

State of Wisconsin



2009 Senate Bill 37

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2009 WISCONSIN ACT 17

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

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

SECTION 1. 345.47 (1) (intro.) of the statutes is amended to read:

345.47 (1) (intro.) If the defendant is found guilty, the court may enter judgment against the defendant for a monetary amount not to exceed the maximum forfeiture provided for the violation, plus costs, fees, and surcharges imposed under ch. 814, and, in addition, may suspend or revoke his or her operating privilege under s. 343.30. Upon entering judgment, the court shall notify the defendant personally, if the defendant is present, and in writing that the defendant should notify the court if he or she is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant is present and the court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable to pay the judgment because of poverty, the court shall provide the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income. If the judgment is not paid or if the defendant fails to make any ordered installment payment, the court shall order:

SECTION 2. 345.47 (1) (b) of the statutes is amended to read:

345.47 (1) (b) In lieu of imprisonment and in addition to any other suspension or revocation, that the defendant's operating privilege be suspended. The operating privilege shall be suspended for 30 days or until the person pays the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, but not to exceed 2 years. If the defendant has notified the court that he or she is unable to pay the judgment because of poverty, and if the court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable to pay the judgment because of poverty, the court may not suspend the defendant's operating privilege without first providing the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income. Suspension under this paragraph shall not affect the power of the court to suspend or revoke under s. 343.30 or the power of the secretary to suspend or revoke the operating privilege. This paragraph does not apply if the judgment was entered solely for violation of an ordinance unrelated to the violator's operation of a motor vehicle.

SECTION 3. 345.47 (1) (c) of the statutes is amended to read:

345.47 (1) (c) If a court or judge suspends an operating privilege under this section, the court or judge shall immediately take possession of the suspended license and shall forward it to the department together with the

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

notice of suspension, which shall clearly state that the suspension was for failure to pay a forfeiture, plus costs, fees, and surcharges imposed under ch. 814 or for failure to comply with an installment payment plan ordered by the court. The notice of suspension and the suspended license, if it is available, shall be forwarded to the department within 48 hours after the order of suspension. If the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, are paid during a period of suspension, or if the court orders an installment payment plan under sub. (4), the court or judge shall immediately notify the department. Upon receipt of the notice and payment of the fees under s. 343.21 (1) (j) and (n), the department shall return the surrendered license.

SECTION 4. 345.47 (1) (d) of the statutes is amended to read:

345.47 (1) (d) In addition to or in lieu of imprisonment or suspension under par. (a) or (b), the court may notify the department, in the form and manner prescribed by the department, that a judgment has been entered against the defendant and remains unpaid, or that the defendant has failed to comply with an installment payment plan ordered under this section. The notice shall include the name and last-known address of the person against whom the judgment was entered, the date judgment was entered, the amount of the judgment, the license number of the vehicle involved, certification by the court that a warrant has been served on the person against whom the judgment was entered or, in the case of a judgment entered under s. 345.28, that the person has been notified of the entry of judgment and the judgment ~~remains~~ or installments remain unpaid and the place where the judgment or installments may be paid. If the person subsequently pays the judgment or complies with the installment payment plan the court shall immediately notify the department of the payment in the form and manner prescribed by the department.

SECTION 4m. 345.47 (2) of the statutes is amended to read:

345.47 (2) ~~The~~ Except in those cases in which the court orders payment by installments, the payment of any judgment may be suspended or deferred for not more than 60 days in the discretion of the court. In cases where a deposit has been made, any forfeitures, plus costs, fees, and surcharges imposed under ch. 814, shall be taken out of the deposit and the balance, if any, returned to the defendant.

SECTION 5. 345.47 (4) of the statutes is created to read:

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

(b) If the operating privilege of a defendant is suspended under this section, the court shall terminate that

suspension and substitute an installment payment plan for the payment of the amount of the judgment that takes into account the defendant's income if all of the following conditions apply:

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

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

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

SECTION 6. 800.09 (1) (a) of the statutes is amended to read:

800.09 (1) (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. In addition, the court shall inform the defendant, orally and in writing, that the defendant should notify the court if he or she is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant is not present, the court shall ensure that the information is sent to the defendant by mail. If the defendant is present and the court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable to pay the judgment because of poverty, the court shall provide the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income. 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.

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

800.09 (1) (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. If the court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable to pay the judgment because of his or her poverty, as that term is used in s. 814.29 (1) (d), the court may not order the suspension of the defendant's operating privilege, except as provided in s. 800.095. 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.

SECTION 8. 800.09 (3) of the statutes is created to read:

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

(b) If the operating privilege of a defendant is suspended under this section or s. 800.095, the court shall terminate that suspension and substitute an installment payment plan for the payment of the amount of the judgment that takes into account the defendant's income if all of the following conditions apply:

1. The defendant is unable to pay the judgment in full because of poverty, as that term is used in s. 814.29 (1) (d).
2. The defendant has not previously failed to comply with an installment payment plan ordered under this section that takes into account the defendant's income.

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

SECTION 9. 800.095 (2) (a) of the statutes is amended to read:

800.095 (2) (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 INDI-

GENE POVERTY) (TO COMPLY WITH THE COMMUNITY SERVICE WORK ORDER FOR GOOD CAUSE). If (good cause or your indigence poverty 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)

SECTION 10. 800.095 (4) (a) of the statutes is amended to read:

800.095 (4) (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, comply with an ordered installment payment plan, 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 poverty, as that term is used in s. 814.29 (1) (d), or is unable to comply with the work order for good cause.

SECTION 11. 800.095 (4) (b) (intro.) of the statutes is amended to read:

800.095 (4) (b) (intro.) 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 poverty, as that term is used in s. 814.29 (1) (d), 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:

SECTION 12. 800.095 (4) (b) 4. of the statutes is amended to read:

800.095 (4) (b) 4. That Except as provided under s. 800.09 (3), 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.

SECTION 13. 800.095 (4) (c) of the statutes is amended to read:

800.095 (4) (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~~ poverty, as that term is used in s. 814.29 (1) (d), 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.

SECTION 14. Initial applicability.

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