

1979 Assembly Bill 1157

Date published: May 9, 1980

CHAPTER 257, Laws of 1979

AN ACT to repeal 757.03 to 757.07 and 800.12 (2); to renumber 800.12 (3); to amend 5.18 (2), 30.03 (4) (b), 52.10 (9), 52.40, 97.20 (10), 101.15 (2) (f) 2, 103.60 (intro.) and (3), 133.07 (4), 345.11 (8), 887.25 (2) and 945.041 (5); and to repeal and recreate chapter 785 and 800.12 (1) of the statutes, relating to contempt of court and providing penalties.

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

SECTION 1. 5.18 (2) of the statutes is amended to read:

5.18 (2) Failure to comply with the order in the specified time, unless stayed or superseded, is criminal may be punished as contempt of court.

NOTE: This act makes various changes throughout the statutes to make provisions consistent with ch. 785. The change made in s. 5.18 (2) reflects the elimination of the distinction between civil and criminal contempt.

SECTION 2. 30.03 (4) (b) of the statutes is amended to read:

30.03 (4) (b) No penalty shall may be imposed for violation of an order of the department under this subsection, but violation of a judgment enforcing the order may be punished in civil as contempt proceedings of court.

SECTION 3. 52.10 (9) of the statutes is amended to read:

52.10 (9) How DUTIES OF SUPPORT ENFORCED. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this section including a proceeding for civil contempt of court. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

SECTION 4. 52.40 of the statutes is amended to read:

52.40 When and how discharged; liability thereafter. Any person who has been so imprisoned 90 days commencing in any one calendar year may apply for his discharge from such the imprisonment as provided by law for the discharge from imprisonment of persons confined in jail upon executions against the person; but notice of the application for such the discharge shall be given to the complainant, if she lives within the state, and also to the district attorney at least 15 days before such the application for discharge is made. Upon the defendant's release, if he at any time fails to comply with the judgment of the court with reference to the continued support of the child, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support such the child which are imposed by law upon the father of a legitimate child of like age and capacity, and in case of such failure to abide by any order of the court, the defendant shall be fully liable for the support of such the child without reference to such the order.

SECTION 5. 97.20 (10) of the statutes is amended to read:

97.20 (10) No person shall may be excused from testifying, from making answer or a report, or from producing any paper, record, document or other evidence, in any examination, inspection, proceeding or requirement in pursuance or enforcement of this section, including civil contempt of court, on the ground of tendency to incriminate; but no person complying herewith shall with this section may be prosecuted in any criminal or forfeiture proceeding for or on account of any transaction, matter or thing as to which he or she may have testified, answered, reported or otherwise produced evidence tending to incriminate him the person, except for perjury, false swearing, false report or false answer in such examination, inspection, proceeding or requirement.

SECTION 6. 101.15 (2) (f) 2 of the statutes is amended to read:

101.15 (2) (f) 2. The department may apply to a court of record for the closing of any underground mine, quarry, pit, zinc works or other excavation where the same is being operated in violation of any of its rules or orders, and the owners or operators have failed within a reasonable time to correct any unsafe methods of operation. The failure of any owner or operator to comply with the order or judgment of the court shall subject such subjects the party or parties to criminal contempt proceedings.

SECTION 7. 103.60 (intro.) and (3) of the statutes are amended to read:

103.60 Contempt cases. (intro.) If a person is charged with civil or criminal contempt under this chapter for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy:

(3) Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein in which the contempt shall have been was committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. All contempt proceedings, ~~whether civil or criminal~~, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury.

SECTION 8. 133.07 (4) of the statutes is amended to read:

133.07 (4) Whenever in any matter relating to the violation of any such restraining order or injunction an issue of fact ~~shall arise, such arises,~~ the issue, whether presented in a civil or a criminal proceeding, shall be tried by a jury, in the same manner as provided for the trial of other cases. All contempt proceedings, ~~whether civil or criminal~~, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury. The requirement for trial by jury shall not apply to direct contempts committed in the immediate presence of the court.

SECTION 9. 345.11 (8) of the statutes is amended to read:

345.11 (8) Any person who, with criminal intent, solicits or aids in the disposition or attempted disposition of a uniform traffic citation and complaint in any unauthorized manner ~~shall be is~~ in criminal contempt of the court having original jurisdiction of said the cause of action.

