

CHAPTER 800

MUNICIPAL COURT PROCEDURE

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800.001 Definition. In this chapter, “general statutory counterpart ordinance” means an ordinance which prohibits conduct which is the same as or similar to conduct prohibited by state statute, but does not include an ordinance enacted by a local authority in accordance with s. 30.77 or 349.06.

History: 1987 a. 389.

Due process does not require commencing a municipal ordinance action by a summons. *Haas V. Wisconsin*, 241 F. Supp. 2d 922 (2003).

800.01 Commencement of action. (1) In municipal court, personal jurisdiction in municipal ordinance violation cases and cases involving a violation of a resolution or bylaw if the resolution or bylaw is authorized by statute is obtained over a defendant when the defendant:

(a) Is served with a summons and complaint or citation and such documents are filed with or transmitted to the court;

(b) Is arrested and brought before the court personally, or in the municipal court of a 1st class city, personally or through interactive video and audio transmission conducted in accordance with the rules of the 1st judicial administrative district; or

(c) Voluntarily appears before a municipal judge.

(2) (a) Service under sub. (1) (a) shall be as provided in s. 801.11 or 968.04 (3) (b) 2. or by personal service by an adult who is a resident of the state where the service is made but who is not a party to the action.

(b) If a summons or citation is personally served, the law enforcement officer or municipal employee serving the summons or citation shall sign a statement of personal service on the summons or citation. The signature required under this paragraph does not apply to a traffic citation issued under s. 345.11.

(3) If the action is commenced by a citation under s. 800.02 (2) (a), a deposit may be taken from the defendant. The defendant may be released on his or her own recognizance. A nonresident defendant who does not make a deposit may be detained in jail to be brought before the court at the earliest opportunity.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.01; 1987 a. 389; 1989 a. 170, 261; 1993 a. 437; 1995 a. 27; 1999 a. 9.

Judicial Council Committee’s Note, 1977: This section sets out the 3 methods in which personal jurisdiction is obtained over a defendant in municipal ordinance violation cases. Personal jurisdiction can be achieved in no other way. The method of service under sub. (1) is made identical with the method for serving a summons in a criminal proceeding under ch. 968. [Bill 1240–A]

800.02 Form of citation, complaint, summons and warrant in municipal ordinance violation cases.

(1) ACTION. An action in municipal court for violation of a municipal ordinance, or violation of a resolution or bylaw if the resolution or bylaw is authorized by statute, is a civil action and the forfeiture or penalty imposed by any ordinance of the municipality may be collected in an action in the name of the municipality.

(2) CITATION FORM. (a) The citation shall be signed by a peace officer or endorsed by a municipal attorney or, if applicable,

signed by a conservation warden. In addition, the governing body of a municipality authorized to adopt the use of citations may designate by ordinance or resolution other municipal officials who may issue citations with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to issue citations may delegate, with the approval of the governing body, the authority to employees. Authority delegated to an official or employee may be revoked only in the same manner by which it is conferred. The citation shall contain substantially the following information:

1. The name, address and date of birth of the defendant.

2. The name and department of the issuing officer.

3. The violation alleged, the time and place of occurrence, a statement that the defendant committed the violation, the ordinance, resolution or bylaw violated and a designation of the violation in language which can be readily understood.

4. A date, time and place for the court appearance, and a notice to appear.

5. Provisions for amount of deposit and stipulation in lieu of a court appearance, if applicable.

6. Notice that the defendant may make a deposit and thereby obtain release if an arrest has been made.

7. Notice that the defendant may by mail prior to the court appearance enter a plea of not guilty and may within 10 days after entry of the plea request a jury trial.

8. Notice that, if the defendant makes a deposit and fails to appear in court at the time fixed in the citation, the defendant is deemed to have tendered a plea of no contest and submits to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant rather than accept the deposit and plea.

8m. Notice that if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the defendant, the court may summon the defendant into court to determine if restitution shall be ordered under s. 800.093.

9. Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or a warrant for the defendant’s arrest or may enter a default judgment against the defendant.

10. Any other pertinent information.

(am) In 1st class cities, all of the written information required under par. (a), except the information under par. (a) 1. to 4. and 10., shall be printed in Spanish on a separate sheet attached to the citation or provided in Spanish on the citation.

(b) Except for parking violations, in traffic regulation actions in municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu of the citation form specified in par. (a).

(a) In actions for violations of local ordinances enacted in accordance with s. 23.33 (11) (am) or 30.77, the citation form specified in s. 23.54 shall be used in lieu of the citation form specified in par. (a).

(3) COMPLAINT FORM. (a) The complaint shall be signed by a complainant and shall contain substantially the following information:

1. The name, address and date of birth of the defendant.
2. The department permit or license number of the defendant, if applicable.

3. The name and department of the issuing officer.

4. The title of the cause, specifying the name of the court and county in which the action is brought and the names and addresses of the parties to the action.

5. A plain and concise statement of the violation identifying the event or occurrence from which the violation arose and showing that the plaintiff is entitled to relief, the ordinance, resolution, or bylaw upon which the cause of action is based, and a demand for a forfeiture, the amount of which shall not exceed the maximum set by the statute involved, plus costs, fees, and surcharges imposed under ch. 814, and such other relief as is sought by the plaintiff.

6. Notice that the defendant may by mail prior to the court appearance enter a plea of not guilty and may within 10 days after entry of the plea request a jury trial.

7. In an action by or against a ch. 180 or 181 corporation, the complaint must state the corporate existence and whether the corporation is a domestic or foreign corporation.

8. In an action by or against a ch. 183 limited liability company, the complaint must state the company existence and whether the limited liability company is a domestic or foreign limited liability company.

(b) In 1st class cities, all of the written information required under par. (a) 6. shall be printed in Spanish on a separate sheet attached to the complaint or provided in Spanish on the complaint.

(4) SUMMONS FORM. (a) The summons shall be signed by a municipal judge or by the attorney who is prosecuting the case in municipal court and shall contain the following information:

1. The title of the cause, specifying the name of the court and county in which the action is brought and the names of all parties to the action.

