SECTION 19. 973.03 (2) of the statutes is amended to read:

973.03 (2) A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.

NOTE: This change is made to accommodate the practices in counties having a population of 500,000 or more.

SECTION 20. 973.09 (2) (a) and (4) of the statutes are amended to read:

973.09 (2) (a) For misdemeanors, not less than 6 months, nor more than 2 years;

(4) The court may also require as a condition of probation that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court specifies, but not to exceed one year and the court shall require him to pay the ~~cost of his board costs~~ as provided in s. 56.08 (4). While confined pursuant to this subsection he shall be subject to all the rules of the jail and the discipline of the sheriff.

NOTE: This amendment restores certain provisions created by ch. 492, laws of 1969 which were inadvertently repealed by ch. 255, laws of 1969.

SECTION 21. 973.10 (1) and (2) of the statutes are amended to read:

973.10 (1) A sentence of probation shall have the effect of placing the defendant in the custody of the department and shall subject him to the control of the department under conditions set by the court and rules and regulations established by the department for the supervision of probationers and parolees.

(2) If a probationer violates the conditions of his probation, the department may order him brought before the court for sentence which shall then be imposed without further stay or if he has already been sentenced, may order him to prison; and the term of the sentence shall begin on the date he enters the prison. A copy of the order of the department shall be sufficient authority for the officer executing it to take the probationer to court or to prison. The officer shall execute such order as a warrant for arrest but any officer may, without order or warrant, take the probationer into custody whenever necessary in order to prevent escape or enforce discipline or for violation of probation.

NOTE: This section restores language from former ch. 57.

SECTION 22. 974.01 (1) and (2) of the statutes are amended to read:

974.01 (1) Appeals from the county court in misdemeanor cases are to the circuit court for the county on the record. Appeals from the circuit court in misdemeanors are to the supreme court.

(2) Within 15 days after judgment ~~or entry of the order appealed from~~, appeal may be taken to the circuit court by filing a notice of appeal with the clerk of the trial court and by serving notice of appeal on the opposing party or his attorney. ~~If a motion for a new trial has been made within the 15 day period, an appeal from a judgment of conviction may be taken within 15 days after~~

~~entry of the order denying the motion or within 15 days after such motion is deemed overruled.~~

SECTION 23. 974.02 (1) and (4) of the statutes are amended to read:

974.02 (1) ~~A~~ In felonies, a defendant may move in writing or with the consent of the state on the record to set aside a judgment of conviction and for a new trial in the interest of justice, or because of error in the trial or because of error in the jury instructions, or because the judgment of conviction is not supported by the evidence or is contrary to law, or based on newly discovered evidence; but such motion must be made, heard and decided within 90 days after the judgment of conviction is entered, unless the court by order made before its expiration extends such time for cause. Such motion, if not decided within the time allowed therefor, shall be deemed overruled. Filing of a motion for a new trial shall not prevent the trial court from imposing sentence.

NOTE: This eliminates a motion for new trial in misdemeanor cases. It also recognizes the right to move for a new trial in felony cases based on newly discovered evidence.

(4) A new trial shall proceed in all respects as if there had been no former trial. ~~On the new trial the defendant may be convicted of any crime charged in the indictment or information irrespective of the verdict or finding on the former trial.~~ The former verdict or finding shall not be used or referred to on the new trial.

NOTE: The stricken language is deleted in response to the U.S. Supreme Court decision in Benton v. Maryland 395 US. 784 (1969) which overruled Palko v. Connecticut, 302 US. 319 (1937).

SECTION 24. 974.03 of the statutes is amended to read:

974.03 In lieu of prosecuting a writ of error, either party may appeal to the supreme court in the manner provided in civil cases. The service of a notice of appeal or the issuance of a writ of error shall be made within 90 days after the entry of judgment or order appealed from. If a motion for a new trial has been made within the 90-day period, an appeal from the denial of the motion or from a the judgment of conviction may be taken within 90 days after entry pronouncement of the order denying the motion or within 90 days after such motion is deemed overruled.

SECTION 25. 974.05 (1) (e) of the statutes is repealed.

NOTE: This change is designed to recognize the decision of the U.S. Supreme Court in Benton v. Maryland.

SECTION 26. CROSS REFERENCES. (1) Wherever the reference "256.27 (2)" appears in section 973.08 of the statutes, substitute the reference "256.57 (2)".

(2) Wherever the reference "s. 964.10" appears in section 976.03 (11) of the statutes, substitute the reference "sub. (10)".

(3) Wherever the reference "s. 964.16" appears in section 976.03 (15) of the statutes, substitute the reference "sub. (16)".

(4) Wherever the reference "ss. 964.07 and 964.08" appears in section 976.03 (27) of the statutes, substitute the reference "subs. (7) and (8)".

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SECTION 27. If Assembly Bill 57 (1971) is enacted into law, the provisions of such chapter relating to section 971.10 (2) (b) of the statutes shall supersede SECTION 18 of this act.