SECTION 10. 757.03 to 757.07 of the statutes, as affected by chapter 32, laws of 1979, are repealed.

SECTION 11. Chapter 785 of the statutes, as affected by chapter 32, laws of 1979, is repealed and recreated to read:

CHAPTER 785

CONTEMPT OF COURT

NOTE: In Wisconsin as in other states and countries, there has been a continuing confusion over the law of contempt of court and in particular over the statutes which attempt to regulate the exercise of the contempt power by the courts. The situation in Wisconsin has been well described in Comment, Contempt of Court: Some Considerations for Reform, 1975 Wis. L. Rev. 1117. The problem nationally has been reviewed in Goldfarb, The Contempt Power (1963); Dobbs, Contempt of court — A Survey, 56 Cornell L. Rev. 183 (1971); Dorsen and Friedman, Disorder in the Court (1973); and American Bar Association, Standards of Criminal Justice, The Function of the Trial Judge ss. 6.1 to 7.5 (1971). The Canadian situation is discussed in Law Reform Commission of Canada, Contempt of Court, 20 Canadian Journal of Criminology 1 (1978).

In an effort to eliminate some of the confusion in Wisconsin, chapter 401, laws of 1975, was enacted. This revised the chapters of the statutes dealing with both civil and criminal contempt. It did not change, however, the division of contempt between civil and criminal. As a result, the confusion which judges and lawyers previously had between civil and criminal contempt was continued and the revision did not provide a solution to the main problem. *State v. King*, 82 Wis. 2d 124, 262 N.W.2d 80 (1978).

Commentators on the law of contempt have for some time been in agreement that the law of contempt could not be clarified unless the statutes forego the attempt to define contempt in terms of civil and criminal contempt. The reason for this is because the distinction between civil and criminal contempt has never been

made on the basis of the type of conduct involved, but rather on the nature and purpose of the penalty imposed. The difficulty was that the nature and purpose of the penalty was not determined until the end of the contempt proceeding, at which time it was too late to have the procedures conform to the requirements for the type of contempt involved. See Comment, Contempt of Court: Some Considerations for Reform, 1975 Wis. L. Rev. 117, 1119-1124.

The approach adopted here is the one proposed in Dobbs, Contempt of Court: A Survey, 56 Cornell L. Rev. 183, 247 (1971). Under this approach, the statute does not attempt to draw a distinction between civil and criminal contempt. Rather the distinction is drawn between the purpose of the sanction sought to be imposed, and the procedures to be followed depend upon the sanction sought. This approach, the council believes, will eliminate most of the confusion that has previously existed in the law of contempt, provide a clear and certain basis for determining which sanction to seek, and specify the procedures to be followed depending upon the sanction sought.

785.01 Definitions. (1) "Contempt of court" means intentional:

- (a) Misconduct in the presence of the court which interferes with a court proceeding or with the administration of justice, or which impairs the respect due the court;
 - (b) Disobedience, resistance or obstruction of the authority, process or order of a court;
 - (c) Refusal as a witness to appear, be sworn or answer a question; or
 - (d) Refusal to produce a record, document or other object.
- (2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.
- (3) "Remedial sanction" means a sanction imposed for the purpose of terminating a continuing contempt of court.

NOTE: (1) The definition of contempt of court is intended to be broad and general. Wisconsin statutes formerly included a lengthy list of acts which were included in the definition of criminal contempt (s. 256.03 (1975)). This list was shortened by chapter 401, laws of 1975 (s. 757.03 (1977)). The intention of this new section is not to exclude any acts which were previously defined as contempt of court, but to make it more inclusive by being less specific and less wordy.

There are a number of sections scattered throughout the statutes which state that certain types of conduct may be punished as contempt of court. No change is made in any of these sections. In most cases the conduct described falls within the language of this section, but if it does not there is no intention to repeal the other section.

The prior statute, s. 757.03 (1977), contained the words "wilful and intentional" in the definition of the types of conduct defined in sub. (1) (b) and (c). Only the word "intentional" is used here because the council believes that although conduct must be intentional to constitute contempt, the higher standard of "wilful" is inappropriate. Similarly, the previous section contained language that a refusal to do something had to be "without legal justification" before it constituted contempt. These words are not necessary because no contempt can be found if the refusal had a legal justification. It is not the purpose of the council to change the law of contempt as it relates to intent or the defenses available to a contempt charge.