2. A direction summoning and requiring the defendant to appear in a specified court on a particular date not less than 10 days following service of the summons to answer the accompanying citation or complaint.

3. A notice that in case of failure to appear, judgment may be rendered against the defendant according to the demand of the citation or complaint, or the court may issue a warrant for the defendant's arrest.

(b) In 1st class cities, all of the written information required under par. (a) shall be printed in Spanish on a separate sheet attached to the summons or provided in Spanish on the summons.

(5) WARRANT FORM. The warrant shall be in the name of the state of Wisconsin, shall be directed to all law enforcement officers in the state, may be addressed to any law enforcement officer in the state, may specify geographical limits for enforcement of the warrant, and shall be signed by the municipal judge who authorizes its issuance or contain a computer-generated facsimile of the judge's signature. A municipal judge may authorize the issuance of a warrant under this chapter by using a computer or other electronic media. The municipal judge shall make the authorization so that it is accessible to the attorney for the municipality and law enforcement officers. A law enforcement officer shall convert the municipal judge's authorization to a paper copy

of the warrant before serving the warrant. The warrant shall contain or have attached to it the following information:

- (a) The name of the defendant.

- (b) The offense alleged.

- (c) A copy of the citation or complaint.

- (d) A finding of probable cause that the defendant committed the offense.

- (e) A command to arrest the defendant and bring him or her before the municipal judge or other municipal judge or judge of the county.

- (f) The date of issuance.

(6) AUTHORITY TO ARREST WITHOUT A WARRANT. A person may be arrested without a warrant for the violation of a municipal ordinance if the arresting officer has reasonable grounds to believe that the person is violating or has violated the ordinance.

History: 1977 c. 305; 1979 c. 22; 1979 c. 32 s. 68; 1979 c. 266; Stats. 1979 s. 800.02; 1981 c. 317; 1983 a. 535; 1987 a. 27; 1987 a. 200 s. 4; 1987 a. 389; 1989 a. 170; 1991 a. 39, 40; 1993 a. 16, 112, 320, 437; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

Judicial Council Committee's Note, 1977: This section sets out the information to be included in the citations, complaints, summonses and warrants used in municipal ordinance violation cases. All the data required for a particular form must be included, although additional information may be included if felt advisable by the person prosecuting a particular ordinance violation.

It is felt that the minimum information required on a citation, complaint summons, or warrant meets any due process requirements of giving a particular defendant sufficient information of the facts and circumstances of the ordinance violation for which he or she is charged. [Bill 1240-A]

800.025 Amended citation and complaint. A citation or complaint under s. 800.02 may be amended once as a matter of course prior to the initial appearance of the defendant. Otherwise, the citation or complaint may be amended only by leave of the court or by written consent of the defendant.

History: 1981 c. 225.

800.03 Plea of no contest prior to initial appearance.

(1) If a person is issued a citation in a case specified in s. 800.02 (1), the person may make a plea of no contest and deposit as follows:

- (a) In traffic regulation cases, as provided in s. 345.26.

- (b) In boating violations, as provided in s. 23.67.

- (c) In other violations, the person may make such a plea and deposit only if the governing body of the municipality has approved the deposit schedule under sub. (3). The person may make the plea of no contest and deposit to the municipal court at any time prior to the initial appearance.

(2) The person who has made a plea and deposit under sub. (1) may appear in court. In such case, the court shall allow the person to withdraw his or her plea of no contest. The person need not appear in court.

(3) The amount of the deposit shall be set by the municipal judge, but shall not be effective until approved by the governing body of the municipality. The amount shall not exceed the maximum penalty for the offense, plus costs, fees, and surcharges imposed under ch. 814.

(4) Notwithstanding sub. (1), a court appearance may be required by a municipality for a violation of a local ordinance in conformity with s. 346.63 (1). If a person fails to make a required appearance under this subsection and the judge issues an arrest warrant, the law enforcement agency which filed or transmitted the uniform traffic citation shall file a detailed description of the warrant with the department of justice.

(5) Notwithstanding sub. (1), a court appearance may be required if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.03; 1981 c. 184, 317; 1983 a. 535; 1985 a. 29; 1987 a. 27; 1989 a. 107, 170; 1991 a. 39, 40; 1993 a. 16, 437; 1997 a. 27; 1999 a. 9, 109; 2001 a. 16; 2003 a. 139.

800.04 Initial appearance; stipulation of guilt; deposit.

(1) (a) When a defendant appears or is brought before a municipal court, the municipal judge shall read the charge as stated in the warrant, complaint or citation to the defendant and shall explain the range of penalties which may be imposed.

(b) 1. The court shall inform the defendant of all of the following:

- a. That he or she may plead guilty, not guilty or no contest or may request a continuance.
- b. The effect of a plea of no contest.
- c. The right to a jury trial.
- d. That if the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and the violation resulted in damage to the property of or physical injury to a person other than the defendant, the court may order the defendant to pay restitution under s. 800.093.

2. The defendant shall plead to the charges and the municipal judge shall enter the plea in the court record. If the defendant refuses to plead, the municipal judge shall enter a plea of not guilty.

(c) If the defendant pleads guilty or no contest, the court shall convict the defendant of the offense charged and render judgment.

(d) If a defendant charged with the violation of an ordinance which is in conformity with s. 346.63 (1) or (5) pleads not guilty and within 10 days after entry of the plea requests a jury trial and pays the required fees, the municipal judge shall promptly transmit all papers and fees in the cause to the clerk of the circuit court of the county where the violation occurred for a jury trial under s. 345.43. The plea of not guilty and request for jury trial may be made by mail. If the person refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305 (9) to determine if the person's refusal was proper, the papers and fees involved in that action shall be transferred to the same circuit court, which shall conduct the refusal hearing. The amount of deposit set out in the citation shall accompany the mailed request. Upon receipt of the request, the circuit court shall set a time for trial. Any deposit made personally or by mail is forfeited upon nonappearance at the time set for trial. The required fee for a jury is prescribed in s. 814.61 (4).

