

CHAPTER 360.

CRIMINAL PROCEEDINGS IN JUSTICE COURTS.

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360.01 Justices' jurisdiction. Except as otherwise provided in this chapter, justices of the peace shall have jurisdiction throughout their respective counties to:

- (1) Cause the laws for the preservation of peace to be kept;
- (2) Cause to come before any of them persons who break or attempt to break the peace and commit such persons to jail or bail;
- (3) Cause to come before them the keepers of houses of ill fame and frequenters of the same or common prostitutes, and compel them to give security for good behavior;
- (4) Cause to come before them persons who are charged with committing any crime and commit them to jail or bail; and
- (5) Hold court to try and determine all charges for crimes arising within their counties, the punishment whereof does not exceed 6 months' imprisonment in the county jail or a fine of \$200 or both such fine and imprisonment.

[360.02 Stats. 1947 repealed by 1949 c. 631]

360.02 Prosecutions against corporations. If the defendant is a corporation, the justice or district attorney shall issue a summons returnable not less than 10 days after service; the summons shall be served in the same manner as summonses in civil actions are served on corporations. Upon default of the defendant, the justice shall enter judgment for a fine, and execution shall issue as in civil cases.

[360.03 Stats. 1947 renumbered section 360.36 by 1949 c. 631]

360.03 Applicability of chapter 354. All provisions of chapter 354 relating to complaints, warrants and summonses shall apply to proceedings under this chapter. Provisions of chapter 354 relating to adjournments, changes of venue, affidavits of prejudice relating to preliminary examinations shall apply to trials under this chapter.

360.04 General statutes apply. (1) Statutes relating to form or substance or amendment of indictments or informations, the statement of crimes and the evidence thereunder, so far as applicable, shall apply to complaints, amendments, proceedings and trials before justices of the peace.

(2) The forms prescribed by chapter 354 may be used as far as applicable in all criminal proceedings in justice courts.

360.05 Docket entries. The justice shall enter an action in his docket in which the state of Wisconsin is plaintiff and the accused is the defendant, and shall make the other entries required in civil cases.

360.06 Trial; change of venue. On the return of the warrant with the defendant or on the defendant's appearing pursuant to a summons, the justice shall proceed to try the action, unless continued for cause. If the defendant, before he pleads to the complaint, makes oath that from prejudice he believes the justice will not decide impartially in the action, the justice shall transmit all the papers and a copy of his docket entries to the nearest justice of the county who is able to try the action, and he shall proceed with the action as though originally begun before him, and the defendant, if in custody, shall be taken before such nearest justice.

has not commenced before the court is informed that the defendant is a repeater, the court may set aside such sentence and resentence the defendant under this section.

(3) **SENTENCE.** The court may sentence repeaters as follows:

(a) If the present conviction be for a crime punishable by imprisonment only in the county jail, the sentence may be to imprisonment in the county jail not less than the minimum provided by law for the crime nor more than one year or to the state prison not less than one nor more than 3 years.

(b) If the present conviction be for a crime punishable by imprisonment in either the county jail or the state prison, and the prior convictions were for misdemeanors, the sentence may be to the state prison for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime or, if a prior conviction was for a felony, not more than 3 years in excess of such maximum.

(c) If the present conviction be for a crime punishable only by imprisonment in the state prison and the prior convictions were for misdemeanors, the sentence may be for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime, or if a prior conviction was for a felony, not more than 15 years in excess of such maximum.

(4) **FORM OF SENTENCE; ERRORS CURED.** In every such case the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error but the combined terms shall be construed as a single sentence for the present conviction; and if in any case the court shall impose a maximum penalty in excess of that authorized by this section, such excess shall be void and the sentence shall be valid only to the extent authorized by this section and shall stand automatically commuted to that extent without any further proceedings.

[359.13 to 359.15 Stats. 1949 renumbered section 359.12 by 1949 c. 631]

[359.16 Stats. 1947 repealed by 1949 c. 631]

359.17 Masking aggravates crime. If the defendant committed the crime while masked, he may, in addition to the maximum punishment fixed for such crime, in case of conviction for a misdemeanor, be imprisoned not to exceed one year in the county jail, and in case of a felony not to exceed 5 years in the state prison.

360.07 Bail, commitment. The defendant may give bail in such sum, with or without sureties, as the justice directs, for his appearance at the trial and at any time thereafter until discharged by law. On his failure to give bail, he shall be committed to jail.

