CHAPTER 818

ARREST AND BAIL

818.01 In civil actions.
818.02 When arrests may be made.
818.03 Order of arrest, by whom made.
818.04 Order, when made.
818.05 Bond of plaintiff.
818.06 Order for arrest, what to contain.
818.07 Execution of order of arrest.
818.10 Bail, how given.
818.11 Deposit in lieu of bail.
818.12 Payment of deposit.
818.13 Bail after deposit.
818.14 Application of deposit.
818.15 Sheriff's return to plaintiff; notice of nonacceptance.
818.16 Notice of justification of bail.
818.17 Qualification of bail.
818.18 Justification of bail.
818.19 Proceedings on justification.
818.20 Surrender of principal.
818.21 Arrest of principal by bail.
818.22 Custody of principal.
818.23 Proceedings against bail.
818.24 Exoneration of bail.
818.25 Sheriff's liability.
818.26 Proceedings against sheriff.
818.27 Bail liable to sheriff.
818.28 Vacation of order of arrest, etc.
818.29 Motion papers.

818.01 In civil actions. (1) No person may be arrested in a civil action except as prescribed by this chapter.

(2) Arrest of a person subject to contempt proceedings under ch. 785 may, but need not, be in accordance with the procedure under this chapter.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.01; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.01; 1985 a. 29.

818.02 When arrests may be made. The defendant may be arrested as hereinafter prescribed in the following cases:

(1) In an action for the recovery of damages on a cause of action not arising out of contract, where the defendant is not a resident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for seduction, or for criminal conversation, or for injuring, or for wrongfully taking, detaining or converting property, and in actions to recover damages for the value of property obtained by the defendant under false pretenses or false tokens.

(2) In an action for fine or penalty, or for money received, or for property embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor or counsel, or by an officer or agent of a corporation or banking association, in the course of his or her employment as such, or by any factor, agent, broker or any person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

(3) In an action to recover possession of personal property unjustly detained where the property or any part thereof has been concealed, removed or disposed of so that it cannot be found or taken by the sheriff.

(4) Subsections (1) and (3) do not apply to any security agreement under which the plaintiff claims a purchase money security interest, as defined in s. 409.103.

(5) In a proceeding to enforce the duty of child support or maintenance.

(6) In a proceeding to determine paternity or to establish or revise a child support or maintenance obligation, if the court or a circuit court commissioner finds that the petitioner cannot effect service of process upon the respondent despite due diligence on the part of the petitioner or after the respondent is personally served but fails to appear on the return date, on the date set for the pretrial hearing or on the date set for the trial.

(7) In an action for a forfeiture under s. 961.573 (2), 961.574 (2) or 961.575 (2) or under a local ordinance strictly conforming to s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

(8) In an action for a forfeiture under a local ordinance enacted under s. 59.54 (25m).

(9) In a proceeding under s. 813.1285.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.02; Sup. Ct. Order, 83 Wis. 2d xiiiv ((1978); Stats. 1977 s. 818.02; 1979 c. 352; 1983 a. 447; 1985 a. 29; 1989 a. 121; 1993 a. 481, 486; 1995 a. 448; 2001 a. 10, 61; 2003 a. 193; 2005 a. 116; 2013 a. 321.

818.03 Order of arrest, by whom made. An order for the arrest of the defendant must be obtained from the court in which the action is brought or a judge.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.03; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.03.

818.04 Order, when made. The order may be made where it shall appear by affidavit that a cause of action exists, and that it is one of those mentioned in s. 818.02.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975), 777; Stats. 1975 s. 809.04; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.04.

818.05 Bond of plaintiff. Before making the order for arrest the court or judge shall require a bond of the plaintiff, with or without sureties, to the effect that if the plaintiff fails to recover, the plaintiff will pay all costs that may be awarded to the defendant and all damages which the defendant may sustain by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least $100. If the bond be executed by the plaintiff without sureties the plaintiff shall annex thereto an affidavit that the plaintiff is a resident and householder or freeholder within the state and worth double the sum specified in the bond above all of the plaintiff's debts and liabilities in property in this state not exempt from execution. This section does not apply to an order for arrest in an action to determine paternity or to any action under ch. 767 brought by the state or its designee.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.05; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.05; 1983 a. 447; 1989 a. 212; 1993 a. 486; 2001 a. 16.