(e) If the defendant agrees to immediate trial by the court, and the municipality is prepared for trial, the case may be tried immediately. If trial is not held immediately, the municipal judge shall then set a date for trial by the court or advise the defendant that he or she will later be notified of the date set for trial.

(f) If a trial by the court is not held immediately, the municipal judge may, in his or her discretion, schedule a pretrial conference before the court. Upon agreement by all parties, the parties may waive the pretrial conference. The court shall prepare a written order that contains the action taken at the pretrial conference and sets the trial date.

(2) (a) A municipal judge may release a defendant without a deposit.

(b) If the municipal judge determines that the defendant should not be released under par. (a) and the defendant is charged with a traffic or boating violation, the municipal judge shall release the defendant on a deposit in the amount established by the uniform deposit schedule under s. 345.26 (2) (a) or under s. 23.66. For other violations, the municipal judge shall establish a deposit in an amount not to exceed the maximum penalty for the offense, plus costs, fees, and surcharges imposed under ch. 814. If the judge in a 1st class city determines that a defendant appearing before the judge through interactive video and audio transmission should not be released under par. (a), the judge shall inform the defendant that he or she has the right to appear personally before a judge for a determination, not prejudiced by the first appearance, as to whether he or she should be released without a deposit. On failure of the defendant to make a deposit under this paragraph, he or she may be committed to jail pending trial only if the judge finds

that there is a reasonable basis to believe the person will not appear in court.

(c) If the defendant has made a deposit under par. (b) or s. 800.03 and does not appear, he or she is deemed to have tendered a plea of no contest and submits to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the defendant fails to appear in response to the summons, the court shall issue a warrant under s. 968.09. If the defendant has made a deposit but does appear, the court shall allow the defendant to withdraw the plea of no contest.

(2m) If a defendant does not appear at the initial appearance, the court may issue a warrant to bring the defendant before the court. Upon proof of personal service of the summons or citation under s. 800.01 (1), or upon proof of service of the summons or citation under s. 801.11 (1) (b), the court may enter a default judgment by reason of the failure of a defendant to respond to a citation under s. 800.02 (2) (a) or a summons under s. 800.02 (4). If a warrant is issued for a defendant under this subsection, the defendant may be detained in jail prior to the initial appearance.

(3) (a) If the court accepts a plea of no contest or judgment is entered against a defendant by default, the defendant may move within 6 months after the date set for the appearance to withdraw the plea of no contest, reopen the judgment and enter a plea of not guilty upon a showing to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise or excusable neglect.

(b) In this subsection, "default judgment" means only a judgment where there has been a plea of no contest and a forfeiture of a deposit.

(c) This subsection does not apply to actions involving general statutory counterpart ordinances. Those actions are subject to s. 800.115.

(4) If a case is brought before a court that does not have jurisdiction, the case shall be transferred to the proper court.

(5) Unless good cause to the contrary is shown, appearances referred to in this section may be conducted by telephone or by interactive video and audio transmission, if available. If testimony is to be taken under oath, the proceeding shall be reported by a court reporter who is in simultaneous voice communication with all parties to the proceeding. Regardless of the physical location of any party to the call, any plea, waiver, stipulation, motion, objection, decision, order or other action taken by the court or any party shall have the same effect as if made in open court. With the exceptions of scheduling conferences, pretrial conferences, and, during hours the court is not in session, the proceeding shall be conducted in a courtroom or other place reasonably accessible to the public. Simultaneous access to the proceeding shall be provided to persons entitled to attend by means of a loudspeaker or, upon request to the court, by making a person party to the telephone call without charge. The court may permit a hearing under this section to be conducted by telephone or by interactive video and audio transmission only if the defendant consents. The defendant's consent may be made by telephone.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); 1979 c. 175 s. 50; Stats. 1979 s. 800.04; 1981 c. 183, 317; 1987 a. 27, 267, 389; 1989 a. 105, 107, 261; 1991 a. 39, 40, 189; 1993 a. 16; Sup. Ct. Order No. 95–10, 197 Wis. 2d xiii (1996); 1995 a. 224; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139, 199.

Judicial Council Committee's Note, 1977: This section sets out the procedure to be used when a defendant initially appears before a municipal court. Sub. (1) (b) lists various information that must be brought to the defendant's attention at the initial appearance. Provision is made for a defendant to plead guilty or no contest at the initial appearance or to request a continuance. A plea of no contest means admission of guilt for purposes of the ordinance violation only and does not bind the defendant in a civil suit for the same wrong.

Sub. (1) (d) sets out the procedure for the defendant to request a jury trial after pleading not guilty.

Sub. (1) (e) provides that if a defendant pleads not guilty and agrees to immediate trial, the trial may be held at the same time as the defendant makes his or her initial appearance.

Sub. (2) sets out the procedure for a municipal judge to release a defendant with or without a deposit. If a deposit is required, sub. (2) (b) sets out the procedure for determining what the deposit should be.

Sub. (2) (c) sets out the procedure for a municipal judge to follow if a defendant has made a deposit and does not appear at the time of trial. It also allows the defendant to reopen a plea of no contest within 6 months if the plea was originally given due to mistake, inadvertence, surprise or excusable neglect. [Bill 1240–A]

800.05 Substitution of municipal judge. (1) In cases specified in s. 800.02 (1), a person charged with a violation may file a written request for a substitution of a new judge for the municipal judge assigned to the trial of that case. The written request shall be filed not later than 7 days after the initial appearance in person or by an attorney. The municipal judge against whom a request has been filed may set initial bail and accept a plea of not guilty.

(2) Except as provided in sub. (4), no person may file more than one such written request in any one action.

(3) In municipal court, upon receipt of the written request, the original judge shall have no further jurisdiction in the case except as provided in sub. (1) and except to determine if the request was made timely and in proper form. If no determination is made within 7 days, the court shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is determined to be proper, the case shall be transferred as provided in s. 751.03 (2). Upon transfer, the municipal judge shall transmit to the appropriate court all the papers in the action and the action shall proceed as if it had been commenced in that court.