It is not the intent of the council to make the failure to comply with a scheduling, discovery or pretrial order automatically contempt of court. Sanctions for failure to comply with these types of orders are specified in the rules of civil proce-

dure. An order issued to compel compliance with a scheduling, discovery or pretrial order, however, may be enforced by contempt.

(2) Traditionally, a remedial sanction was the type of sanction imposed for civil contempt. The purpose of the sanction was remedial in that it was designed to force a person into complying with an order of the court and terminating a present contempt of court. That concept is continued here, even though without the civil contempt designation. The definition makes it clear that a remedial sanction is appropriate only when the contempt is continuing, and cannot be imposed if for any reason the contempt has ceased, even as a result of the settlement of the case. This is consistent with prior law. *State v. King*, 82 Wis.2d 124, 262 N.W.2d 80 (1978).

(3) Under prior law, criminal contempt involved sanctions imposed on past conduct designed to vindicate the authority of the court. Again here, the concept is retained in the definition of punitive sanction, although the phrase "criminal contempt" is not used. There is no intent, however, to change the basic law of contempt.

785.02 Power of court to punish for contempt of court. A court of record may impose a remedial or punitive sanction for contempt of court under this chapter.

NOTE: This section recognizes the inherent authority of a court of record to punish for contempt of court. The supreme court has often acknowledged, however, the power of the legislature to regulate and limit how that power is exercised by the courts, so long as the contempt power is not rendered ineffectual. *State v. King*, 82 Wis.2d 124, 262 N.W.2d 80 (1978).

A municipal court, which is not a court of record, has limited contempt power under s. 800.12 which is amended by this act to make it conform to the other provisions of this act.

785.03 Procedure. (1) **NONSUMMARY PROCEDURE.** (a) *Remedial sanction.* A person aggrieved by a contempt of court may seek imposition of a remedial sanction for the contempt by filing a motion for that purpose in the proceeding to which the contempt is related. The court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(b) *Punitive sanction.* The district attorney of a county, the attorney general or a special prosecutor appointed by the court may seek the imposition of a punitive sanction by issuing a complaint charging a person with contempt of court and reciting the sanction sought to be imposed. The district attorney, attorney general or special prosecutor may issue the complaint on his or her own initiative or on the request of a party to an action or proceeding in a court or of the judge presiding in an action or proceeding. The complaint shall be processed under chs. 967 to 973. If the contempt alleged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(c) *Joint hearing and trial.* The court may hold a hearing on a motion for a remedial sanction jointly with a trial on a complaint seeking a punitive sanction.

(2) **SUMMARY PROCEDURE.** The judge presiding in an action or proceeding may impose a punitive sanction upon a person who commits a contempt of court in the actual presence of the court. The judge shall impose the punitive sanction immediately after the contempt of court and only for the purpose of preserving order in the court and protecting the authority and dignity of the court.

NOTE: (1) (a) Under prior law, the relationship between a contempt proceeding seeking a remedial sanction and the proceeding out of which it arose was not clear, nor was the procedure for initiating the contempt proceeding. This section makes it clear that the motion filed in the principal proceeding is the proper

procedure to be used. Any person aggrieved by the contempt, even one not a party to the principal proceeding, may file the motion. In all but the rarest of instances this would not include the presiding judge.

A person must be aggrieved by the contempt to have standing to file the motion. This incorporates the concept contained in prior ss. 295.01 and 295.03 (1) (1977) that a contempt must in some way impair or prejudice the rights or remedies of the person in the original proceeding.

If the person who is alleged to be committing the contempt is not a party to the original proceeding, the person may be brought in as a party for the purposes of the contempt motion pursuant to s. 803.06. The request to add the person as a party should be included in the contempt motion.

The appealability of the court's ruling on the contempt motion is determined by s. 808.03.