818.06 Order for arrest, what to contain. The order for arrest may be made at any time before judgment. It shall direct the sheriff of a particular county or generally the sheriff of any county where the defendant may be found, and require the sheriff forthwith to arrest the defendant and hold the defendant to bail in a specified sum.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.06; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.06; 1993 a. 486.

818.07 Execution of order of arrest. The affidavit, bond and order of arrest shall be delivered to the sheriff who, upon arresting the defendant, shall deliver to the defendant copies thereof; and the sheriff shall, within 5 days after such arrest, endorse the sheriff's return on and file the originals with the clerk of the court in which the action is brought. The sheriff shall promptly notify the plaintiff's attorney of the execution of the order of arrest.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.07; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.07; 1993 a. 486.

818.10 Bail, how given. The defendant may give a bail bond executed by 2 or more sufficient sureties, stating their places of residence and occupations, to the effect that the defendant shall, at all times, be amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein, or if the defendant is arrested for the cause mentioned in s. 818.02 (3), a bond executed by sufficient sureties, to the effect that they are bound in a sum double the value of the property.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.10; 1977 c. 308; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.10; 1993 a. 481.

818.11 Deposit in lieu of bail. The defendant may, instead of giving a bond, deposit with the sheriff the amount mentioned in the order. The sheriff shall thereupon give the defendant a certificate of the deposit, and release the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.11; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.11; 1993 a. 486.

818.12 Payment of deposit. The sheriff shall, within 5 days after the deposit, deliver it to the clerk of the court, and shall take from the clerk duplicate certificates of deposit one of which the sheriff shall deliver to the plaintiff and the other to the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.12; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.12; 1993 a. 486; 1995 a. 225.

818.13 Bail after deposit. If money be deposited as provided in s. 818.11 bail may be given and justified upon notice as prescribed in s. 818.16 any time before judgment, and thereupon the judge before whom the justification is had shall direct, in the order of allowance, that the money be refunded to the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.13; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.13.

818.14 Application of deposit. Where money remains on deposit at the time of judgment for the payment of money to the plaintiff, the clerk shall, under direction of the court, apply the same in satisfaction thereof, and refund the surplus to the defendant, except as provided in s. 814.61 (12) (c). If judgment be for the defendant the clerk shall return the deposit to the defendant.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.14; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.14; 1989 a. 191; 1991 a. 32.

818.15 Sheriff's return to plaintiff; notice of nonacceptance. The sheriff shall, at the time the sheriff notifies the plaintiff or the plaintiff's attorney of the sheriff's execution of the order of arrest, deliver to the plaintiff or the plaintiff's attorney a certified copy of the bail bond. The plaintiff, within 10 days thereafter, may serve upon the sheriff a notice that the plaintiff does not accept the bail, or the plaintiff shall be deemed to have accepted it, and the sheriff shall be exonerated from liability.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.15; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.15; 1993 a. 486.

818.16 Notice of justification of bail. On receipt of such notice by the sheriff, the sheriff or the defendant may, within 10 days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed notice of justification of the same or other bail, specifying the places of residence and occupation of the latter, before a judge of the court at a specified time and place; the time to be not less than 5 nor more than 10 days thereafter. In case other bail be given there shall be a new undertaking in the form prescribed in s. 818.10.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.16; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.16; 1993 a. 486.

818.17 Qualification of bail. Each surety must be a resident and freeholder within the state and be worth the amount specified in the order of arrest, above all the surety's liabilities, in property within this state, not exempt from execution; but a judge, on justification, may allow more than 2 sureties to justify severally in amounts less than that expressed in the order, if the whole justification equals twice the sum specified in the bond.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.17; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.17; 1993 a. 486.

