



2001 ASSEMBLY BILL 508

September 24, 2001 - Introduced by Representatives JESKEWITZ, RILEY, LA FAVE, BOCK, MONTGOMERY, MUSSER, RYBA, COGGS, TURNER, ALBERS, PLALE, YOUNG and OTT, cosponsored by Senators MOORE, PLACHE and GEORGE. Referred to Committee on Judiciary.

1 **AN ACT to amend** 345.47 (1) (intro.), 345.47 (1) (c), 345.47 (1) (d), 800.09 (1) (a),
2 800.09 (1) (c), 800.095 (2) (a) (form), 800.095 (4) (a), 800.095 (4) (b) (intro.) and
3 800.095 (4) (c); and **to create** 345.47 (4) and 800.09 (3) of the statutes; **relating**
4 **to:** payment of judgments in traffic cases and in municipal court and the
5 suspension of operating privileges.

Analysis by the Legislative Reference Bureau

Currently, if a person is found guilty of violating a traffic regulation, the court may enter judgment against the defendant for the forfeiture and for any applicable assessments, such as a penalty assessment. In addition, the court may suspend or revoke the person's operating privilege for a period not exceeding one year. This bill requires the court, when entering judgment, to tell the defendant, or to notify the defendant if he or she is not present in court, that he or she should notify the court if he or she is unable to pay the judgment because of poverty. The bill requires the court to determine if the defendant is unable to pay the judgment because of poverty, and if so, to give the defendant the opportunity to pay the judgment in installments, based on the defendant's income.

Under current law, if a defendant is found guilty in municipal court of an ordinance violation, the court orders the defendant to pay a forfeiture, restitution, and applicable assessments and informs the defendant of the date on which the judgment must be paid and of the penalties of failure to pay the judgment, including imprisonment and operating privilege suspension. The bill requires the municipal

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court to also notify the defendant at the time the judgment is rendered that, if the defendant cannot pay the judgment because of poverty, he or she should notify the court. If a judgment is not paid, current law allows the municipal court to defer payments, provide for installment payments of the judgment, allow the defendant to perform community service in lieu of paying the judgment, suspend the defendant's operating privilege, or imprison the defendant for up to 90 days. This bill prohibits the judge from ordering the defendant imprisoned or the suspension of the defendant's operating privilege if the defendant has notified the municipal court of his or her poverty unless the defendant fails to comply with the court order to pay the judgment in installments or to perform community service work.

Currently, a person found guilty of violating a traffic regulation or ordinance who fails to pay the ordered judgment may be imprisoned for up to 90 days or may have his or her operating privilege suspended for 30 days or until the judgment is paid, but not to exceed five years. Under this bill, the court may terminate the ordered operating privilege suspension and substitute an installment plan for the payment of the judgment. The bill requires the court to terminate the ordered operating privilege suspension and substitute an installment plan for the payment of the judgment if the defendant is unable to pay the judgment because of poverty and the defendant has not previously failed to comply with a court-ordered installment plan.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 345.47 (1) (intro.) of the statutes, as affected by 2001 Wisconsin Act
2 16, is amended to read:
3 345.47 (1) (intro.) If the defendant is found guilty, the court may enter
4 judgment against the defendant for a monetary amount not to exceed the maximum
5 forfeiture, penalty assessment, if required by s. 757.05, the jail assessment, if
6 required by s. 302.46 (1), the truck driver education assessment, if required by s.
7 349.04, the railroad crossing improvement assessment, if required by s. 346.177,
8 346.495 or 346.65 (4r), and the crime laboratories and drug law enforcement
9 assessment, if required by s. 165.755, provided for the violation and for costs under
10 s. 345.53 and, in addition, may suspend or revoke his or her operating privilege under

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1 s. 343.30. Upon entering judgment, the court shall notify the defendant personally,
2 if the defendant is present, and in writing that the defendant should notify the court
3 if he or she is unable to pay the judgment because of poverty, as that term is used in
4 s. 814.29 (1) (d). If the court, using the criteria in s. 814.29 (1) (d), determines that
5 the defendant is unable to pay the judgment because of poverty, the court may not
6 suspend the defendant's operating privilege without first providing the defendant
7 with an opportunity to pay the judgment in installments, taking into account the
8 defendant's income. If the judgment is not paid or if the defendant fails to make any
9 ordered installment payment, the court shall order:

