

**1981 Assembly Bill 613**

Date published: **April 30, 1982**

**CHAPTER 289 , Laws of 1981**

**AN ACT** to repeal 59.99 (11), (12) and (13) and 62.23 (7) (e) 11, 12 and 13; to amend 19.97 (2), 40.18 [40.08] (12), 48.15, 51.45 (13) (m), 59.99 (10), 62.23 (7) (e) 10, 68.13 (1), 70.47 (13) and (16) (a), 70.85 (1), 801.02 (1) and (5), 802.10 (1), 974.06 (8), 976.03 (10) and (27) (a) and 977.05 (4) (j); and to create chapter 781

and 801.50 (9r) of the statutes, relating to the use of extraordinary remedies in legal actions and proceedings.

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

JUDICIAL COUNCIL NOTE: A long-standing problem for courts and litigants has been uncertainty as to the procedure applicable to actions seeking an extraordinary writ — mandamus, prohibition, habeas corpus, quo warranto, or certiorari. The relationship between the rules of civil procedure (chapters 801 to 807, stats.) and the statutory provisions governing the writs (chapters 782 to 784, stats.) is unclear.

The principal procedural difficulty involves the initiation of the action seeking the extraordinary writ. Rule 801.02 (1), which specifies that an ordinary civil action is commenced by the filing and service of a complaint and summons, expressly does not apply to actions seeking an extraordinary writ. Chapters 782 to 784, stats., include some procedural requirements, but no complete requirements are stated. It is necessary, consequently, to rely on form books that include forms developed over a century ago and which are not reflective of current practice and procedure.

The judicial council, after a review of the question, concluded that the major difficulties would be eliminated if writ procedures were made unnecessary. This bill therefore expressly provides that any remedy available by use of a writ may also be included in a judgment or order rendered in an ordinary action in circuit court. This same approach has been used successfully with regard to injunction under s. 813.01, stats. There is, consequently, no longer any need to use the writ procedure in circuit court, although it remains available.

SECTION 1. 19.97 (2) of the statutes is amended to read:

19.97 (2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to ~~a writ of mandamus, an~~ injunction or a declaratory judgment, as may be appropriate under the circumstances.

NOTE: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 2. 40.18 [40.08] (12) of the statutes, as affected by chapter 96, laws of 1981, is amended to read:

40.18 [40.08] (12) COURT REVIEW. Notwithstanding s. 227.15, any action, decision or determination of the board shall be reviewable only by ~~a writ of~~ certiorari, and any party to the certiorari proceedings ~~shall have~~ has the right of appeal from the decision of the reviewing court.

NOTE: Reference in sub. (12) to a "writ" of certiorari has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 3. 48.15 of the statutes is amended to read:

**48.15 Jurisdiction of other courts to determine legal custody.** Nothing contained in ss. 48.12, 48.13 and 48.14 ~~shall deprive~~ ~~deprives~~ other courts of the right to determine the legal custody of children ~~upon writs of~~ by habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter is paramount in all cases involving children alleged to come within the provisions of ss. 48.12, 48.13 and 48.14.

NOTE: Reference to "writs" of habeas corpus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 4. 51.45 (13) (m) of the statutes is amended to read:

51.45 (13) (m) A person committed under this section may at any time seek to be discharged from commitment by ~~writ of habeas corpus under s. 782.01 (2) proceedings.~~

NOTE: Reference to a "writ" of habeas corpus in sub. (13) (m) has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 5. 59.99 (10) of the statutes is amended to read:

59.99 (10) (title) CERTIORARI. Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the municipality, may ~~present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Such petition shall be presented to the court, within thirty 30 days after the filing of the decision in the office of the board, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board and on due cause shown, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.~~

SECTION 6. 59.99 (11), (12) and (13) of the statutes are repealed.

NOTE: Subsections (11), (12) and (13) have been repealed as unnecessary because in large part they merely describe the remedy of certiorari, which is now available in an ordinary action. See s. 781.01, stats., and the note thereto. Those provisions of the repealed subsections which permit departure from ordinary certiorari procedures, such as augmentation of the record by the court, have been placed in sub. (10). No substantive change in the scope or standard of review is intended.

SECTION 7. 62.23 (7) (e) 10 of the statutes is amended to read:

62.23 (7) (3) 10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may ~~present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.~~

SECTION 8. 62.23 (7) (e) 11, 12 and 13 of the statutes are repealed.

NOTE: Subsection (7) (e) 11, 12 and 13 have been repealed as unnecessary because in large part they merely describe the remedy of certiorari, which is available in an ordinary action. See s. 781.01, stats., and the note thereto. Those provisions of the repealed subdivisions which permit departure from ordinary certiorari procedures, such as augmentation of the record by the court, have been placed in subd. 10. No substantive change in the scope or standard of review is intended.

