

1991 Assembly Bill 66

Date of enactment: **August 27, 1991**
Date of publication*: **September 11, 1991**

1991 WISCONSIN ACT 40

AN ACT *to renumber* 911.01 (5); *to amend* 48.17 (2) (d), 66.119 (3), 66.12 (1) (c), 755.045 (3), 800.04 (2) (c), 800.09 (1), 800.09 (2) (b), 800.095 (title), 800.095 (1), 800.095 (2) (a) and 800.095 (4); *to repeal and recreate* 943.24 (5) (b) and 943.50 (5) (b); and *to create* 66.119 (1) (b) 7. e., 800.02 (2) (a) 8m, 800.03 (5), 800.04 (1) (b) 1. d., 800.093, 911.01 (5) (b), 943.24 (5) (c) and 943.50 (5) (c) of the statutes, **relating to:** restitution in civil actions involving forfeitures.

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

SECTION 1. 48.17 (2) (d) of the statutes is amended to read:

48.17 (2) (d) If a municipal court finds that the child violated a municipal ordinance other than an ordinance enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 161.573 (2), 161.574 (2) or 161.575 (2), the court shall enter any of the dispositional orders permitted under s. 48.343 (1), (2), (4), (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 or privilege under this section, the court shall immediately take possession of the applicable license and forward it to the department that 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 or privilege is suspended, the suspension shall be reduced to the minimum period of 30 days. If the forfeiture is paid thereafter, the court shall immediately notify the department, which shall thereupon return the license to the person. If the forfeiture is paid after the end of the 30 days,

the suspension shall be reduced to the time period that has already elapsed and the court shall immediately notify the department, which shall then return the license to the child.

SECTION 2. 66.119 (1) (b) 7. e. of the statutes is created to read:

66.119 (1) (b) 7. e. That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093.

SECTION 3. 66.119 (3) of the statutes is amended to read:

66.119 (3) VIOLATOR'S OPTIONS; PROCEDURE ON DEFAULT. (a) The person named as the alleged violator in a citation may appear in court at the time specified in the citation or may mail or deliver personally a cash deposit in the amount, within the time and to the court, clerk of court or other official specified in the citation. If a person makes a cash deposit, the person may nevertheless appear in court at the time specified in the citation, provided that the cash deposit may be retained for application against any forfeiture, restitution, penalty assessment or jail assessment which may be imposed.

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(b) If a person appears in court in response to a citation, the citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may plead guilty, no contest or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter a judgment of guilty and impose a forfeiture, the penalty assessment imposed by s. 165.87 and the jail assessment imposed by s. 302.46 (1). If the court finds that the violation meets the conditions in s. 800.093 (1), the court may order restitution under s. 800.093. A plea of not guilty shall put all matters in the case at issue, and the matter shall be set for trial.

(c) If the alleged violator makes a cash deposit and fails to appear in court, the citation may serve as the initial pleading and the violator shall be deemed to have tendered a plea of no contest and submitted to a forfeiture, the penalty assessment imposed by s. 165.87 and the jail assessment imposed by s. 302.46 (1) 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. If the court finds the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the court accepts the plea of no contest, the defendant may move within 10 days after the date set for the 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 the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. If the plea of no contest is accepted and not subsequently changed to a plea of not guilty, no costs or fees may be taxed against the violator, but a penalty assessment and a jail assessment shall be assessed. If the court rejects the plea of no contest or if the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, an action for collection of the forfeiture, penalty assessment and jail assessment may be commenced. A city or village may commence action under s. 66.12 (1) and a county or town may commence action under s. 778.10. The citation may be used as the complaint in the action for the collection of the forfeiture, penalty assessment and jail assessment.

SECTION 4. 66.12 (1) (c) of the statutes is amended 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. If the court finds the violation meets the conditions in s. 800.093 (1) (a) and (b), the court may hold a hearing to determine if restitution shall be ordered under s. 800.093.

SECTION 5. 755.045 (3) of the statutes is amended to read:

755.045 (3) A municipal judge may order the payment of restitution for violations of ordinances ~~in conformity with s. 943.24 or 943.50~~ that prohibit conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both. The judge shall use the restitution procedure under s. 943.24 ~~(5) or 943.50 (5)~~, as applicable 800.093.