(4) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order in a manner such that further proceedings in the municipal court are necessary, the person charged with a violation may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

History: 1977 c. 305, 447; 1977 c. 449 s. 496; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.05; 1987 a. 151.

Judicial Council Committee's Note, 1977: This section sets out the procedures to be used when a defendant requests a substitution of a new judge in an ordinance violation case. The request must be made not later than 7 days after the initial appearance in the case by the defendant.

The section also provides that the same administrative procedure for assignment of judges in courts of record when a request for substitution has been made will also be used in assigning a municipal judge to replace a municipal judge for whom a request for substitution has been made. [Bill 1240–A]

Sub. (3) did not authorize the chief judge of a judicial district to issue a rule providing that when a case is transferred on substitution, the receiving court is entitled to the forfeitures and that the receiving court's prosecutors try the case. *City of West Allis v. Sheedy*, 211 Wis. 2d 92, 564 N.W.2d 708 (1997), 96–3579.

800.06 Illness, absence or vacancy; pending actions triable by court which receives papers; continuance on vacancy and notice of trial. (1) If any municipal judge is to be temporarily absent or is sick or disabled, the municipal judge may deliver the court record and all papers relating to any pending action to the circuit court of the county and the circuit court may try the action and enter judgment as though the action was begun before that court or the municipal judge may by written order, filed in the court and with the approval of the chief judge of the judicial administrative district, do one of the following:

(a) If the municipal judge is from the 1st judicial administrative district, designate another municipal judge from any municipality within the state to perform his or her duties for a period not to exceed 30 days.

(b) If the municipal judge is from a judicial administrative district other than the 1st judicial administrative district, designate another municipal judge within the same judicial administrative district to perform his or her duties for a period not to exceed 30 days.

(2) If any municipal judge is incompetent, unable or fails to act, s. 751.03 (2) applies. The parties and their attorneys shall be

notified of the transfer to another judge or to circuit court prior to trial. The judge designated or the circuit court to which the case is transferred may, while in possession of the court record, issue execution upon or give a certified transcript of any unsatisfied judgment appearing in the record.

(3) Notwithstanding s. 751.03 (2), if there is a permanent vacancy in the office of municipal judge, the chief judge of the judicial administrative district may, upon request by the municipal governing body, designate another municipal judge to perform the duties of the office until the municipal governing body fills the vacancy by temporary appointment under s. 8.50 (4) (fm). The chief judge of the 1st judicial administrative district may designate a municipal judge under this subsection from any municipality within the state. The chief judge of a judicial administrative district other than the 1st judicial administrative district may designate a municipal judge under this subsection from any municipality within the same judicial administrative district as the chief judge. The municipal judge designated under this subsection may exercise all of the authority of the municipal court to which he or she is assigned.

History: 1977 c. 305; 1977 c. 449 s. 497; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.06; 1985 a. 304; 1987 a. 151; 1993 a. 384; 1995 a. 224.

Judicial Council Committee's Note, 1977: This section governs the procedures to be followed when a municipal judge is temporarily absent from court or is sick or disabled. Another municipal judge may be designated to perform the duties of his or her court for a period not to exceed 30 days.

If a municipal judge is incompetent, unable or fails to act, or if the office of municipal judge is vacant, the provisions of s. 751.03 (5) [(2)] for assignment of another municipal judge to the court applies. [Bill 1240–A]

800.065 Temporary reserve judges; service. (1) DEFINITIONS. In this section, “temporary reserve judge” means a judge for a municipal court for any municipality within the judicial administrative district appointed by the chief judge of that district to perform such specified duties on a day–by–day basis as the chief judge may direct.

(2) ELIGIBILITY. Any of the following persons may serve as a temporary reserve judge:

(a) A person who has served a total of 8 or more years as a municipal judge.

(b) A person who has served 4 or more years as a municipal judge and who was not defeated at the most recent time he or she sought election to judicial office.

(3) COMPENSATION. Notwithstanding s. 755.04, temporary reserve judges under this section shall receive compensation in an amount agreed to by contract between the municipality and the temporary reserve judge. The judge may not serve until the contract is entered into and the judge has complied with s. 755.03.

(4) TRAINING. All persons serving as temporary reserve judges under this section are subject to s. 755.18.

History: 1987 a. 389.

800.07 Discovery in municipal court. Neither party is entitled to pretrial discovery in any action in municipal court, including refusal hearings held by a municipal court under s. 343.305 (9), except that if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.07; 1987 a. 389; 2003 a. 199.

Judicial Council Committee's Note, 1977: Discovery prior to trial in municipal court in ordinance violation cases is limited to the court ordering, upon cause shown by a party, production of documents, including lists of names of witnesses, under s. 804.09 or the inspection of any devices used by the prosecutor in determining whether an ordinance violation has occurred. [Bill 1240–A]

800.08 Procedure at trial. (1) In a trial before a municipal court, the municipality may provide a prosecutor who is an attorney authorized or licensed to practice law in this state. The municipality shall first offer evidence in support of the citation or complaint. The defendant may offer evidence after the municipality

has rested. If the municipality and the defendant have offered evidence upon the citation or complaint, the parties may then respectively offer rebuttal testimony only, unless the court permits them to offer evidence upon their original case. Both parties shall have the opportunity to question all witnesses.

(2) (a) Before testifying in a municipal court, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken his or her conscience and impress the witness with the duty to testify truthfully.

(b) The oath may be administered by the municipal judge or his or her designee substantially in the following form: Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth, so help you God.

(c) Every person who declares that he or she has conscientious scruples against taking the oath, or swearing in the usual form, shall make a solemn declaration or affirmation, which may be in the following form: Do you solemnly, sincerely and truly declare and affirm that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth; and this you do under the pains and penalties of perjury.

(d) The assent to the oath or affirmation by the person making it may be manifested by the uplifted hand.

(3) The standard of proof for conviction of any person charged with violation of any municipal ordinance, bylaw or resolution specified in s. 800.02 (1) shall be evidence that is clear, satisfactory and convincing.