SECTION 9. 68.13 (1) of the statutes is amended to read:

68.13 (1) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within 30 days of receipt of the final determination. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

NOTE: Reference in sub. (1) to a "writ" of certiorari has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 10. 70.47 (13) and (16) (a) of the statutes are amended to read:

70.47 (13) (title) CERTIORARI. Except as provided in s. 70.85, appeal from the determination of the board of review shall be by writ of an action for certiorari to the circuit court and shall be placed at the head of the circuit court calendar for an early hearing. No such writ shall issue unless the petition therefor is made to the circuit court commenced within 90 days after final adjournment of the board. The action shall be placed at the head of the circuit court calendar for an early hearing. If the court on such the appeal finds any error in the proceedings of the board which renders the assessment or the proceedings void, it shall remand the assessment to the board for further proceedings in accordance with the court's determination and retain jurisdiction of the matter until the board has determined an assessment in accordance with the court's order. For this purpose, if final adjournment of the board occurs prior to the court's decision on the appeal, the court may order the governing body of the assessing authority to reconvene the board.

(16) (a) In 1st class cities all objections to the amount or valuation of real or personal property shall be first made in writing and filed with the tax commissioner on or before the 3rd Monday in May. No person may, in any action or proceeding, question the amount or valuation of real or personal property in the assessment rolls of the city unless objections have been so filed. The board may not waive the requirement that objections be in writing. If the objections have been investigated by a committee of the board of assessors as provided in s. 70.07 (6), the board of review may adopt the recommendation of the committee unless the objector requests or the board orders a hearing. At least 2 days' notice of the time fixed for the hearing shall be given to the objector or attorney and to the city attorney of the city. The provisions of the statutes relating to boards of review not inconsistent with this subsection apply to proceedings before the boards of review of 1st class cities, except that the board need not adjourn until the assessment roll is completed by the tax commissioner, as required in s. 70.07 (6), but may immediately hold hearings on objections filed with the tax commissioner, and the changes, corrections and determinations made by the board acting within its powers shall be prima facie correct. Appeal from the determination shall be by writ of an action for certiorari to the circuit court and shall be placed at the head of the circuit court calendar for an early hearing. No writ of certiorari shall issue to the board of review unless the petition for the writ is filed with the circuit court commenced within 90 days after final adjournment of the board of review. The action shall be placed at the head of the circuit court calendar for an early hearing.

NOTE: References in subs. (13) and (16) (a) to “writs” of certiorari have been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 11. 70.85 (1) of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

70.85 (1) ~~Whenever it appears to the satisfaction of~~ If the department of revenue, on a written complaint filed with the department within 20 days after the adjournment of the board of review for any taxation district, determines that the assessment of one or more descriptions of property in the taxation district, the fair market value of which does not exceed \$1 million as determined by the department of revenue, is radically out of proportion to the general average of the assessment of all other property in the district and the assessment can be satisfactorily corrected without a reassessment of the entire district, the department of revenue may revalue the property and equalize the assessment without the intervention of a board of review, if the revaluation can be accomplished before November 1 of the year in which the assessment is made or within 60 days of the receipt of the written complaint, whichever is later. The valuation so fixed by the department shall be substituted for the original valuation in the assessment and tax rolls and taxes computed and paid on it accordingly. No assessment ~~shall~~ may be raised except on the written complaint of 3 or more taxpayers and only if the party to whom the property is assessed has been duly notified of the intention in time to appear and be heard before, or file the party’s objections with, the department in relation to it. Appeal from the determination of the department shall be by ~~writ of~~ an action for certiorari ~~to~~ in the circuit court of the county in which the property is located ~~and, which~~ shall be placed at the head of the circuit court calendar for an early expedited hearing.

NOTE: Reference in sub. (1) to a “writ” of certiorari has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 12. Chapter 781 of the statutes is created to read:

CHAPTER 781  
EXTRAORDINARY REMEDIES

**781.01 Extraordinary remedy as final judgment or provisional remedy.** The remedy available by a writ of mandamus, prohibition, quo warranto, certiorari or habeas corpus may be granted by the final judgment or allowed as a provisional remedy in an action or proceeding. The use of a writ is not necessary. This section does not alter the nature of any extraordinary remedy or the scope of the proceedings, including without limitation the relief available, discovery, the availability of jury trial and the burden of proof.

NOTE: This section renders the use of the writ procedure unnecessary. It makes the remedy available by one of the extraordinary writs also available by a final judgment or a provisional remedy in an ordinary action in circuit court. This section follows the approach taken in s. 813.01, stats., by which the injunction remedy was made available in an ordinary action, and in s. 809.01 (1), stats., by which the writ of error procedure was made the same as the procedure for appeals.

**781.02 Temporary relief.** A plaintiff in an action or proceeding seeking an extraordinary remedy may request, by motion, temporary relief pending disposition of the action or proceeding. Procedure on the motion is governed by s. 801.15 (4) unless the plaintiff establishes that an emergency exists, in which even the court may rule on the motion *ex parte*.

**781.03 Transmittal of record.** In an action or proceeding seeking an extraordinary remedy for which a record must be reviewed, the defendant shall cause the record to be transmitted to the clerk of court in which the action or proceeding is pending or shall give

notice of the pendency of the action to the person in possession of the record. The person in possession of the record shall transmit the record to the clerk upon receipt of the notice.

NOTE: This rule will be used most often in a certiorari action in which a proceeding in an inferior tribunal or body is reviewed on the record. It puts the ultimate responsibility for transmitting the record on the person in possession of the record.

