

June 1980 Spec. Sess.
Assembly Bill 11

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CHAPTER 359, Laws of 1979

AN ACT to repeal 48.25 (5); to amend 48.10, 48.237, 48.24 (3) and (4), 48.245 (1) and (8), 48.27 (1), 48.28, 48.297 (5), 48.30 (5) (b), (6) and (7), 48.335 (1), 48.344 (1) (a), 48.355 (3m), 48.37 and 778.25 (1) and (8) (a) to (c); to repeal and recreate 48.065 (3) (b), 48.17 (2), 48.24 (5), 48.30 (1), (4) (intro.) and (c) and (8) (intro.), 48.31 (1) and (2) and 48.35 (1) (a) and (e); and to create 48.24 (7) of the statutes, relating to resolving conflicts between 1979 AB-742 and AB-1168 and making those bills consistent.

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

SECTION 1. 48.065 (3) (b) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, is repealed and recreated to read:

48.065 (3) (b) Conduct fact-finding or dispositional hearings except petitions or citations under s. 48.125.

SECTION 2. 48.10 of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.10 Power of the judge to act as intake worker. The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a recommendation to file a petition is made, a citation is issued ~~under s. 778.25~~ or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

SECTION 3. 48.17 (2) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, is repealed and recreated to read:

48.17 (2) CIVIL LAW AND ORDINANCE VIOLATIONS. (a) Except as provided in sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter in proceedings against children aged 14 or older for violations of county, town or other municipal ordinances. When a child is alleged to have violated a municipal ordinance, the child may be:

1. Issued a citation directing the child to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance;

2. Issued a citation directing the child to appear in the court assigned to exercise jurisdiction under this chapter or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 48.237; or

3. Referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter pursuant to s. 48.125.

(b) When a child 14 years of age or older is alleged to have violated a civil law punishable by a forfeiture or where a child is alleged to have violated a municipal ordinance but there is no municipal court in the municipality, the child may be:

1. Issued a citation directing the child to appear in the court assigned to exercise jurisdiction under this chapter or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 48.237; or

2. Referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter pursuant to s. 48.125.

(c) The citation procedures described in ch. 800 shall govern proceedings involving children in municipal court, except that this chapter shall govern the taking and holding of a child in custody. When a child is before the court assigned to exercise jurisdiction under this chapter upon a citation alleging the child to have violated a civil law or municipal ordinance, the procedures specified in s. 48.237 shall apply. If a citation is issued to a child, the issuing agency shall, within 7 days, notify the child's parent or guardian. The agency issuing a citation to a child who is 14 or 15 years of age for a violation of s. 66.054 (19), (20), (22) or (24), 176.29, 176.30 (2), 176.31 or 176.32 (1) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 48.24 for informational purposes only.

(d) If a municipal court finds that the child violated a municipal ordinance other than an ordinance which conforms to s. 66.054 (19), (20), (22) or (24), 176.29, 176.30 (2), 176.31 or 176.32 (1), it shall enter any of the dispositional orders permitted under s. 48.343 (1), (2), (5), (6), (7) or (8). If a child fails to pay the forfeiture imposed by the municipal court, the court shall not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 nor more than 90 days, or suspend the child's operating privilege, as defined in s. 340.01 (40), for not less than 30 nor more than 90 days. If a court suspends a license under this section, it shall immediately take possession of the suspended license and forward it to the department which issued the license, together with the notice of suspension clearly stating that the suspension is for failure to pay a forfeiture imposed by the court. If the forfeiture is paid during the first 30 days after the license is suspended, the suspension shall be reduced to the minimum period of 30 days. If it is paid thereafter, the court shall immediately notify the department, which shall thereupon return the license to the person. If it is paid after the end of the 30 days, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then return the license to the child.

(e) If a municipal court finds that a child violated a municipal ordinance which conforms to s. 66.054 (19), (20), (22) or (24), 176.29, 176.30 (2), 176.31 or 176.32 (1), it shall enter a dispositional order under s. 48.344.

SECTION 4. 48.237 of the statutes, as created by chapter (Assembly Bill 1168), laws of 1979, is amended to read:

48.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter. (1) The citation forms under s. 23.54, 66.119, 778.25 or 800.02 may be used to commence an action for a violation of civil laws and ordinances in the court assigned to exercise jurisdiction under this chapter.