(4) Except as provided in s. 938.17 (2) (h) 3., municipal courts shall be bound by the rules of evidence specified in chs. 901 to 911.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.08; 1997 a. 205. **Judicial Council Committee's Note, 1977:** This section sets out the procedure to be followed at trial before a municipal court in ordinance violation cases.

Sub. (1) states the order of presentation of evidence. After the municipality offers evidence in support of the violation, the defendant may present evidence. After each side has offered evidence upon the violation, only rebuttal testimony is allowed unless the court permits otherwise.

Every witness testifying in a municipal court must be sworn. Subsection (2) sets out the method of swearing a witness.

Sub. (3) states that the standard of proof for conviction in a municipal court shall be evidence that is clear, satisfying and convincing.

Sub. (4) states that the Wisconsin Rules of Evidence, chs. 901 to 911, shall apply in municipal court. [Bill 1240–A]

800.09 Judgment; failure to appear; plea of guilty.

(1) **JUDGMENT.** If a municipal court finds a defendant guilty, it may render judgment by ordering restitution under s. 800.093 and payment of a forfeiture, plus costs, fees, and surcharges imposed under ch. 814. The court shall apply any payment received on a judgment that includes restitution to first satisfy any payment of restitution ordered, then to pay the forfeiture, costs, fees, and surcharges. If the judgment is not paid, the court may proceed under par. (a), (b), or (c) or any combination of those paragraphs, as follows:

(a) The court may defer payment of any judgment or provide for installment payments. At the time that the judgment is rendered, the court shall inform the defendant, orally and in writing, of the date by which restitution and the payment of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, must be made, and of the possible consequences of failure to do so in timely fashion, including imprisonment, as provided in s. 800.095, or suspension of the defendant's motor vehicle operating privilege, as provided in par. (c), if applicable. If the defendant is not present, the court shall ensure that the information is sent to the defendant by mail. In 1st class cities, all of the written information required by this paragraph shall be printed in English and Spanish and provided to each defendant.

(b) If the defendant agrees to perform community service work in lieu of making restitution or paying the forfeiture, assessments and costs, or both, the court may order that the defendant perform

community service work for a public agency or a nonprofit charitable organization that is designated by the court. Community service work may be in lieu of restitution only if also agreed to by the public agency or nonprofit charitable organization and by the person to whom restitution is owed. The court may utilize any available resources, including any community service work program, in ordering the defendant to perform community service work. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the forfeiture by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(c) The court may suspend the defendant's operating privilege, as defined in s. 340.01 (40), until restitution is made and the forfeiture, assessments and costs are paid, if the defendant has not done so within 60 days after the date the restitution or payments or both are to be made under par. (a) and has not notified the court that he or she is unable to comply with the judgment, as provided under s. 800.095 (4) (a), except that the suspension period may not exceed 2 years. The court shall take possession of the suspended license and shall forward the license, along with a notice of the suspension clearly stating that the suspension is for failure to comply with a judgment of the court, to the department of transportation. This paragraph does not apply if the forfeiture is assessed for violation of an ordinance that is unrelated to the violator's operation of a motor vehicle.

(2) **JUDGMENT ON PLEA OF GUILTY OR NO CONTEST OR ON FAILURE TO APPEAR.** (a) If the defendant pleads guilty or no contest, the court shall convict the defendant of the offense charged and render judgment.

(b) If the person charged fails to appear personally or by an attorney at the time fixed for hearing of the case, the defendant may be deemed to have entered a plea of no contest and the money deposited, if any, or such portion thereof as the court determines to be an adequate penalty, plus costs, fees, and surcharges imposed under ch. 814, may be declared forfeited by the court or may be ordered applied upon the payment of any penalty which may be imposed, plus costs, fees, and surcharges imposed under ch. 814. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. Any money remaining after payment of any penalties, surcharges, costs, fees, and restitution shall be refunded to the person who made the deposit.

(c) This subsection shall not apply to violations of parking ordinances. Bail given for appearance to answer a charge under any such ordinance may be forfeited as determined by the municipality.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.09; 1981 c. 317; 1985 a. 179; 1987 a. 27, 389; 1987 a. 399 s. 494u; 1989 a. 107; 1991 a. 39, 40, 189; 1993 a. 16; 1997 a. 27, 84; 1999 a. 9, 185; 2001 a. 16; 2003 a. 139.

Judicial Council Committee's Note, 1977: Sub. (1) governs the procedure for rendering judgment upon a finding of guilty of a defendant. A court may allow the defendant up to 60 days to pay a judgment. Failure to pay a judgment exposes a person to possible commitment to a jail or house of correction for not more than 90 days. If a defendant is indigent and unable to pay the forfeiture, the defendant cannot be imprisoned for nonpayment. The defendant must demonstrate that his or her inability to pay the fine is a result of indigency and must be afforded a hearing to determine his or her ability to pay the fine. See State ex rel. Pedersen v. Blessinger, (1972) 56 Wis. 2d 286, 201 N.W.2d 778.

Sub. (2) provides that a municipal judge shall convict a defendant of the violation for which he or she is charged if the defendant pleads either guilty or no contest. If the defendant fails to appear at the time that the offense is to be heard by a municipal judge, the judge may deem the defendant to have entered a plea of no contest and then determine the appropriate penalty. Payment for the forfeiture and penalty assessment may be secured from any deposit made by the defendant. Any money remaining from a deposit after payment of the forfeiture, penalty assessment and costs shall then be refunded to the person making the deposit. [Bill 1240–A]

Section 343.30 (5) does not preclude the suspension of operating privileges under s. 800.09 or 800.095. Suspension of operating privileges for failure to pay non-traffic forfeitures is not an unconstitutional exercise of the police power or an unconstitutionally excessive fine. City of Milwaukee v. Kilgore, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

An award of costs of prosecution does not include actual attorney fees. *Town of Wayne v. Bishop*, 210 Wis. 2d 218, 565 N.W.2d 201 (Ct. App. 1997), 95–2387.

A municipal court is not authorized to subpoena persons outside of the state; thus the court cannot order an out of state defendant to appear in person. There is no inherent authority in the court authorizing such an order. *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 595 N.W.2d 635 (1999), 97–1651.