360.08 Form of bail. The following form of bail may be used in all actions and examinations under this chapter and under chapter 354 upon the adjournment of the action, proceeding or examination:

STATE OF WISCONSIN,
 County,
 Town (city, village) of }
 State of Wisconsin,
 v.
 Name of defendant.

We, A. B. and C. D. and E. F. hereby give bail in the sum of dollars, for the appearance of said A. B. upon the day of, 19.., at M. of that day, before G. H., a of said county, at his office in the (town, village or city) of, in said county, to answer a (criminal prosecution, examination or proceeding) for (state the crime), and from time to time thereafter until discharged by law.

Dated, 19...

(Signed) A. B.
 C. D.
 E. F.

Bail, entered in substantially the foregoing form, shall bind the principal and sureties jointly and severally for the appearance of the defendant and his attendance upon the specified court or magistrate at all times to which the trial or examination may be adjourned and until he is discharged by law.

360.09 Defendant to plead. The charge stated in the warrant or complaint shall be read to the defendant and he shall plead thereto. The justice shall enter the plea in his docket. The defendant may plead guilty, not guilty or nolo contendere; if he refuses to plead, the justice shall enter a plea of not guilty.

360.10 When justice to try issue. If the defendant pleads not guilty and no jury is demanded by him, the justice shall try and determine the action according to the evidence.

360.11 Judgment on plea of guilty. If the defendant pleads guilty or nolo contendere, the justice shall convict him of the crime charged and render judgment.

360.12 Jury, how obtained. If a jury is demanded by the defendant before the trial begins, the justice shall direct the sheriff or any constable of the county to write the names of 18 residents of the county qualified to serve as jurors in courts of record, from which list the defendant and the complainant may each strike 6 names. If either party neglects to strike out names, the justice shall strike out names for him. The justice shall issue a venire to the sheriff or constable to summon the 6 persons whose names are not struck out to appear at the time and place named in the venire.

[360.13 Stats. 1947 renumbered section 360.12 by 1949 c. 631]

360.14 Service of venire. The officer shall summon the jurors personally and shall make a list of the persons summoned, which he shall certify and annex to the venire and return to the justice within the time therein specified.

360.15 Talesmen. If a juror named in the venire fails to attend or if there is any legal objection to any who appears, the justice shall direct the sheriff or constable to summon bystanders to act as jurors.

360.16 Second jury. If the officer fails to return the venire as required or if the jury fails to agree and is discharged, a new jury shall be selected and summoned in the same manner as the preceding one, and the same proceedings shall thereupon be had as that prescribed in respect to the first jury, unless the defendant consents to be tried by the justice, in which case he shall proceed as if no jury had been demanded.

360.17 Challenges for cause. Either party may challenge a juror for cause, as in civil actions.

[360.18 Stats. 1935 repealed by Supreme Court Order, effective Jan. 1, 1937]

360.19 Jury, duty. After the jurors are sworn they shall sit together and hear the evidence in the action, which shall be delivered publicly in the presence of the defendant unless he has waived the right to be present. After hearing the evidence the jury shall be kept together in some convenient place until they agree on a verdict or are discharged. The sheriff or a constable shall be sworn to take charge of the jury.

360.20 Verdict. The jury shall deliver their verdict publicly to the justice, who shall copy it in his docket.

360.21 Judgment and sentence. If the defendant is found guilty, the justice shall render judgment according to law and shall issue a commitment or order as may be required.

360.22 Discharge of accused; costs; appeal. (1) If the defendant is acquitted, he shall be discharged; and if the justice certifies in his docket that the complaint was malicious and without probable cause, he shall enter judgment against the complainant to pay all the taxable costs that have accrued, including the fees of witnesses.

(2) The complainant may stay such judgment for 30 days by giving a bond to the state with one or more sureties conditioned for the payment of the judgment at the expiration of 30 days; but if the complainant neglects to give such bond, the court may (if the complainant gave security for costs in the manner provided in section 360.33) issue execution against both the complainant and the surety, and if the complainant does not satisfy the execution and the officer cannot find sufficient property belonging to him upon which to levy, the officer shall levy upon the property of the surety; and in case the complainant has not given such security, the court may issue a body execution against the complainant, as in civil actions.

(3) The complainant may appeal from the judgment as in civil actions, and the action shall be tried and determined on such appeal upon the records in the action certified and returned by the justice.

[360.23 Stats. 1947 renumbered section 358.01 by 1949 c. 651]

360.24 Execution of judgment. The judgment shall be carried out by the sheriff or constable in accordance with the commitment or execution issued by the court.

