

1987 Senate Bill 379

Date of enactment: April 23, 1988
Date of publication: May 2, 1988

1987 Wisconsin Act 389

AN ACT to renumber 800.01 (2), 800.02 (3) and 800.02 (4); to amend 66.119 (1) (a), 345.43 (1), 345.47 (1) (a), 345.47 (1) (b), 755.01 (4), 800.04 (1) (b) 1, 800.04 (1) (d), 800.04 (1) (e), 800.07, 800.09 (1), 800.09 (2) (b), 800.14 (4), 814.08 (1) and 814.65 (1); to repeal and recreate 66.12 (1) (c); and to create 345.47 (1m), 756.096 (3) (d), 800.001, 800.01 (2) (b), 800.01 (3), 800.02 (2) (am), 800.02 (3) (b), 800.02 (4) (b), 800.04 (1) (f), 800.04 (2m), 800.04 (3) (c), 800.065, 800.09 (1) (b) and (c), 800.095 and 800.115 of the statutes, relating to municipal court procedure, temporary reserve municipal judges and providing penalties.

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

SECTION 1. 66.119 (1) (a) of the statutes is amended to read:

66.119 (1) (a) The governing body of any county, town, city or village may by ordinance adopt and authorize the use of a citation to be issued for violations of ordinances ~~other than those~~, including ordinances for which a statutory counterpart exists.

SECTION 2. 66.12 (1) (c) of the statutes, as affected by 1987 Wisconsin Act 27, is repealed and recreated to read:

66.12 (1) (c) If the circuit court finds a defendant guilty in a forfeiture action based on a violation of a municipal ordinance, the court shall render judgment as provided under ss. 800.09 and 800.095.

SECTION 3. 345.43 (1) of the statutes is amended to read:

345.43 (1) If a case has been transferred under s. 800.04 (1) (d) ~~in a traffic regulation case~~, or if in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the circuit court. The number of jurors shall be determined under s. 756.096 (3) (b). If no party demands a trial by a jury of 12, the right to trial by a jury of 12 is waived forever.

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

345.47 (1) (a) That, subject to s. 800.095 (8), the defendant be imprisoned for a time specified by the court until the judgment is paid, but not to exceed 90 days; or

SECTION 5. 345.47 (1) (b) of the statutes, as affected by 1987 Wisconsin Act 27, 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 for a ~~period of time not less than 30 days nor more than 6 months~~. If or until the person pays the forfeiture, the penalty assessment, if required by s. 165.87, and the jail assessment, if required by s. 53.46 (1), ~~after suspension under this section, the suspension shall be reduced to the minimum period of 30 days whichever is longer, but not to exceed 5 years~~. 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.

SECTION 6. 345.47 (1m) of the statutes is created to read:

345.47 (1m) If the action is in municipal court, the court shall determine, at the time of entering judgment under sub. (1), whether incarceration may be ordered for noncompliance with a judgment or order under this section. If incarceration may be ordered because of the defendant's subsequent noncompliance with the judgment, the provisions of s. 800.095 (1) to (3) and (4) (a) apply.

SECTION 6m. 755.01 (4) of the statutes is amended to read:

755.01 (4) Two or more cities, towns or villages of this state may enter into an agreement under s. 66.30 for the joint exercise of the power granted under sub. (1), except that for purposes of this subsection, any agreement under s. 66.30 shall be effected by the enactment of identical ordinances by each affected city, town or village. Electors of each municipality entering into the agreement shall be eligible to vote for the judge of the municipal court so established. If a municipality enters into an agreement with a municipality that already has a municipal court, the municipalities may provide by ordinance or resolution that the judge for the existing municipal court shall serve as the judge for the joint court until the end of the term or until a special election is held under s. 8.50 (4) (fm). Each ~~such~~ municipality shall adopt an ordinance or bylaw under sub. (1) prior to entering into the agreement. The contracting municipalities need not be contiguous and need not all be in the same county.