10 **SECTION 2.** 345.47 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 16,
11 is amended to read:

12 345.47 (1) (c) If a court or judge suspends an operating privilege under this
13 section, the court or judge shall immediately take possession of the suspended license
14 and shall forward it to the department together with the notice of suspension, which
15 shall clearly state that the suspension was for failure to pay a forfeiture, a penalty
16 assessment, if required by s. 757.05, a truck driver education assessment, if required
17 by s. 349.04, a jail assessment, if required by s. 302.46 (1), a railroad crossing
18 improvement assessment, if required by s. 346.177, 346.495 or 346.65 (4r), and a
19 crime laboratories and drug law enforcement assessment, if required by s. 165.755,
20 imposed by the court, or for failure to comply with an installment payment plan
21 ordered under this section. The notice of suspension and the suspended license, if
22 it is available, shall be forwarded to the department within 48 hours after the order
23 of suspension. If the forfeiture, penalty assessment, jail assessment, truck driver
24 education assessment, railroad crossing improvement assessment, and crime
25 laboratories and drug law enforcement assessment are paid during a period of

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1 suspension, or if the court orders an installment payment plan under sub. (4), the
2 court or judge shall immediately notify the department. Upon receipt of the notice
3 and payment of the reinstatement fee under s. 343.21 (1) (j), the department shall
4 return the surrendered license.

5 **SECTION 3.** 345.47 (1) (d) of the statutes is amended to read:

6 345.47 (1) (d) In addition to or in lieu of imprisonment or suspension under par.
7 (a) or (b), the court may notify the department, in the form and manner prescribed
8 by the department, that a judgment has been entered against the defendant and
9 remains unpaid. The notice shall include the name and last-known address of the
10 person against whom the judgment was entered, the date judgment was entered, the
11 amount of the judgment, the license number of the vehicle involved, certification by
12 the court that a warrant has been served on the person against whom the judgment
13 was entered or, in the case of a judgment entered under s. 345.28, that the person has
14 been notified of the entry of judgment and the judgment remains unpaid and the
15 place where the judgment may be paid. If the person subsequently pays the
16 judgment or the court orders an installment payment plan under sub. (4), the court
17 shall immediately notify the department of the payment or installment plan in the
18 form and manner prescribed by the department. This paragraph does not apply if
19 the court orders an installment payment plan under sub. (1) (intro.) and the
20 defendant makes all installment payments ordered.

21 **SECTION 4.** 345.47 (4) of the statutes is created to read:

22 345.47 (4) (a) If the operating privilege of a defendant is suspended under this
23 section, the court may terminate that suspension and substitute an installment
24 payment plan for paying the amount of the judgment that takes into account the
25 defendant's income.

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1 (b) If the operating privilege of a defendant is suspended under this section, the
2 court shall terminate that suspension and substitute an installment payment plan
3 for the payment of the amount of the judgment that takes into account the
4 defendant's income if all of the following conditions apply:

5 1. The defendant is unable to pay the judgment in full because of poverty, as
6 that term is used in s. 814.29 (1) (d).

7 2. The defendant has not previously failed to comply with an installment
8 payment plan ordered under this section that takes into account the defendant's
9 income.

10 (c) If the defendant fails to comply with an installment payment plan ordered
11 under this subsection, the court shall reinstate the suspension of the defendant's
12 operating privilege.

13 **SECTION 5.** 800.09 (1) (a) of the statutes, as affected by 2001 Wisconsin Act 16,
14 is amended to read:

15 800.09 (1) (a) The court may defer payment of any judgment or provide for
16 ~~instalment~~ installment payments. At the time the judgment is rendered, the court
17 shall inform the defendant, orally and in writing, of the date by which restitution and
18 the payment of the forfeiture, the penalty assessment, the jail assessment, the crime
19 laboratories and drug law enforcement assessment, any applicable consumer
20 protection assessment, and any applicable domestic abuse assessment plus costs
21 must be made, and of the possible consequences of failure to do so in timely fashion,
22 including imprisonment, as provided in s. 800.095, or suspension of the defendant's
23 motor vehicle operating privilege, as provided in par. (c), if applicable. In addition,
24 the court shall inform the defendant, orally and in writing, that if the defendant
25 cannot pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d),

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1 the defendant should so notify the court. If the defendant notifies the court of his or
2 her poverty, the court may not order imprisonment or the suspension of the
3 defendant's operating privilege, except as provided in s. 800.095. If the defendant
4 is not present, the court shall ensure that the information is sent to the defendant
5 by mail. In 1st class cities, all of the written information required by this paragraph
6 shall be printed in English and Spanish and provided to each defendant.