818.18 Justification of bail. For the purpose of justification each surety shall attend before the judge at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching the surety's sufficiency. The examination shall be reduced to writing and subscribed by the surety, if required by the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.18; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.18; 1993 a. 486.

818.19 Proceedings on justification. If the judge find the bail sufficient, the judge shall annex the examination to the bond, endorse the judge's allowance thereon and file them with the court. In such case, if the sureties annexed to their bond, at the time of its delivery to the sheriff, their affidavit showing sufficient qualifications as bail, according to s. 818.17, the judge may, by order, require the costs of the justification before the judge, including fees to the sureties as witnesses, to be forthwith paid by the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.19; Sup. Ct. Order, 83 Wis. 2d xiii; Stats. 1977 s. 818.19; 1993 a. 486.

818.20 Surrender of principal. At any time before a failure to comply with their bond the sureties may surrender the defendant in their exoneration or the defendant may surrender to the sheriff of the county where the defendant was arrested. A certified copy of the bail bond shall be delivered to the sheriff, who shall detain the defendant in the sheriff's custody, as upon an order of arrest, and shall, in writing, acknowledge the surrender. Upon the production of a copy of the bond and the sheriff's certificate a judge may, upon 8 days' notice to the plaintiff, order that the bail be exonerated. But this section shall not apply to the arrest for the causes mentioned in s. 818.02 (3).

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.20; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.20; 1993 a. 481, 486; 1995 a. 225.

818.21 Arrest of principal by bail. For the purpose of surrendering the defendant the sureties, at any time before they are finally charged, may arrest the defendant or by a written authority endorsed on a certified copy of the bond may empower any discreet person to do so.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.21; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.21; 1993 a. 486.

818.22 Custody of principal. Every person surrendered in exoneration of the person's bail shall be kept in safe custody until the person shall satisfy the judgment rendered against the person or be discharged according to law.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.22; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.22; 1993 a. 486.

818.23 Proceedings against bail. In case of breach of the bond the sureties may be proceeded against by action only.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.23; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.23.

818.24 Exoneration of bail. The bail may be exonerated either by the death of the defendant or imprisonment in the Wisconsin state prisons, or by discharge from the obligation to be amenable to the process, or by surrender to the sheriff of the county where arrested, in execution thereof, within 20 days after the commencement of the action against the bail or within such further time as may be granted by the court.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.24; 1977 c. 418; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.24.

818.25 Sheriff's liability. If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof the sheriff shall himself or herself be liable as bail. But the sheriff may discharge himself or her-

self from such liability by the giving and justification of bail as provided in ss. 818.16 to 818.19, at any time before process against the person of the defendant to enforce an order or judgment in the action.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758, 777 (1975); Stats. 1975 s. 809.25; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.25; 1993 a. 486.

818.26 Proceedings against sheriff. If a judgment be recovered against a sheriff upon the sheriff's liability as bail and an execution thereon be returned unsatisfied in whole or in part the same proceedings may be had on the official bond of the sheriff, to collect the delinquency, as in other cases of delinquency.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.26; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.26; 1993 a. 486.

818.27 Bail liable to sheriff. The bail taken upon the arrest shall, unless they justify or other bail be given or justified, be liable to the sheriff by action for damages which the sheriff may sustain by reason of such omission.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.27; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.27; 1993 a. 486.

818.28 Vacation of order of arrest, etc. A defendant arrested may, at any time before the justification of bail, apply, on motion, to vacate the order of arrest or to reduce the amount of bail.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.28; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.28.

818.29 Motion papers. If the motion be made upon affidavit on the part of the defendant but not otherwise, the plaintiff may oppose the same by affidavit or other proof, in addition to those on which the order of arrest was made.

History: Sup. Ct. Order, 67 Wis. 2d 585, 758 (1975); Stats. 1975 s. 809.29; Sup. Ct. Order, 83 Wis. 2d xiiiv (1978); Stats. 1977 s. 818.29.