SECTION 7m. 756.096 (3) (d) of the statutes is created to read:

756.096 (3) (d) Notwithstanding par. (b), a jury in civil actions under s. 800.14 (4) shall consist of 6 persons.

SECTION 8. 800.001 of the statutes is created to read:

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.

SECTION 9. 800.01 (2) of the statutes is renumbered 800.01 (2) (a).

SECTION 10. 800.01 (2) (b) of the statutes is created to read:

800.01 (2) (b) If a summons or citation is personally served, the law enforcement officer or municipal employe serving the summons or citation shall sign a statement of personal service on the summons or citation.

SECTION 11. 800.01 (3) of the statutes is created to read:

800.01 (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.

SECTION 12. 800.02 (2) (am) of the statutes is created to read:

800.02 (2) (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.

SECTION 13. 800.02 (3) of the statutes is renumbered 800.02 (3) (a).

SECTION 14. 800.02 (3) (b) of the statutes is created to read:

800.02 (3) (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.

SECTION 15. 800.02 (4) of the statutes is renumbered 800.02 (4) (a).

SECTION 16. 800.02 (4) (b) of the statutes is created to read:

800.02 (4) (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.

SECTION 17. 800.04 (1) (b) 1 of the statutes is amended to read:

800.04 (1) (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. ~~Of the~~ The effect of a plea of no contest; ~~and~~

c. ~~Of the~~ The right to a jury trial.

SECTION 18m. 800.04 (1) (d) of the statutes is amended to read:

800.04 (1) (d) ~~If the~~ a defendant charged with the violation of an ordinance which is in conformity with s. 346.63 (1) 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. ~~In cases not governed by ss. 345.20 to 345.53,~~ 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).

SECTION 19. 800.04 (1) (e) of the statutes is amended to read:

800.04 (1) (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.

SECTION 20. 800.04 (1) (f) of the statutes is created to read:

800.04 (1) (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 writ-

ten order that contains the action taken at the pretrial conference and sets the trial date.

SECTION 21. 800.04 (2m) of the statutes is created to read:

800.04 (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), 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.

SECTION 22. 800.04 (3) (c) of the statutes is created to read:

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

SECTION 23. 800.065 of the statutes is created to read:

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.

SECTION 24. 800.07 of the statutes is amended to read:

800.07 Discovery in municipal court. Neither party is entitled to pretrial discovery, except that if the defendant moves within ~~7~~ 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.

SECTION 25. 800.09 (1) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

800.09 (1) **JUDGMENT.** If a municipal court finds a defendant guilty it may render judgment by ordering payment of a forfeiture, the penalty assessment imposed by s. 165.87 and the jail assessment imposed by s. 53.46 (1) plus costs of prosecution, including the fee prescribed in s. 814.65 (1), ~~and by imprisonment in default of the payment. Persons who fail to pay forfeitures, penalty assessments, jail assessments and costs shall be committed to a jail or a house of correction in the county in which the cause of action arose for not more than 90 days and shall be kept at the expense of the municipality. Any person committed under this section may be accorded privileges under s. 56.08. If the judgment is not paid, the court may proceed under par. (a), (b) or (c) or any combination thereof, as follows:~~

(a) The court may defer payment of any judgment for not more than 60 days or provide for instalment payments. At the time the judgment is rendered, the court shall inform the defendant, orally and in writing, of the date by which payment of the forfeiture, penalty assessment, jail assessment and costs must be made, and of the possible consequences of failure to make the payment 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. A municipal court may order the payment of restitution under s. 755.045 (3). 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.

SECTION 26. 800.09 (1) (b) and (c) of the statutes are created to read:

800.09 (1) (b) If the defendant agrees to perform community service work in lieu of paying the judgment and any restitution ordered under par. (a), the court may order that the defendant perform community service work for a public agency or a nonprofit charitable organization which is designated by the court. 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 the judgment and any restitution order under par. (a) is paid, if the defendant has not paid the judgment and restitution within 60 days after the date on which pay-

ment is ordered under par. (a) and has not notified the court that he or she is unable to pay the judgment, as provided under s. 800.095 (4) (a), except that the suspension period may not exceed 5 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 pay a forfeiture ordered by the court, to the department of transportation.