800.093 Restitution. (1) The municipal court, in addition to ordering any payment authorized by law, may order a defendant to make full or partial restitution to any victim or, if the victim is deceased, to his or her estate if the court finds all of the following:

(a) The defendant is guilty of violating an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both.

(b) The violation resulted in damage to the property of or physical injury to a person other than the defendant.

(2) Restitution ordered under this section is enforceable in a civil action by the victim named in the order to receive restitution. A court may not order a defendant to pay more than \$4,000 in restitution under this section. This \$4,000 limit does not apply to restitution ordered for violation of an ordinance that prohibits conduct that is the same as or similar to the conduct prohibited by s. 943.24 or 943.50.

(3) If the violation resulted in damage to or loss or destruction of property, the restitution order may require that the defendant do one of the following:

(a) Return the property to the owner or owner's designee.

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee, subject to the \$4,000 limit in sub. (2), the reasonable repair or replacement cost or the greater of the following:

1. The value of the property on the date of its damage, loss or destruction.

2. The value of the property on the date judgment is rendered, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(4) If the violation resulted in physical injury, the restitution order may require that the defendant do one or more of the following, subject to the \$4,000 limit in sub. (2):

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric or psychological care and treatment.

(b) Reimburse the injured person for income lost as a result of the violation.

(c) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to reimburse the person for any payments made to another to perform those duties from the date of the injury and to ensure that the duties are continued until the person is able to resume performance of the duties.

(5) The restitution order may require that the defendant do one or more of the following, subject to the \$4,000 limit in sub. (2):

(a) Pay all special damages, but not general damages, including, but without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses, substantiated by evidence in the record, that could be recovered in a civil action against the defendant for his or her conduct in the commission of the violation.

(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom the violation was committed as a result of the commencement of the action or of cooperating in the investigation and prosecution of the violation.

(c) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be made. The court shall order that all restitution to victims be made before restitution to other persons. If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the court shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(7) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The fact that restitution was required or made is not admissible as evidence in that civil action and has no legal effect on the merits of the civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events that were the basis for the restitution. The court trying that civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(8) (a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of the violation.

2. The financial resources of the defendant.

3. The present and future earning ability of the defendant.

4. The needs and earning ability of the defendant's dependents.

5. Any other factors which the court deems appropriate.

(b) If the court finds that the conditions in sub. (1) are met, the court may hold the restitution hearing at the time of any appearance by the defendant before the court or may summon the defendant to appear to determine if restitution shall be ordered. The court shall give the victim an opportunity to present evidence and arguments pertaining to the factor specified in par. (a) 1. The court shall give the defendant the opportunity to present evidence and arguments on the factors specified in par. (a). The victim has the burden of demonstrating by the preponderance of the evidence the amount of loss sustained as a result of the violation. The defendant has the burden of demonstrating by the preponderance of the evidence the factors specified in par. (a) 2. to 5. When hearing evidence as to the factors specified in par. (a), the court may waive the rules of practice, procedure, pleading and evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person.

History: 1991 a. 40; 1995 a. 156.

800.095 Nonpayment of judgment or noncompliance with work order; further proceedings. (1) NONPAYMENT OR NONCOMPLIANCE. If the defendant does not comply with the judgment of the court under s. 800.09 (1), fails to pay a driver improvement surcharge imposed under s. 346.655 or fails to comply with the community service work order under s. 800.09 (1) (b), the court shall issue a warrant to arrest the defendant and bring him or her before the court or a summons ordering the defendant to appear in court, or both. The defendant may be incarcerated prior to the court appearance.

(2) WARRANT; SUMMONS; FORM. (a) The warrant shall be in the form specified under s. 800.02 (5). The summons shall be in substantially the following form:

STATE OF WISCONSIN

.... City/Village/Town

State of Wisconsin

vs.

.... Defendant(s)

THE STATE OF WISCONSIN TO THE DEFENDANT

A judgment, a copy of which is attached, has been entered against you for (restitution and) the payment of a civil forfeiture. You were ordered by the court on, .. (year) to (make the following payments:) (perform the following community service work order:) (make the following restitution:).

You have failed to comply with that order.

YOU ARE THEREFORE ORDERED to appear before the Honorable in Courtroom, at the Courthouse, in the City/Town/Village of at a.m./p.m. TO SHOW THAT YOU ARE UNABLE TO (PAY THE FORFEITURE OR MAKE RESTITUTION FOR GOOD CAUSE OR BECAUSE OF YOUR INDIGENCE) (TO COMPLY WITH THE COMMUNITY SERVICE WORK ORDER FOR GOOD CAUSE). If (good cause or your indigence has prevented you from paying the forfeiture or making restitution) (good cause has prevented you from complying with the community service work order), the court will modify the order.

IF YOU FAIL TO APPEAR AT THE TIME AND PLACE DESIGNATED ABOVE, AN ORDER FOR COMMITMENT SHALL BE ISSUED AND YOU WILL BE IMPRISONED IN THE JAIL/HOUSE OF CORRECTIONS. IN ADDITION, AN ORDER MAY BE ISSUED TO SUSPEND YOUR MOTOR VEHICLE OPERATING PRIVILEGE.

Dated:, .. (year)

Signature:....

(Municipal Court Judge)

(b) In 1st class cities, all of the written information required for the summons form under par. (a) shall be printed in Spanish on a separate sheet attached to the summons.

(3) SERVICE OF SUMMONS. The summons authorized under sub. (1) shall be served in the manner set forth under s. 800.01 (2).

(4) HEARING; COURT ORDER. (a) If the defendant appears before the court pursuant to a warrant or summons issued under sub. (1) or the defendant otherwise notifies the court that he or she is unable to comply with the judgment or community service work order, the court shall conduct a hearing. If the defendant failed to pay the forfeiture, make restitution or comply with the work order, the court shall determine if the defendant is unable to comply with the judgment for good cause or because of the defendant's indigence or is unable to comply with the work order for good cause.