(b) The procedure for seeking a punitive sanction in a nonsummary situation is made the same as for a criminal violation. The supreme court of the United States has made it clear that the basic requirements of due process for criminal prosecutions are applicable to criminal contempt proceedings. The council believes that the simplest solution is to have all of the procedures set forth in chs. 967 to 973 made applicable to the punitive sanction proceeding because there is not real distinction between the 2 types of proceedings. For this same reason the council decided not to include any provision making the acts punishable by a punitive sanction also punishable as a crime. Even if not prevented by the technical requirements of double jeopardy, there should be only one punishment for any criminal type act. Thus, no provision comparable to former s. 757.07 (1977) is included.

(c) This paragraph permits a motion for a remedial sanction to be heard at the same time as a trial of a complaint seeking a punitive sanction. The objective is designed to avoid duplication if the same facts must be proved in each proceeding. It is recognized that there may be different evidence introduced, triers of facts, standards of proof and attorneys. Nonetheless, the council believes that the joint hearing and trial should be available as an option for the judge to use.

(2) It is universally recognized that a court must be able to deal summarily with contempts committed in the actual presence of the court in order to preserve order in the court and to protect its dignity and authority. This power is very limited, as is the penalty that can be imposed under s. 785.04 (2) (b). The exercise of this authority does not depend upon whether the person committing the contempt is in custody, contrary to *State v. Van Laarhoven*, Wis. 2d, 279 N.W.2d 488 (1979).

The term "actual presence" is used rather than "immediate view and presence" as in prior s. 757.04 (1) (a) (1977) because the former is consistent with Rule 42 of the federal rules of criminal procedure and the council's intent is to have the Wisconsin statute be in accord with the federal rule.

785.04 Sanctions authorized. (1) **REMEDIAL SANCTION.** A court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.

(b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.

(c) A forfeiture not to exceed \$2,000 for each day the contempt of court continues.

(d) An order designed to ensure compliance with a prior order of the court.

(e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(2) **PUNITIVE SANCTION.** (a) *Nonsummary procedure.* A court, after a finding of contempt of court in a nonsummary procedure under s. 785.03 (1) (b), may impose for each separate contempt of court a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year or both.

(b) *Summary procedure.* A court, after a finding of contempt of court in a summary procedure under s. 785.03 (2), may impose for each separate contempt of court a fine of not more than \$500 or imprisonment in the county jail for not more than 30 days or both.

(3) **PAST CONDUCT.** A punitive sanction may be imposed for past conduct which was a contempt of court even though similar present conduct is a continuing contempt of court.

NOTE: The sanctions listed in this section are essentially the same as under prior law. Sub. (1) (d) is added to make it clear that a separate order may be necessary to enforce a prior order. Sub. (1) (e) incorporates the principle set forth in *Kenosha Unified School Dist. No. 1 v. Kenosha Ed. Assn.*, 70 Wis.2d 325, 234 N.W.2d 311 (1975).

Subsection (3) is intended to make it clear that where a contempt of court has continued for some time it is permissible for a punitive sanction to be imposed for past conduct even though the contempt is still continuing and may be the object of a remedial sanction. The 2 sanctions are not mutually exclusive.

785.06 Court commissioners, municipal courts and administrative agencies. A court commissioner, municipal court or state administrative agency conducting an action or proceeding or a party to the action or proceeding may petition the circuit court in the county in which the action or proceeding is being conducted for a remedial or punitive sanction specified in s. 785.04 for conduct specified in s. 785.01 in the action or proceeding.

NOTE: Various statutory provisions provide for contempt procedures to be available in support of proceedings before court commissioners, municipal courts and state administrative agencies. This general section is included to make this chapter generally applicable to all situations before those bodies and not those covered only by specific provisions. Those specific provisions are not, however, repealed and govern where applicable.

SECTION 12. 800.12 (1) of the statutes, as affected by chapter 32, laws of 1979, is repealed and recreated to read:

800.12 (1) A municipal judge may impose a sanction authorized under sub. (2) for contempt of court, as defined in s. 785.01 (1), in accordance with the procedures under s. 785.03.

SECTION 13. 800.12 (2) of the statutes, as affected by chapter 32, laws of 1979, is repealed.

SECTION 14. 800.12 (3) of the statutes, as affected by chapter 32, laws of 1979, is renumbered 800.12 (2).