(2) The procedures for issuance and filing of a citation, and for forfeitures, stipulations and deposits set forth in ss. 23.50 to 23.67, 23.75 (3) and (4), 66.119, 778.25 and 800.01 to 800.04 except s. 800.04 (2) (b), when the citation is issued by a law enforcement officer, shall be used as appropriate, except that this chapter shall govern taking and holding a child in custody, s. 48.37 shall govern costs and penalty assessments, and a *capias* shall be substituted for an arrest warrant. Sections 66.119 (3) (c), 66.12 (1) and 778.10 as they relate to collection of forfeitures do not apply.

(3) If a child to whom a citation has been issued does not submit a deposit or a stipulation and deposit, the child shall appear in the court assigned to exercise jurisdiction under this chapter for a plea hearing under s. 48.30 at the date, time and place for the court appearance specified on the citation. If the child does not submit a stipulation and deposit or if the court refuses to accept a deposit unaccompanied by a stipulation, the child may be summoned to appear and the procedures which govern petitions for civil law or ordinance violations under s. 48.125 shall govern all proceedings initiated by a citation, except that the citation shall not be referred to the court intake worker for an intake inquiry and if the citation issued is a uniform municipal citation issued under ch. 800, the child may request a jury trial at any time prior to the fact-finding hearing and within 20 days after the plea hearing. If the court finds that a child violated a municipal ordinance or a civil law punishable by a forfeiture under this section, the court shall enter a dispositional order under s. 48.344, if applicable, or if s. 48.344 does not apply, the court may enter any of the dispositional orders under s. 48.343.

SECTION 5. 48.24 (3) and (4) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, are amended to read:

48.24 (3) If the intake worker determines as a result of the intake inquiry that the child should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 48.09 file a petition, ~~except a citation issued under s. 778.25 is sufficient to initiate proceedings under this chapter and may serve as the initial pleading unless the court directs that the action be brought by petition.~~

(4) If the intake worker determines as a result of the intake inquiry that the case should be subject to an informal disposition, or should be closed, the intake worker shall so proceed. If a petition has been filed ~~or a citation issued under s. 778.25~~, informal disposition may not occur or a case may not be closed unless the petition ~~or citation~~ is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

SECTION 6. 48.24 (5) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, is repealed and recreated to read:

48.24 (5) The intake worker shall recommend that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. A notice of informal disposition of an alleged delinquency case shall include a summary of facts surrounding the allegation and a list of prior intake referrals and dispositions. If a law enforcement officer has made a recommendation concerning the child, the intake worker shall forward this recommendation to the district attorney, corporation counsel or other official under s. 48.09. With respect to petitioning a child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a condition or pattern which, together with informa-

tion received within the 40-day period, provides a basis for conferring jurisdiction on the court. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 48.25 within 20 days after notice that the case has been closed or that an informal disposition has been made. The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection.

SECTION 7. 48.24 (7) of the statutes is created to read:

48.24 (7) If a citation is issued to a child, the citation shall not be the subject of an intake inquiry or a review by an intake worker for the purpose of recommending informal disposition.

SECTION 8. 48.245 (1) and (8) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, are amended to read:

48.245 (1) ~~Except as provided by s. 48.24 (4), the~~ The intake worker may enter into a written agreement with all parties which imposes informal disposition under this section if the intake worker has determined that neither the interests of the child nor of the public require filing of a petition ~~or the issuance of a citation under s. 778.25~~ for circumstances relating to ss. 48.12 to 48.14. Informal disposition shall be available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian.

(8) If the obligations imposed under the informal disposition are met, the intake worker shall so inform the child and a parent, guardian and legal custodian in writing, and ~~no petition or citation may be filed or citation issued~~ on the charges that brought about the informal disposition nor may the charges be the sole basis for a petition under ss. 48.13 to 48.14.

SECTION 9. 48.25 (5) of the statutes, as created by chapter (Assembly Bill 742), laws of 1979, is repealed.

SECTION 10. 48.27 (1) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.27 (1) After a citation is is issued ~~under s. 778.25~~ or a petition has been filed relating to facts concerning a situation specified under ss. 48.12, 48.125 and 48.13, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the person who has legal custody of the child to appear personally, and, if the court so orders, to bring the child before the court at a time and place stated.