SECTION 27. 800.09 (2) (b) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

800.09 (2) (b) If the person ~~arrested and released~~ 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 the penalty assessment, jail assessment and costs, including the fee prescribed in s. 814.65 (1), may be declared forfeited by the court or may be ordered applied upon the payment of any penalty which may be imposed, together with the penalty assessment, jail assessment and costs. In either event, any remaining money shall be refunded to the person who made the deposit.

SECTION 28. 800.095 of the statutes is created to read:

800.095 Nonpayment of forfeiture or noncompliance with work order; further proceedings. (1) **NONPAYMENT OR NONCOMPLIANCE.** If the defendant does not make payments in accordance with the order of the court under s. 800.09 (1) (a) 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 the payment of a civil forfeiture. You were ordered by the court on, 19..., to (make the following payments:) (perform the following community service work order:).

You have failed to (make the payments) (comply with the community service work 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 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) (good cause has prevented you from complying with the community service work order), the court will set a new payment schedule or modify the community service work 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:, 19..

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 pay the judgment or comply with the community service work order, the court shall conduct a hearing. If the defendant failed to pay the forfeiture or comply with the work order, the court shall determine if the defendant is unable to pay the amount specified in 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 pay 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 amount is 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.

2. That the payment schedule or the amount of the 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. 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, non-tipped 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 and any restitution order under s. 800.09 (1) (a) is paid, except that the suspension period may not exceed 5 years.

(c) If the court determines that the failure of the defendant to pay 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. 56.08.

(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.

(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.

SECTION 29. 800.115 of the statutes is created to read:

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).

SECTION 30. 800.14 (4) of the statutes is amended to read:

800.14 (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 de novo without a jury be held in circuit court. The new trial shall be conducted by the court without a jury unless the appellant requests a jury trial in the notice of appeal under sub. (1). The required fee for a jury is prescribed in s. 814.61 (4).

SECTION 30m. 814.08 (1) of the statutes is amended to read:

814.08 (1) In actions appealed from municipal court, where there is no new trial, if the judgment is affirmed or the appeal dismissed the respondent shall have costs; if reversed, the appellant; if affirmed in part and reversed in part, the court may award the costs or such part thereof as is just to either party. In actions appealed by the defendant from municipal court, where there is no new trial, if the judgment finding the defendant guilty under s. 800.09 is affirmed, or if the defendant's appeal is dismissed, the defendant shall pay the full costs of the transcript prepared under s. 800.14 (5), minus the \$10 transcript payment under s. 814.65. Where there is a new trial, costs shall be awarded to the successful party; but if the appeal is from a judgment in favor of the appellant he or she shall have costs only if he or she obtains a more favorable judgment, and otherwise the respondent shall have costs. In all those cases full costs shall be the applicable fee under s. 814.61 (8) and all disbursements made for return of the judge and officers' and witnesses' fees, together with all costs taxable in the municipal court in the action.

SECTION 31. 814.65 (1) of the statutes is amended to read:

814.65 (1) COURT COSTS. In a municipal court action, the municipal judge shall collect a fee of ~~\$10~~ \$15 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons or the action is tried as a contested matter. Of each ~~\$10~~ \$15 fee received by the judge under this subsection, the municipal treasurer shall pay monthly ~~50%~~ one-third to the state treasurer for deposit in the general fund and shall retain the balance for the use of the municipality.

SECTION 32. **Initial applicability.** (1) Except as provided in subsection (2), this act applies to actions commenced on or after the effective date of this subsection.

(2) The treatment of section 66.119 (1) (a) of the statutes applies to ordinances adopted on or after the effective date of this subsection authorizing the use of citations for general statutory counterpart ordinances.

SECTION 33. **Effective date.** This act takes effect on the first day of the 6th month commencing after publication.