SECTION 15. 887.25 (2) of the statutes is amended to read:

887.25 (2) If any person on whom such the subpoena has been served, and to whom has been tendered the sum of 10 cents for each mile to be traveled to and from the court, together with the sum of \$5 for each day that his or her attendance is required, shall neglect neglects to attend and testify at such the trial, he the person shall be punished as for a criminal contempt of court unless such the subpoena shall be is vacated.

SECTION 16. 945.041 (5) of the statutes is amended to read:

945.041 (5) Violations of injunctional orders hereunder shall be under this section are punishable by the court as criminal contempts in accordance with the provisions of chapter 757 of court under ch. 785.

SECTION 17. Cross-reference changes. In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A Statute Sections	B Old Cross-References	C New Cross-References ch. 785
767.29 (1), as affected by chapter 32, laws of 1979	785.02	ch. 785
767.30, as affected by chapter 32, laws of 1979	785.02	ch. 785
767.305, as affected by chapter 32, laws of 1979	785.02	ch. 785
767.37 (1) (a), as affected by chapter 32, laws of 1979	295.02	ch. 785

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CHAPTER 258, Laws of 1979

AN ACT to amend 344.02 (4), 344.08 (2) and 344.18 (1) (d) and (3) (b); and to repeal and recreate 344.20 (3) of the statutes, relating to the duration of suspension period for failure to report an accident or failure to deposit security.

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

SECTION 1. 344.02 (4) of the statutes is amended to read:

344.02 (4) The time during which enforcement of an order of suspension is stayed pending completion of court review thereof shall not be included as part of the 13-month one-year period fixed by s. 344.18 (1) (d).

SECTION 2. 344.08 (2) of the statutes is amended to read:

344.08 (2) Any operating privilege suspended pursuant to under this section, or suspended pursuant to under any other section for failure to report an accident, shall be reinstated in accordance with s. 344.09 at the end of 13 months one year following the accident effective date of the suspension order if, during such 13-month one-year period, no notice of action instituted within one year from the date of the accident has been filed with the department in the manner specified in s. 344.18 (1) (d).

SECTION 3. 344.18 (1) (d) of the statutes, as affected by chapter 32, laws of 1979, is amended to read:

344.18 (1) (d) Thirteen months have One year has elapsed since the effective date of the accident suspension order and, during such period, no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest within the one-year period following the date of the accident or by service of counterclaim or cross-complaint within the 20-day answer period. If the action was commenced in a court of record, the notice required by this paragraph shall include a certified copy of the summons and complaint or counterclaim or cross-complaint and proof of service filed therein. In all cases of service under s. 345.09 (nonresident service), an additional notice and

service must be made under ch. 344 this chapter to avail oneself of the provisions of said this chapter.

SECTION 4. 344.18 (3) (b) of the statutes is amended to read:

344.18 (3) (b) ~~Thirteen months have~~ One year has elapsed since the date when the security was required and, during such period, no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest within the one-year period following the date when such security was required or by service of counterclaim or cross-complaint within the 20-day answer period. The notice required by this paragraph shall comply with sub. (1) (d).

SECTION 4m. 344.20 (3) of the statutes is repealed and recreated to read:

344.20 (3) (a) The deposit of security or any balance thereof shall be returned to the depositor or the personal representative under the conditions provided in par. (b) or (c).

(b) The deposit or any balance thereof shall be returned when evidence satisfactory to the secretary has been filed that one of the contingencies specified in s. 344.18 (1) (b), (c) or (d) or (3) (b) has occurred.

(c) If the provisions of s. 344.18 (1) (b), (c) or (d) or (3) (b) are not applicable, the deposit or any balance thereof shall be returned when one year has elapsed from the date the deposit was made and during that period no notice has been filed with the secretary by any claimant that an action was commenced by a party in interest within the one-year period following the date of the accident or by service of counterclaim or cross complaint within the 20-day answer period. If the action was commenced in a court of record, the notice required by this paragraph shall include a certified copy of the summons and complaint or counterclaim or cross complaint and proof of service filed therein. In all cases of service under s. 345.09, an additional notice and service must be made under this chapter to avail oneself of the provisions of this chapter.

SECTION 5. Effective date. This act takes effect on the first day of the first month commencing after publication and applies to all accidents occurring on or after that date.