360.25 Nonattendance of jurors and witnesses. If any person summoned to appear before a justice of the peace as a juror or witness fails to appear or if any witness refuses to be sworn or to testify, he shall be liable to the same penalties and may be proceeded against in the manner provided in respect to jurors and witnesses in justices' courts in civil proceedings.

360.26 Certificate of conviction. If there is a conviction, the justice shall make and sign a certificate of conviction in which it shall be sufficient to state the crime charged and the conviction and judgment thereon, and if any fine has been collected the amount thereof.

360.27 Certificate filed. Within 20 days after conviction the justice shall file such certificate in the office of the clerk of the circuit court of the county; except in counties having a court other than a circuit court vested with exclusive appellate criminal jurisdiction, in which case the certificate shall be filed with the clerk of that court. The clerk shall make an alphabetical record thereof.

360.28 Certificate as evidence. Such certificate of conviction or a duly certified copy thereof shall be evidence of the facts therein contained.

360.29 Breach of bail bond. If a bail bond is breached, that fact shall be certified to the circuit court and a rearrest may be had as provided in section 354.06.

360.30 Procedure if justice has no jurisdiction to try. If in the progress of a trial before a justice under this chapter it appears to the justice from the evidence that there is probable cause to believe the defendant guilty of a crime of which the justice has not trial jurisdiction and that the defendant ought to be put upon trial for a crime cognizable before another court, the justice shall stop the trial and bind the defendant over or commit him to jail to answer to said court in the same manner as he would have done had the defendant been brought before the justice for a preliminary examination for the crime of which the justice finds there is probable cause to believe him guilty.

360.31 Witnesses; subpoenas. (1) The justice shall subpoena all persons whose testimony is deemed material.

(2) If the trial is continued it is not necessary for the justice to again subpoena any witness who is present, but the justice shall verbally notify such witnesses as either party may require to attend before him to testify in the action on the day set for trial, which notice shall be effective as a subpoena.

[360.32 Stats. 1947 renumbered section 360.31 (2) by 1949 c. 631]

360.33 Security for costs. The justice may require the complainant to give security for costs as in civil actions, and if he refuses, the justice may dismiss the complaint.

360.34 Fines; record, payment, entry, report. All fines imposed by a justice court, police court, municipal court or other magistrate, if paid before the defendant is committed, shall be received by the court or magistrate. The amount thereof, the date when

received and the title of the action shall be entered on the docket or other record required to be kept and be paid to the county treasurer within 30 days after the receipt thereof. And the court or magistrate shall at the same time report in writing to the treasurer the date of conviction, the title of the action and the crime for which the fine was imposed.

360.35 Payment to sheriff. If the defendant is committed, payment of his fine and the costs may be made to the sheriff, who shall, within 30 days after receipt thereof, pay the same to the county treasurer.

360.36 Forms. The following forms may be used:

COMPLAINT

STATE OF WISCONSIN, }
.... County, } In Justice Court
Town (city, village) of } Before , Justice of the Peace
The State of Wisconsin,

v.
Name of defendant.

.... , being duly sworn, says that on the ... day of, 19.., at said county (name of the defendant or alias) did (state the crime), contrary to section of the statutes and against the peace and dignity of the state.

Subscribed and sworn to before me this day of, 19...
....., Justice of the Peace

SUMMONS

(If defendant is a corporation, strike words "arrested and" and amend last clause to read: "and in case of your failure to appear, judgment will be rendered against you.")

STATE OF WISCONSIN, }
.... County, } In Justice Court
Town (city, village) of } Before , Justice of the Peace
The State of Wisconsin,

v.
Name of defendant.

THE STATE OF WISCONSIN, to said defendant:

Whereas, has this day complained in writing to me on oath that you did, on the day of 19.., in said county (here insert the complaint), and has prayed that you might be arrested and dealt with according to law; now, therefore, you are summoned to appear before me at my office in (state the location) in said town (city, village), to answer said complaint, on the ... day of, 19.., at 10 o'clock in the forenoon, and in case of your failure to appear a warrant for your arrest will be issued.

Given under my hand this day of, 19...
....., Justice of the Peace

WARRANT

STATE OF WISCONSIN, }
.... County, } In Justice Court
Town (city, village) of } Before , Justice of the Peace
The State of Wisconsin,

v.
Name of defendant.

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, has this day complained in writing to me on oath that did, on the day of, 19.., in said county (here insert the complaint), and prayed that said might be arrested and dealt with according to law; now, therefore, you are commanded forthwith to arrest him and to bring him before me.