SECTION 11. 48.28 of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.28 Failure to obey summons; capias. If any person summoned fails without reasonable cause to appear, he or she may be proceeded against for contempt of court. In case the summons cannot be served or the parties served fail to obey the same, ~~or, except as provided by s. 778.25 (8) (b) and (c),~~ in any case when it appears to the court that the service will be ineffectual a capias may be issued for the parent or guardian or for the child. Subchapter IV governs the taking and holding of a child in custody.

SECTION 12. 48.297 (5) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.297 (5) If the child is in custody and the court grants a motion to dismiss based upon a defect in the petition or a citation ~~issued under s. 778.25~~ or in the institution of the proceedings, the court may order the child continued in custody for not more than 48 hours pending the filing of a new petition or citation.

SECTION 13. 48.30 (1) and (4) (intro.) and (c) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, are repealed and recreated to read:

48.30 (1) The hearing to determine the child's plea to a citation or a petition under s. 48.12, 48.125 or 48.13 (12), or to determine whether any party wishes to contest an allegation that the child is in need of protection or services, shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days of the filing of a petition or issuance of a citation for a child who is not being held in secure custody or within 10 days of the filing of a petition or issuance of a citation for a child who is being held in secure custody.

(4) (intro.) If a delinquency petition under s. 48.12, a civil law or ordinance violation petition or citation under s. 48.125, or a petition alleging that a child is in need of protection or services under s. 48.13 (12) is filed, the child may plead as follows:

(c) Except pursuant to petitions or citations under s. 48.125, state that he or she is not responsible for the acts alleged in the petition by reason of mental disease or defect. This plea shall be joined with an admission under par. (a), a denial under par. (b) or a plea of no contest under par. (bm).

SECTION 14. 48.30 (5) (b), (6) and (7) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, are amended to read:

48.30 (5) (b) If the child denies the allegations in the petition or citation, the court shall hold a fact-finding hearing on the allegations in the petition or citation as provided under s. 48.31. If, at the end of the fact-finding hearing, the court finds that the allegations in the petition have been proven, the court shall immediately hold a hearing to determine whether the child was not responsible by reason of mental disease or mental defect.

(6) ~~If the child fails to appear in response to a citation issued under s. 778.25 the court shall proceed as provided by s. 778.25 (8). If a child appears in response to a citation issued under s. 778.25 and does not contest the citation, or if a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days from the plea hearing for the child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing. If a citation is not contested, the court may proceed immediately to enter a dispositional order.~~

(7) ~~If the citation issued under s. 778.25 or the petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days from the plea hearing for a child who is held in secure custody and no more than 30 days from the plea hearing for a child who is not held in secure custody.~~

SECTION 15. 48.30 (8) (intro.) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, is repealed and recreated to read:

48.30 (8) (intro.) Except when a child fails to appear in response or stipulates to a citation before accepting an admission or plea of no contest of the alleged facts in a petition or citation, the court shall:

SECTION 16. 48.31 (1) and (2) of the statutes, as affected by chapters (Assembly Bill 742) and (Assembly Bill 1168), laws of 1979, are repealed and recreated to read:

48.31 (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations of a petition under s. 48.12 or 48.13 (12) are supported beyond a reasonable doubt or a hearing to determine if the allegations in a petition or citation under s. 48.125 or 48.13 (1) to (11) or a petition to terminate parental rights are proved by clear and convincing evidence.

(2) The hearing shall be to the court unless the child, parent, guardian or legal custodian exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. Chapters 756 and 805 shall govern the selection of jurors except that ss. 972.03 and 972.04 shall apply in cases in which the juvenile is alleged to be delinquent under s. 48.12. At the conclusion of the hearing, the court or jury shall make a determination of the facts. If the court finds that the child is not within the jurisdiction of the court or the court or jury finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

SECTION 17. 48.335 (1) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.335 (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be delinquent under s. 48.12, to have violated a civil law or ordinance under s. 48.125 or to be in need of protection or services under s. 48.13, except the court shall proceed as provided by s. ~~778.25 (8)~~ 48.237 (2) if a citation is issued ~~under s. 778.25~~ and the child fails to ~~appear~~ contest the citation.