(b) If the defendant fails to appear before the court for a hearing conducted under par. (a) or if the court determines at a hearing under par. (a) that the failure of the defendant to comply with the judgment is not for good cause or because of the defendant's indigence or that the failure of the defendant to comply with the work order is not for good cause, the court shall order one of the following:

1. That the defendant be imprisoned until the forfeiture, assessments, surcharge, and costs are paid, except that the defendant reduces the amount owed at a rate of at least \$25 for each day of imprisonment, including imprisonment following an arrest but prior to the findings under this subsection, and the maximum period of imprisonment is 90 days. The court may impose a term of imprisonment under this subdivision that is either concurrent with or consecutive to any other term of imprisonment imposed at the same time or any term of imprisonment imposed by any court.

2. That the payment schedule or judgment be modified, suspended or permanently stayed.

3. That the defendant perform community service work for a public agency or a nonprofit charitable organization designated by the court, except that the court may not order the defendant to perform community service work unless the defendant agrees to perform community service work and, if the community service work is in lieu of restitution, unless the person to whom the restitution is owed agrees. The court may utilize any available resources, including any community service work program, in ordering the defendant to perform community service work. The number of

hours of community service work required may not exceed the number determined by dividing the amount owed on the forfeiture or restitution, or both, by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

4. That the defendant's operating privilege, as defined in s. 340.01 (40), be suspended until the judgment is complied with, except that the suspension period may not exceed 2 years. This subdivision does not apply if the forfeiture is assessed for violation of an ordinance that is unrelated to the violator's operation of a motor vehicle.

(c) If the court determines that the failure of the defendant to comply with the judgment is for good cause or because of the defendant's indigence or that the failure of the defendant to comply with the work order is for good cause, the court may enter an order under par. (b) 2. or 3.

(5) NONCOMPLIANCE; COURT ORDER. If the defendant fails to comply with the court order under sub. (4) (b) 2. or 3., the court may enter an order under sub. (4) (b) 1.

(6) PLACE OF IMPRISONMENT. If the court orders imprisonment under sub. (4) (b) 1., the defendant shall be committed to a jail or a house of correction in the county in which the cause of action arose or, if the defendant has been committed to the Wisconsin state prisons, to the prison in which the defendant is an inmate. Except in cases where the defendant has been committed to the Wisconsin state prisons, the municipality shall pay the expense incurred by the county to imprison the defendant. The defendant is eligible for privileges under s. 303.08.

(7) USE OF ORDINARY CIVIL REMEDIES. In addition to the procedures under this section, a municipality may enforce the judgment in the same manner as for a judgment in an ordinary civil action.

(7m) TRANSFER OF UNCLAIMED MONEY. In addition to the procedures under this section, a municipal court may order the transfer of any of the defendant's money that the municipality is holding and that is unclaimed by the defendant for more than one year to pay any forfeitures that the defendant failed to pay the municipality.

(8) APPLICABILITY. Subsections (1) to (3) and (4) (a) apply to any judgment in forfeiture actions in municipal court for the violation of a traffic regulation if the court, at the time of rendering judgment, determines that incarceration may be ordered for subsequent noncompliance with the judgment and order.

History: 1987 a. 389; 1987 a. 399 s. 494u; 1989 a. 31; 1991 a. 40; 1995 a. 27; 1997 a. 84, 250; 1999 a. 9 ss. 3083m, 3263; 1999 a. 185; 2005 a. 192.

Section 343.30 (5) does not preclude the suspension of operating privileges under s. 800.09 or 800.095. Suspension of operating privileges for failure to pay non-traffic forfeitures is not an unconstitutional exercise of the police power or an unconstitutionally excessive fine. *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

This section authorizes incarceration of defendants for noncompliance with with default judgments entered by the municipal court. The power is not restricted to ordinance violations with statutory counterparts. Incarceration under this section is not imprisonment for debt or involuntary servitude. *Haas V. Wisconsin*, 241 F. Supp. 2d 922 (2003).

800.10 Fees and costs in municipal court. (1) Fees and costs in municipal court are prescribed in s. 814.65.

(2) All forfeitures, fees, surcharges, and costs paid to a municipal court under a judgment before a municipal judge shall be paid to the municipal treasurer within 7 days after receipt of the money by a municipal judge or other court personnel. At the time of the payment, the municipal judge shall report to the municipal treasurer the title of the action, the offense for which a forfeiture was imposed and the total amount of the forfeiture, fees, surcharges, and costs, if any. The treasurer shall disburse the fees as provided in s. 814.65 (1). All jail surcharges paid to a municipal court under a judgment before a municipal judge shall be paid to the county

treasurer within 7 days after receipt of the money by a municipal judge or other court personnel.

History: 1981 c. 317; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1999 a. 9; 2001 a. 16; 2003 a. 139.

800.11 Municipal court record and transcript entries.

(1) Every municipal judge shall keep a court record in which he or she shall enter, in actions to which they relate:

(a) The title of every action commenced before the municipal judge, including the name and address of the defendant;

(b) The process issued, date and place where it issued, when returnable and the return of the officer;

(c) A brief statement of the charges, including the nature and time of the offense and the section of law violated;

(d) Every adjournment, stating at whose request and to what time;

(e) The date and time trial was held;

(f) The names of witnesses sworn, stating at whose request;

(g) The judgment rendered by the municipal judge, including the penalties imposed, the date and time of rendering judgment and the costs assessed in the action;

(h) The record of contempt convictions under s. 800.12;

(i) The amount of bail and names and addresses of sureties, if any;

(j) The time of ordering any stay of execution;

(k) The time of issuing execution and the name of the officer to whom delivered;

(m) The return of every execution and when made and every renewal of an execution, with the date thereof;

(n) The date and reason of removal of the action to another court;

(o) The date of giving transcript of judgment;

(p) The date of an appeal made from judgment; and

(q) All motions made in the action, the decision thereon and all other proceedings in the action which the municipal judge may think useful.

(2) Failure of the municipal judge to keep a court record properly shall not affect the jurisdiction of the municipal court or render the judgment void.

(3) The transcript of judgment shall contain the following:

(a) The name and location of the court.

(b) The title of action.

(c) The name, address and vocation of defendant.

