

# State of Wisconsin



1995 Senate Bill 538

Date of enactment: **June 10, 1996**  
Date of publication\*: **June 24, 1996**

## 1995 WISCONSIN ACT 438

AN ACT *to amend* 973.05 (1) and 973.05 (1m); and *to create* 59.39 (11), 565.37 (5r) and 973.05 (4) and (5) of the statutes; **relating to:** the collection of fines through civil actions and providing a penalty.

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

**SECTION 1.** 59.39 (11) of the statutes is created to read:

59.39 (11) Keep a record of all payments ordered by the court under s. 973.05 (4) to be paid to the clerk of circuit court or ordered by a court in another county or jurisdiction but enforced or received by the clerk's court.

**SECTION 2.** 565.37 (5r) of the statutes is created to read:

565.37 (5r) WITHHOLDING OF ASSESSMENTS, FINES, RESTITUTION AND SURCHARGES. If the administrator receives a notice of the assignment of lottery prizes under s. 973.05 (4) (b), he or she shall periodically determine if the person subject to the assignment is a winner of a lottery prize that is payable in instalments. If the administrator determines that a person subject to an assignment of lottery prizes under s. 973.05 (4) (b) is a winner of a lottery prize that is payable in instalments, the administrator shall withhold the amount of the judgment that is the basis of the assignment from the next instalment payment. The administrator shall submit the withheld amount to the court that issued the assignment. The administrator shall notify the winner of the reason that the amount is withheld from the lottery prize. If the initial instalment payment is insufficient to pay the judgment, the administrator shall withhold and submit to the court

an amount from any additional instalment payments until the judgment is paid in full or until the court notifies the administrator that the judgment is paid and the assignment is no longer in effect.

**SECTION 3.** 973.05 (1) of the statutes is amended to read:

973.05 (1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment of the fine, of the penalty assessment imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1), the crime victim and witness assistance surcharge under s. 973.045, any applicable deoxyribonucleic acid analysis surcharge under s. 973.046, any applicable drug abuse program improvement surcharge imposed by s. 161.41 (5), any applicable domestic abuse assessment imposed by s. 971.37 (1m) (c) 1. or 973.055, any applicable driver improvement surcharge imposed by s. 346.655, any applicable weapons assessment imposed by s. 167.31, any applicable uninsured employer assessment imposed by s. 102.85 (4), any applicable environmental assessment imposed by s. 144.992, any applicable wild animal protection assessment imposed by s. 29.9965, any applicable natural resources assessment imposed by s. 29.997 and any applicable natural resources restitution payment imposed by s. 29.998 to be made within a period not to exceed 60 120 days. If no such permission is embodied in the sentence, the fine, the penalty assessment, the jail assessment, the crime victim and witness assistance surcharge,

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

any applicable deoxyribonucleic acid analysis surcharge, any applicable drug abuse program improvement surcharge, any applicable domestic abuse assessment, any applicable driver improvement surcharge, any applicable weapons assessment, any applicable uninsured employer assessment, any applicable environmental assessment, any applicable wild animal protection assessment, any applicable natural resources assessment and any applicable natural resources restitution payment shall be payable immediately.

**SECTION 4.** 973.05 (1m) of the statutes is amended to read:

973.05 (1m) If the court orders payment of restitution and a fine and related payments under s. 973.20, the court may authorize a payment period in excess of ~~60 days~~ the limit imposed under sub. (1).

**SECTION 5.** 973.05 (4) and (5) of the statutes are created to read:

973.05 (4) If a defendant fails to pay the fine, assessment, surcharge or restitution payment within the period specified under sub. (1) or (1m), the court may do any of the following:

(a) Issue a judgment for the unpaid amount and direct the clerk to file and docket a transcript of the judgment, without fee. If the court issues a judgment for the unpaid amount, the court shall send to the defendant at his or her last-known address written notification that a civil judgment has been issued for the unpaid fine, assessment, surcharge or restitution payment. The judgment has the same force and effect as judgments docketed under s. 806.10.

(b) Issue an order assigning lottery prizes that are payable in instalments and not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102 and other money due or to be due in the future to the clerk for payment of the unpaid fine, assessment, surcharge or restitution payment. In this paragraph, "employer" includes the state and its political subdivisions.

(5) (a) Upon entry of the assignment under sub. (4) (b), unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last-known address of the person from whom the defendant receives or will receive money. If the clerk does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order directing payment. If the court issues an order under sub. (4) (b) assigning lottery prizes, the court shall send the notice of that order to the administrator of the lottery division of the gaming commission, including a statement of the amount owed under the judgment and the name and address of the person owing the

judgment. The court shall notify the administrator of the lottery division of the gaming commission when the judgment that is the basis of the assignment has been paid in full.

(b) For each payment made under the assignment under sub. (4) (b), the person from whom the defendant under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the defendant.

(c) A person who receives notice of the assignment under par. (a) shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the clerk of the jurisdiction providing notice. Section 241.09 does not apply to assignments under this section.

(d) If after receipt of notice of assignment under par. (a) the person from whom the defendant receives money fails to withhold the money or send the money to the clerk as provided in this subsection, the person may be proceeded against under the principal action under ch. 785 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1% of the amount not withheld or sent.

(e) If an employer who receives notice of an assignment under par. (a) fails to notify the clerk within 10 days after an employe is terminated or otherwise temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under ch. 785 for contempt of court.

(f) Compliance by the person from whom the defendant receives money with the order operates as a discharge of the person's liability to the defendant as to that portion of the defendant's commission, earnings, salaries, wages, benefits or other money so affected.

(g) No employer may use an assignment under sub. (4) (b) as a basis for the denial of employment to a defendant, the discharge of an employe or any disciplinary action against an employe. An employer who denies employment or discharges or disciplines an employe in violation of this paragraph may be fined not more than \$500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of industry, labor and human relations for enforcement of this paragraph.

(h) A person who receives more than one notice of assignment under par. (a) may send all money withheld to the clerk in a combined payment, accompanied by any information that the clerk requires.

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(i) 1. In this paragraph, "payroll period" has the meaning given in s. 71.63 (5).

2. If after an assignment is in effect the defendant's employer changes its payroll period, or the defendant changes employers and the new employer's payroll period is different from the former employer's payroll period, the clerk may, unless otherwise ordered by a judge, amend the withholding assignment or order so that all of the following apply:

a. The withholding frequency corresponds to the new payroll period.

b. The amounts to be withheld reflect the adjustment to the withholding frequency.

(j) The clerk shall provide notice of the amended withholding assignment or order under par. (i) by regular mail to the defendant's employer and to the defendant.

**SECTION 6. Initial applicability.**

(1) This act first applies to sentences imposed on the effective date of this subsection.

**SECTION 7. Effective date.**

(1) This act takes effect on the first day of the 4th month beginning after publication or on June 30, 1996, whichever is earlier.

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