Given under my hand this day of, 19...
....., Justice of the Peace

CERTIFICATE OF CONVICTION

STATE OF WISCONSIN, }
.... County, } In Justice Court
Town (city, village) of } Before , Justice of the Peace
The State of Wisconsin,

v.
Name of defendant.

At a justice's court held at my office in said town before me,, a justice of the peace for said county, for the trial of for the crime hereinafter stated, the said was convicted of having, on the day of, 19.., in said county (here state the crime as in the warrant), and upon such conviction the court adjudged that he pay a fine of . . . dollars and costs (and if imprisonment be imposed, add), and be imprisoned in the county jail . . . days; (if the fine be paid, add) and said fine has been paid to me.

Given under my hand this day of, 19...
, Justice of the Peace

EXECUTION

STATE OF WISCONSIN, }
 County, } In Justice Court
 Town (city, village) of } Before, Justice of the Peace
 The State of Wisconsin,
 v.
 Name of defendant.

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, at a justice's court held at my office in said town for the trial of for the crime hereinafter stated he was convicted of having, on the day of, 19.., in said county (here state the crime as in the warrant), and upon conviction the court adjudged that he pay a fine of . . . dollars and costs; and whereas, said fine and costs have not been paid, you are commanded to levy on the personal property, etc. (as in an execution against the goods or body in civil cases).

COMMITMENT UPON SENTENCE

STATE OF WISCONSIN, }
 County, } In Justice Court
 Town (city, village) of } Before, Justice of the Peace
 The State of Wisconsin,
 v.
 Name of defendant.

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, a justice's court held before me at my office in said town for the trial of, for the crime hereinafter stated, he was convicted of having, on the day of, 19.., in said county (here state the crime as in the warrant), and upon conviction the court adjudged that he be imprisoned in the county jail for . . . days, therefore you are commanded forthwith to convey and deliver said to the keeper of such jail; and the keeper is commanded to keep him there until the expiration of said . . . days or until he is discharged by due course of law.

Given under my hand this day of, 19...
, Justice of the Peace

COMMITMENT AFTER ARREST AND BEFORE TRIAL

STATE OF WISCONSIN, }
 County, } In Justice Court
 Town (city, village) of } Before, Justice of the Peace
 The State of Wisconsin,
 v.
 Name of defendant.

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, has been this day brought before me, a justice of the peace in and for said county, charged with having on the day of, 19.., in said county (here state the crime as in the warrant), and said not having given bail to appear and answer for the crime, therefore you are commanded forthwith to deliver him to the keeper of the county jail; and said keeper is commanded to keep him there until he is brought before the court or is otherwise discharged by due course of law.

Given under my hand this day of, 19...
, Justice of the Peace

ORDER TO BRING UP PRISONER

STATE OF WISCONSIN, }
 County, } In Justice Court
 Town (city, village) of } Before, Justice of the Peace

The State of Wisconsin,

v.

Name of defendant.

THE STATE OF WISCONSIN, to the sheriff of said county:

The undersigned, a justice of the peace in and for said county, sitting as a court for the trial of, now in your custody, do hereby order you to bring him forthwith before me at my office in said town, together with the warrant by which he was committed to your custody.

Given under my hand this day of, 19. . .

., Justice of the Peace

COMMITMENT WHERE JUSTICE HAS NOT JURISDICTION

STATE OF WISCONSIN,

. . . . County,

Town (city, village) of

The State of Wisconsin,

v.

Name of defendant.

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, has been brought before the undersigned, a justice of the peace of said county, charged with having, on the day of, 19. . ., in said county, committed the crime of (here state the crime charged in the warrant), and in the trial on said charge it appearing to me that there is probable cause to believe that the defendant is guilty of the crime of (here state the new crime found on trial), committed at the time and place aforesaid, of which crime the justice has not trial jurisdiction; and whereas, after an examination had in due form of law, touching the crime last aforesaid, I found that said crime had been committed and that there was probable cause to believe the defendant is guilty thereof; now, whereas he has not offered sufficient bail for his appearance to answer for said crime, you are commanded to take him to the county jail, and the keeper thereof is required to detain him in said jail until he is discharged according to law.

Given under my hand this day of, 19. . .

., Justice of the Peace

[361.01 to 361.44 Stats. 1947 (except 361.28, 361.29, 361.41) consolidated, revised and renumbered 354.01 to 354.43 by 1949 c. 631]

[361.28, 361.29 Stats. 1947 repealed by 1949 c. 631]

[361.41 Stats. 1947 renumbered section 360.04 by 1949 c. 631]