SECTION 6. 800.02 (2) (a) 8m of the statutes is created to read:

800.02 (2) (a) 8m. Notice that if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the defendant, the court may summon the defendant into court to determine if restitution shall be ordered under s. 800.093.

SECTION 7. 800.03 (5) of the statutes is created to read:

800.03 (5) Notwithstanding sub. (1), a court appearance may be required if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator.

SECTION 8. 800.04 (1) (b) 1. d. of the statutes is created to read:

800.04 (1) (b) 1. d. That if the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and the violation resulted in damage to the property of or physical injury to a person other than the defendant, the court may order the defendant to pay restitution under s. 800.093.

SECTION 9. 800.04 (2) (c) of the statutes is amended to read:

800.04 (2) (c) If the defendant has made a deposit under par. (b) or s. 800.03 and does not appear, he or she is deemed to have tendered a plea of no contest and submits to a forfeiture, a penalty assessment imposed by s. 165.87 and a jail assessment imposed by s. 302.46 (1) plus costs, including the fee prescribed in s. 814.65 (1), 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. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the defendant fails to appear in response to the summons, the court shall issue a warrant under s. 968.09. If the defendant has made a deposit but does appear, the court shall allow the defendant to withdraw the plea of no contest.

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SECTION 10. 800.09 (1) of the statutes is amended to read:

800.09 (1) JUDGMENT. If a municipal court finds a defendant guilty it may render judgment by ordering restitution under s. 800.093 and payment of a forfeiture, the penalty assessment imposed by s. 165.87 and the jail assessment imposed by s. 302.46 (1) plus costs of prosecution, including the fee prescribed in s. 814.65 (1). The court shall apply any payment received on a judgment that includes restitution to first satisfy any payment of restitution ordered, then to pay the forfeiture, assessments and costs. If the judgment is not paid, the court may proceed under par. (a), (b) or (c) or any combination thereof of those paragraphs, as follows:

(a) The court may defer payment of any judgment 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 restitution and the payment of the forfeiture, penalty assessment, jail assessment and costs must be made, and of the possible consequences of failure to make the payment 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. ~~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.

(b) If the defendant agrees to perform community service work in lieu of making restitution or paying the judgment and any restitution ordered under par. (a) for forfeiture, assessments and costs, or both, the court may order that the defendant perform community service work for a public agency or a nonprofit charitable organization which that is designated by the court. Community service work may be in lieu of restitution only if also agreed to by the public agency or nonprofit charitable organization and by the person to whom restitution is owed. 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 non-agriculture, 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~~ restitution is made and the forfeiture, assessments and costs are paid, if the defendant has not ~~paid the judgment and restitution~~

~~done so~~ within 60 days after the date ~~on which payment is ordered~~ 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 pay comply with 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 comply with a judgment of the court, to the department of transportation.

SECTION 11. 800.09 (2) (b) of the statutes is amended to read:

800.09 (2) (b) If the person 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~~ If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. Any money remaining after payment of any penalties, assessments, costs and restitution shall be refunded to the person who made the deposit.

SECTION 12. 800.093 of the statutes is created to read:

800.093 Restitution. (1) The municipal court, in addition to ordering any payment authorized by law, may order a defendant to make full or partial restitution to any victim or, if the victim is deceased, to his or her estate if the court finds all of the following:

(a) The defendant is guilty of violating an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both.

(b) The violation resulted in damage to the property of or physical injury to a person other than the defendant.

(2) Restitution ordered under this section is enforceable in a civil action by the victim named in the order to receive restitution. A court may not order a defendant to pay more than \$200 in restitution under this section. This \$200 limit does not apply to restitution ordered for violation of an ordinance that prohibits conduct that is the same as or similar to the conduct prohibited by s. 943.24 or 943.50.

(3) If the violation resulted in damage to or loss or destruction of property, the restitution order may require that the defendant do one of the following:

(a) Return the property to the owner or owner's designee.

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(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee, subject to the \$200 limit in sub. (2), the reasonable repair or replacement cost or the greater of the following:

1. The value of the property on the date of its damage, loss or destruction.

2. The value of the property on the date judgment is rendered, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(4) If the violation resulted in physical injury, the restitution order may require that the defendant do one or more of the following, subject to the \$200 limit in sub. (2):

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric or psychological care and treatment.