**781.04 Habeas corpus.** (1) In an action or proceeding seeking the remedy available by habeas corpus, the court may admit the prisoner to bail in accordance with ch. 969.

(2) If the prisoner is detained upon any criminal accusation, no order for discharge may be made until sufficient notice of the time and place of the hearing on the application is given to the district attorney of the county in which the action or proceeding is pending.

NOTE: Subsection (1) applies the substance of s. 782.23, stats., to all actions and proceedings for the remedy available by habeas corpus.

Subsection (2) applies the substance of s. 782.26, stats., to all actions and proceedings for the remedy available by habeas corpus.

SECTION 13. 801.02 (1) and (5) of the statutes are amended to read:

801.02 (1) A civil action in which a personal judgment is sought, ~~other than certiorari, habeas corpus, mandamus or prohibition,~~ is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 60 days after filing.

(5) An action of seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition is may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ. ~~A if a copy of the writ shall be is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.~~

NOTE: Subsection (1) is amended to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action. Subsection (5) allows the additional option of using an order to shorten the time for filing a response to the complaint in lieu of a summons. This option is for the emergency situation when the case may be moot before a response would be filed. The order serves the same purpose as the alternative writ and the order to show cause used to initiate the action under writ procedures. In all other matters of procedure, the rules of civil procedure govern to the extent applicable. Subsection (5) applies only to procedure in the circuit court. In seeking an extraordinary remedy in the supreme court or court of appeals, s. 809.51, stats., should be followed.

SECTION 14. 801.50 (9r) of the statutes is created to read:

801.50 (9r) **HABEAS CORPUS.** Of an action seeking a remedy available by habeas corpus:

(a) If the action seeks relief from a judgment of conviction or a sentence under which the plaintiff's liberty is restrained, in the county in which the plaintiff was convicted or sentenced.

(b) If the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff, in the county in which the liberty of the plaintiff is restrained.

NOTE: Subsection (9r) is intended to eliminate some of the confusion as to venue for an action seeking habeas corpus relief. An attack on the validity of a conviction or sentence is most appropriately filed in the county where the conviction and sentence took place while an attack on the conditions of confinement is most appropriate in the county where the plaintiff is confined. In each, venue is where the records and witnesses are most likely to be conveniently available.

SECTION 15. 802.10 (1) of the statutes is amended to read:

802.10 (1) This section applies to all actions and special proceedings except appeals taken to circuit court, actions seeking writs of the remedy available by certiorari, habeas corpus, mandamus, prohibition and quo warranto, actions in which all defendants are in default, provisional remedies, and actions under s. 66.12, chs. 48, 52, 102, 108, 227, 348, 767, 778, 799, and 812, and proceedings under chs. 851 to 882.

NOTE: The reference in sub. (1) to "writs" of certiorari, habeas corpus, mandamus, prohibition and quo warranto has been removed because these remedies are now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 16. 974.06 (8) of the statutes is amended to read:

974.06 (8) An application A petition for a writ of habeas corpus or an action seeking that remedy in behalf of a prisoner who is authorized to apply for relief by motion ~~pursuant to~~ under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced ~~him~~ the prisoner, or that ~~such~~ the court has denied ~~him~~ the prisoner relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.

NOTE: Subsection (8) has been amended to reflect the fact that habeas corpus relief is now available in an ordinary action in circuit court. See s. 781.01, stats., and the note thereto and s. 809.51, stats.

SECTION 17. 976.03 (10) and (27) (a) of the statutes are amended to read:

976.03 (10) (title) RIGHTS OF ACCUSED; APPLICATION FOR HABEAS CORPUS. No person arrested upon such warrant ~~shall~~ may be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to ~~apply for a writ of~~ commence an action for habeas corpus. When such ~~writ is applied for~~ action is commenced, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

(27) (a) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in subs. (7) and (8) and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; however, before such waiver shall be executed or subscribed by such person the judge shall inform such person of his rights to the issuance and service of a warrant of extradition and to ~~obtain a writ of~~ commence an action for habeas corpus as provided in sub. (10).

NOTE: References in subs. (10) and (27) (a) to a "writ" of habeas corpus have been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 18. 977.05 (4) (j) of the statutes, as affected by chapter 20, laws of 1981, is amended to read:

977.05 (4) (j) At the request of any person determined by the state public defender to be indigent or upon referral of any court, prosecute a writ of error, appeal, ~~writ of action or proceeding~~ for habeas corpus or other post-conviction or post-commitment remedy or attack the conditions of confinement on behalf of ~~such~~ the person before any court, if the state public defender determines the case should be pursued.

NOTE: Reference in sub. (4) (j) to a "writ" of habeas corpus has been removed because the remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto.

SECTION 19. **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:

<b>A</b>	<b>B</b>	<b>C</b>
Statute Sections	Old Cross-References	New Cross-References
59.456 (6)	782.01 (2)	51.45 (13)(m)
236.13 (5)	62.23 (7)(e) 10 to 15	62.23 (7)(e) 10, 14 and 15

SECTION 20. **Effective date.** This act takes effect on the first day of the month following its publication.

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