7 **SECTION 6.** 800.09 (1) (c) of the statutes is amended to read:

8 800.09 (1) (c) The court may suspend the defendant's operating privilege, as
9 defined in s. 340.01 (40), until restitution is made and the forfeiture, assessments
10 and costs are paid, if the defendant has not done so within 60 days after the date the
11 restitution or payments or both are to be made under par. (a) and has not notified the
12 court that he or she is unable to comply with the judgment, as provided under s.
13 ~~800.095 (4)~~ par. (a), except that the suspension period may not exceed 2 years. The
14 court shall take possession of the suspended license and shall forward the license,
15 along with a notice of the suspension clearly stating that the suspension is for failure
16 to comply with a judgment of the court, to the department of transportation. This
17 paragraph does not apply if the forfeiture is assessed for violation of an ordinance
18 that is unrelated to the violator's operation of a motor vehicle.

19 **SECTION 7.** 800.09 (3) of the statutes is created to read:

20 800.09 (3) JUDGMENT REGARDING OPERATING PRIVILEGE. (a) If the operating
21 privilege of a defendant is suspended under this section or s. 800.095, the court may
22 terminate that suspension and substitute an installment payment plan for paying
23 the amount of the judgment that takes into account the defendant's income.

24 (b) If the operating privilege of a defendant is suspended under this section or
25 s. 800.095, the court shall terminate that suspension and substitute an installment

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1 payment plan for the payment of the amount of the judgment that takes into account
2 the defendant's income if all of the following conditions apply:

3 1. The defendant is unable to pay the judgment in full because of poverty, as
4 that term is used in s. 814.29 (1) (d).

5 2. The defendant has not previously failed to comply with an installment
6 payment plan ordered under this section that takes into account the defendant's
7 income.

8 (c) If the defendant fails to comply with an installment payment plan ordered
9 under this subsection, the court shall reinstate the suspension of the defendant's
10 operating privilege.

11 **SECTION 8.** 800.095 (2) (a) (form) of the statutes is amended to read:

12 800.095 (2) (a) (form):

13 STATE OF WISCONSIN

14 City/Village/Town

15 State of Wisconsin

16 vs.

17 Defendant(s)

18 THE STATE OF WISCONSIN TO THE DEFENDANT

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

23 You have failed to comply with that order.

24 YOU ARE THEREFORE ORDERED to appear before the Honorable in
25 Courtroom, at the Courthouse, in the City/Town/Village of at a.m./p.m. TO

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1 SHOW THAT YOU ARE UNABLE TO (PAY THE FORFEITURE OR MAKE
 2 RESTITUTION FOR GOOD CAUSE OR BECAUSE OF YOUR INDIGENCE
 3 POVERTY) (TO COMPLY WITH THE COMMUNITY SERVICE WORK ORDER
 4 FOR GOOD CAUSE). If (good cause or your ~~indigence~~ poverty has prevented you
 5 from paying the forfeiture or making restitution) (good cause has prevented you from
 6 complying with the community service work order), the court will modify the order.

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

12 Dated:, (year)

13 Signature:....

14 (Municipal Court Judge)

15 **SECTION 9.** 800.095 (4) (a) of the statutes is amended to read:

16 800.095 (4) (a) If the defendant appears before the court pursuant to a warrant
 17 or summons issued under sub. (1) or the defendant otherwise notifies the court that
 18 he or she is unable to comply with the judgment or community service work order,
 19 the court shall conduct a hearing. If the defendant failed to pay the forfeiture, make
 20 restitution or comply with the work order, the court shall determine if the defendant
 21 is unable to comply with the judgment for good cause or because of the defendant's
 22 ~~indigence~~ poverty, as that term is used in s. 814.29 (1) (d), or is unable to comply with
 23 the work order for good cause.

24 **SECTION 10.** 800.095 (4) (b) (intro.) of the statutes is amended to read:

