

CHAPTER 401, Laws of 1975

AN ACT to amend 100.201 (9) (b); and to repeal and recreate 256.03 to 256.07 and chapter 295 of the statutes, relating to the revision of civil and criminal contempt procedures and providing penalties.

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

SECTION 1. 100.201 (9) (b) of the statutes is amended to read:

100.201 (9) (b) The department, after public hearing held under s. 93.18, may issue a special order against any person requiring such person to cease and desist from acts, practices or omissions determined by the department to violate this section. Such orders shall be subject to judicial review under ch. 227. Any violation of a special order issued hereunder shall be punishable as a contempt under ch. 295 in the manner provided for disobedience of a lawful order of a court, upon the filing of an affidavit by the department of the commission of such violation in any court of record in the county where the violation occurred. ~~The person in contempt may be fined not more than \$5,000 or imprisoned not more than 6 months or both, but s. 295.15 shall not be applicable.~~

SECTION 2. 256.03 to 256.07 of the statutes are repealed and recreated to read:

256.03 What acts may be punished as criminal contempts. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts and no other:

(1) Any breach of the peace, noise, disturbance or other disorderly or insolent behavior committed in its immediate view and presence, in court or chambers, which directly tends to interrupt its proceedings or to impair the respect due its authority.

(2) Wilful and intentional disobedience or obstruction of, or resistance to any process or order lawfully issued or made by it.

(3) Wilful refusal to be sworn as a witness or, when so sworn, the wilful refusal to answer any legal or proper question when the refusal is not legally justified.

(4) Wilful, intentional and contumacious misconduct on the basis of which the court could make a finding of civil contempt under s. 295.01, which challenges and impugns the authority of the court.

256.04 Procedure in criminal contempts. (1) SUMMARY PROCEDURE. (a) A criminal contempt may be punished summarily if the judge certifies on the record that he has seen or heard the conduct constituting the contempt and that it was committed in the immediate view and presence of the court.

(b) If, in the situation described in par. (a), the court has become personally embroiled with the alleged contemnor or has been attacked in such a way that the personal feelings of the judge could reasonably be expected to have been affected, or has adopted an adversary posture with regard to the alleged contemnor, the court may then employ the summary contempt procedure only immediately after the allegedly contemptuous behavior has taken place, if necessary to preserve the order of the court and protect the authority of the court.

(2) **NONSUMMARY PROCEDURE.** (a) In all contempt situations other than those described in sub. (1), there shall be a nonsummary procedure conducted by a different judge, unless the defendant consents to the same judge.

(b) A nonsummary criminal contempt shall be prosecuted on notice. Such proceeding shall be prosecuted by the district attorney, the attorney general or an attorney specially appointed by the court for that purpose. On a verified petition setting forth the essential facts constituting the criminal contempt charged and described as such, on information and belief, the court may take jurisdiction of the special proceeding of criminal contempt and issue the necessary process of order to show cause or warrant for arrest. The defendant is entitled to a reasonable time for the preparation of his defense, right to bail, substitution of judge, and is presumed innocent until proven guilty beyond a reasonable doubt to the satisfaction of all jurors. Upon a verdict or finding of guilty the court shall sign and enter of record an order reciting the facts and fixing the punishment.

256.05 Pardon for criminal contempt. Upon receiving proper application under ss. 57.08 to 57.10, the governor may pardon any person convicted of a criminal contempt.

256.06 Punishment for criminal contempt. Punishment for criminal contempt under this chapter may be by fine or imprisonment in the jail of the county where the court is sitting, or both, but in no case may exceed the following:

(1) For each offense adjudicated under the summary procedures of s. 256.04 (1), a fine of not more than \$500 or imprisonment for not more than 30 days or both. When any person is committed to jail for the nonpayment of any fine under this subsection, he shall be discharged at the end of 30 days.

(2) For each offense adjudicated under the nonsummary procedures of s. 256.04 (2) for past acts, a fine of not more than \$5,000 or imprisonment for a period not to exceed one year, or both; and to enforce any continuing order of the court for future acts, a fine of not more than \$1,000 for each day of violation, subject to purge by the defendant's timely compliance with the future acts required under such continuing order.

(3) Fines collected under this section may not be applied for the benefit of any party in a civil proceeding.