(d) The date of judgment.

(e) The amount of judgment, costs and fees.

(f) The certification that it is a true copy of the judgment.

(4) If the municipal judge is elected under s. 755.01 (4), the judge shall keep separate court records for each municipality.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.11; 1985 a. 89; 1995 a. 224.

Judicial Council Committee's Note, 1977: Sub. (1) lists the various docket entries that are to be made by a municipal judge.

Sub. (2) makes clear that failure to properly docket a matter does not adversely affect the jurisdiction of a municipal court or a judgment rendered therein.

Sub. (3) lists the items that must be included in a transcript of judgment. [Bill 1240–A]

800.115 Relief from judgment. (1) A defendant in an action involving a general statutory counterpart ordinance may move for relief from the judgment under s. 806.07 (1). Except as provided under sub. (2), the motion must be made no later than 6 months after the judgment was entered or the order or stipulation was made.

(2) A defendant may move for relief from a judgment entered under s. 800.09 at any time for any of the grounds listed under s. 806.07 (1) (f), (g) or (h).

History: 1987 a. 389.

Only a defendant may seek relief under this section. However a municipal court has the inherent authority to vacate a void judgment irrespective of the statute's

requirements for reopening a judgment. *City of Kenosha v. Jensen*, 184 Wis. 2d 91, 516 N.W.2d 4 (Ct. App. 1994).

800.12 Municipal court contempt procedure. (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.

(2) A municipality may by ordinance provide that a municipal judge may impose a forfeiture for contempt under sub. (1) in an amount not to exceed \$50 or, upon nonpayment of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, a jail sentence not to exceed 7 days.

History: 1977 c. 305; 1979 c. 32 s. 68; 1979 c. 257; Stats. 1979 s. 800.12; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

800.13 Recording in municipal court. (1) Every proceeding in which testimony is taken under oath in a municipal court shall be recorded by electronic means for purposes of appeal.

(2) Notwithstanding sub. (1), a municipal court is not a court of record.

History: 1977 c. 305; 1979 c. 32 s. 68; 1979 c. 237; Stats. 1979 s. 800.13.

Judicial Council Committee's Note, 1977: Sub. (1) requires that all testimony taken under oath in municipal court must be recorded by electronic means. Electronic means requires only a tape recorder and a microphone or microphones sufficient to pick up all testimony given under oath. The capacity of the recorder is defined to assure compatibility of equipment upon appeal. The municipal judge has the responsibility to make sure that the recorded testimony in his or her court is done in such a way that the individual giving the testimony can be readily identified.

Sub. (2) makes clear that the municipal court is not a court of record. The only purpose of recording testimony in municipal court by electronic means is to establish a record for appeal to a court of record. [Bill 1240–A]

800.14 Appeal from municipal court decision.

(1) Appeals from judgments of municipal courts may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after judgment.

(2) On appeal by the defendant, the defendant shall execute a bond to the municipality with or without surety, approved by the municipal judge, that if the judgment is affirmed in whole or in part the defendant shall pay the judgment and all costs awarded on appeal.

(3) On meeting the requirements for appeal, execution on the judgment of the municipal court shall be stayed until the final disposition of the appeal.

(4) Upon the request of either party within 20 days after notice of appeal under sub. (1), or on its own motion, the circuit court shall order that a new trial be held in circuit court. The new trial shall be conducted by the court without a jury unless either party requests a jury trial within 10 days after the order for a new trial. The required fee for a jury is prescribed in s. 814.61 (4).

(5) If there is no request or motion under sub. (4), an appeal shall be based upon a review of a transcript of the proceedings. The municipal judge shall direct that the transcript be prepared from the electronic recording under s. 800.13 (1) and shall certify the transcript. The costs of the transcript shall be paid for under s. 814.65 (5). The electronic recording and the transcript shall be transferred to the circuit court for review.

(6) The disposition of the appeal shall be certified to the municipal court by the reviewing court within 30 days of the judgment of the reviewing court.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); 1979 c. 237; Stats. 1979 s. 800.14; 1981 c. 317 s. 2202; 1987 a. 389; 2005 a. 191.

Review under sub. (5) is analogous to appellate review of a trial to the court under s. 805.17 (2). *Village of Williams Bay v. Metz*, 124 Wis. 2d 356, 369 N.W.2d 186 (Ct. App. 1985).

That sub. (4) only allows the appellant to request a jury trial is not an unconstitutional denial of equal protection. *Village of Oregon v. Waldofsky*, 177 Wis. 2d 412, 501 N.W.2d 912 (Ct. App. 1993).

When a municipal court found the defendant guilty of OWI and dismissed a blood alcohol count charge without finding guilt, the defendant's appeal of the OWI conviction did not give the circuit court jurisdiction to hear the BAC charge absent an appeal of the dismissal. *Town of Menasha v. Bastian*, 178 Wis. 2d 191, 503 N.W.2d 382 (Ct. App. 1993).

There is no statutory or constitutional requirement that a circuit court must hold a hearing or request briefs when conducting a transcript review under sub. (5). This section, when considered as a whole, affords municipal court appellants a meaningful right to be heard. *City of Middleton v. Hennen*, 206 Wis. 2d 347, 557 N.W.2d 818 (Ct. App. 1996), 95–3054.

That sub. (4) only allows the appellant to request a jury trial does not deny the respondent the constitutional right to equal protection. *City of Kenosha v. Leese*, 228 Wis. 2d 806, 598 N.W.2d 278 (Ct. App. 1999), 98–1769.

A case dismissed before trial could not be appealed under sub. (4). The words of sub. (4) that “a new trial be held in circuit court” presuppose that a trial has taken place in municipal court. A proceeding constituted a trial under sub. (4) when the prosecution presented its case, the defendant had an opportunity to present its evidence, even though it chose not to do so and moved for dismissal, and the matter was judicially resolved on its merits. *City of Pewaukee v. Carter*, 2004 WI 136, 276 Wis. 2d 333, 688 N.W.2d 449, 03–1114

Appealing Municipal Court Judgments to Circuit Court. *Andregg*. Wis. Law. March 2006.