SECTION 18. 48.344 (1) (a) of the statutes, as created by chapter (Assembly Bill 742), laws of 1979, is amended to read:

48.344 (1) (a) "Court" means a ~~civil~~ municipal court or the court assigned to exercise jurisdiction under this chapter.

SECTION 19. 48.35 (1) (a) and (e) of the statutes, as affected by chapter (Assembly Bill 742), laws of 1979, are repealed and recreated to read:

48.35 (1) (a) A judgment in proceedings on a petition under this chapter is not a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from the conviction of a crime and shall not operate to disqualify the child in any civil service application or appointment.

(e) If a child is found to be not responsible by reason of mental disease or defect the petition shall be dismissed with prejudice.

SECTION 20. 48.355 (3m) of the statutes, as created by chapter (Assembly Bill 1168), laws of 1979, is amended to read:

48.355 (3m) ORDERS BASED ON EVIDENCE. Dispositional orders under s. 48.343 or ~~48.344~~ shall be based upon the evidence except this subsection does not require a dispositional hearing for the disposition of an uncontested citation.

SECTION 21. 48.37 of the statutes, as affected by chapter (Assembly Bill 1168), laws of 1979, is amended to read:

48.37 Costs. No costs or penalty assessments may be assessed against any child in a court assigned to exercise jurisdiction under this chapter. Courts of civil and criminal jurisdiction exercising jurisdiction under s. 48.17 may assess the same costs and penalty assessment against children as they may assess against adults, except that witness fees shall not be charged to the child.

SECTION 22. 778.25 (1) and (8) (a) to (c) of the statutes, as created by chapter (Assembly Bill 742), laws of 1979, are amended to read:

778.25 (1) The citation procedures established by this section may be used only in an action ~~in a court other than a municipal court~~ to recover a forfeiture under s. 66.054 (19), (20), (22) or (24), 176.29, 176.30 (2), 176.31 or 176.32 (1) or under a local ordinance strictly conforming to one of those statutes brought against an adult in circuit court or against a minor in the court assigned to exercise jurisdiction under ch. 48. The citation form provided by this section may serve as the initial pleading for the action and is adequate process to give a court jurisdiction over the person if the citation is filed with the court.

(8) (a) If the defendant has not made a deposit, the court may issue a summons or an arrest warrant, ~~except an arrest warrant may be issued for a minor only if it appears to the court that a summons would be ineffectual if the defendant is a minor the court shall proceed under s. 48.28.~~ Chapter 48 governs taking and holding a minor in custody.

(b) If the defendant has made a deposit, the citation may serve as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs, 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 or arrest warrant, ~~except a if the defendant is a minor the court may issue an arrest warrant for a minor only if the summons cannot be served or the minor fails to obey the summons shall proceed under s. 48.28.~~ Chapter 48 governs taking and holding a minor in custody. If the court accepts the plea of no contest, the defendant may move within 90 days after the date set for appearance to withdraw the plea of no contest, open the judgment and enter a plea of not guilty if the defendant shows to the satisfaction of the court that failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If a party is relieved from the plea of no contest, the court or judge may order a written complaint or petition to be filed. If on reopening the defendant is found not guilty, the court shall delete the record of conviction and shall order the defendant's deposit returned.

(c) If the defendant has made a deposit and stipulation of no contest, the citation serves as the initial pleading and the defendant shall be considered to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment plus costs, 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 or arrest warrant, ~~except a if the defendant is a minor the court may issue an arrest warrant for a minor only if the summons cannot be served or the minor fails to obey the summons shall proceed under s. 48.28.~~ Chapter 48 governs taking and holding a minor in custody. After signing a stipulation of no contest, the defendant may, at any time prior to or at the time of the court appearance date, move the court for relief from the effect of the stipulation. The court may act on such motion, with or without notice, for cause shown by affidavit and upon just terms, and relieve the defendant from the stipulation and the effects of the stipulation.

SECTION 23. Reconciliation. The repeal of section 48.25 (5) of the statutes, as created by chapter (Assembly Bill 742), laws of 1979, by this act does not repeal section 48.25 (5) of the statutes, as created by chapter (Assembly Bill 1168), laws of 1979, and that section, as created by chapter (Assembly Bill 1168), laws of 1979, shall remain in effect on and after the effective date of this act.