256.07 Criminal prosecution for contempt. Persons found in contempt under s. 256.03 shall be liable to complaint, indictment or information for any offense committed by the same act which was found to be a criminal contempt. The court before which a conviction may be had on such complaint, indictment or information shall, in sentencing, take into account the punishment inflicted under s. 256.06.

SECTION 3. Chapter 295 of the statutes is repealed and recreated to read:

CHAPTER 295

CONTEMPTS IN CIVIL ACTIONS

295.01 Contempt power of courts. Every court of record may find in contempt any person who disobeys any process or lawful order of the court, violates or neglects an official duty, or is otherwise guilty of misconduct, by which act the rights or remedies of a party in an action or proceeding pending or triable in such court or before a court commissioner for the same county may be impaired, impeded, defeated or prejudiced.

295.02 Sanctions. Every court of record may, in the exercise of its equitable powers, enforce the rights or remedies of a party to an action or proceeding by imposing on any person found in contempt under s. 295.01 the following sanctions:

(1) (a) If an actual loss or injury has been produced to any party by the misconduct of the contemnor, which it is not efficacious to remedy by execution or

garnishment, the court may order the defendant to pay such party a sum sufficient to compensate him for his losses and his costs and expenses, and in such case the payment and acceptance of such a sum shall be an absolute bar to any action by the aggrieved party to recover damages in another action for such injury or loss.

(b) This subsection does not apply to an actual loss or injury arising out of a debt founded in contract or for a tort that is dischargeable in bankruptcy.

(2) (a) If the misconduct proved consists of an omission to perform some act or duty which it is yet in the power of a party to perform in part or in full, including a failure to indemnify another party under sub. (1), the party or, if applicable, the executive officer of a corporation or association may be imprisoned until he performs such act or duty and pays the costs and expenses of the proceedings.

(b) If the misconduct of the party under par. (a) also constitutes a violation of another statute, the injunction may specify the amount of forfeiture to be payable to the common school fund under s. 25.21 for each day of violation in the future.

(3) Sanctions imposed under this section may not exceed the following maximums:

(a) No requirement to pay money under sub. (1) may exceed a sum sufficient to compensate an aggrieved party for his actual losses, costs and expenses.

(b) No person may be imprisoned under sub. (2) (a) for more than 6 months on the basis of any single finding of contempt.

(c) No forfeiture under sub. (2) may exceed \$2,000 for each day of violation.

(4) A person imprisoned shall be released upon purging himself by compliance with the court's order.

(5) No person may be imprisoned, nor required to pay any sum of money to the court or to a party, under this chapter except as specified in subs. (1) and (2).

(6) Nothing in this section may prohibit the court from imposing punishment of fine or imprisonment for criminal contempt under ss. 256.03 to 256.07.

295.03 Procedure in civil contempts. (1) Upon a verified petition alleging misconduct under s. 295.01, the judge in the principal action, or another judge if the original judge is unable to act, may take jurisdiction of the special proceeding of contempt and issue any necessary process, including but not limited to an order to show cause, an attachment to arrest which shall state whether or not the defendant may post cash bail in a given amount or a property bond to assure his attendance at court or a writ of habeas corpus if the defendant is in custody.

(2) The party prosecuting any person for contempt under this chapter shall be required to prove by a preponderance of the evidence that such person is guilty of misconduct under s. 295.01, and has by his misconduct impeded, impaired, defeated or prejudiced a right or remedy of such party.

(3) Any person charged with contempt under this chapter may plead by answer affirmative defenses to the charge, including but not limited to inability to comply with an order or decree of the court. The defendant setting forth such a defense shall have the burden of proving his defense by a preponderance of the evidence.

295.04 Terms of court disregarded. The judge of any court of record shall have the power to make findings of contempt, impose sanctions and carry out all contempt proceedings under this chapter regardless of whether the court is in session, in adjournment, between sessions or between terms.

SECTION 4. Cross reference changes. In the sections listed below in column A, the cross references in column B are changed to the cross references shown in column C:

	A	B	C
Statute	Sections	Old Cross References	New Cross References
247.29	(1)	295.03	295.02
247.30		295.03	295.02
247.37	(1) (a)	295.03	295.02

SECTION 5. **Program citations.** Under the listing of program responsibilities for the department of justice under section 15.251 (intro.) of the statutes, the reference to “295.20” and “295.21” are deleted.