(b) Reimburse the injured person for income lost as a result of the violation.

(c) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to reimburse the person for any payments made to another to perform those duties from the date of the injury and to ensure that the duties are continued until the person is able to resume performance of the duties.

(5) The restitution order may require that the defendant do one or more of the following, subject to the \$200 limit in sub. (2):

(a) Pay all special damages, but not general damages, including, but without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses, substantiated by evidence in the record, that could be recovered in a civil action against the defendant for his or her conduct in the commission of the violation.

(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom the violation was committed as a result of the commencement of the action or of cooperating in the investigation and prosecution of the violation.

(c) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be made. The court shall order that all restitution to victims be made before restitution to other persons. If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the court shall

distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(7) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The fact that restitution was required or made is not admissible as evidence in that civil action and has no legal effect on the merits of the civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events that were the basis for the restitution. The court trying that civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(8) (a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of the violation.

2. The financial resources of the defendant.

3. The present and future earning ability of the defendant.

4. The needs and earning ability of the defendant's dependents.

5. Any other factors which the court deems appropriate.

(b) If the court finds that the conditions in sub. (1) are met, the court may hold the restitution hearing at the time of any appearance by the defendant before the court or may summon the defendant to appear to determine if restitution shall be ordered. The court shall give the victim an opportunity to present evidence and arguments pertaining to the factor specified in par. (a) 1. The court shall give the defendant the opportunity to present evidence and arguments on the factors specified in par. (a). The victim has the burden of demonstrating by the preponderance of the evidence the amount of loss sustained as a result of the violation. The defendant has the burden of demonstrating by the preponderance of the evidence the factors specified in par. (a) 2. to 5. When hearing evidence as to the factors specified in par. (a), the court may waive the rules of practice, procedure, pleading and evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person.

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

800.095 (title) Nonpayment of judgment or non-compliance with work order; further proceedings.

SECTION 14. 800.095 (1) of the statutes is amended to read:

800.095 (1) NONPAYMENT OR NONCOMPLIANCE. If the defendant does not ~~make payments in accordance~~ comply with the ~~order~~ judgment of the court under s. 800.09 (1) ~~(a)~~ or fails to comply with the community service

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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.

SECTION 15. 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, 19.., to (make the following payments:) (perform the following community service work order:) (make the following restitution:).

You have failed to ~~(make the payments)~~ ~~(comply with the community service work~~ 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 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 or making restitution) (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)

SECTION 16. 800.095 (4) of the statutes is amended to read:

800.095 (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 judgment or community service work order, the court shall conduct a hearing. If

the defendant failed to pay the forfeiture, make restitution or comply with the work order, the court shall determine if the defendant is unable to ~~pay the amount specified in~~ comply with 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~~ comply with 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 forfeiture, assessments and costs are 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 and, if the community service work is in lieu of restitution, unless the person to whom the restitution is owed agrees. 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 or restitution, or both, 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.

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~~ complied with, except that the suspension period may not exceed 5 years.

(c) If the court determines that the failure of the defendant to ~~pay~~ comply with 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.

SECTION 17. 911.01 (5) of the statutes is renumbered 911.01 (5) (a).

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SECTION 18. 911.01 (5) (b) of the statutes is created to read:

911.01 (5) (b) When hearing evidence as to the factors that determine a restitution order under s. 800.093, the rules of evidence are subject to waiver under s. 800.093 (8) (b).

SECTION 19. 943.24 (5) (b) of the statutes is repealed and recreated to read:

943.24 (5) (b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. A victim may not be compensated under ss. 800.093 and 943.245.

SECTION 20. 943.24 (5) (c) of the statutes is created to read:

943.24 (5) (c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

SECTION 21. 943.50 (5) (b) of the statutes is repealed

and recreated to read:

943.50 (5) (b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. A victim may not be compensated under ss. 800.093 and 943.51.

SECTION 22. 943.50 (5) (c) of the statutes is created to read:

943.50 (5) (c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

SECTION 23. Initial applicability. This act first applies to persons who, on the effective date of this SECTION, violate ordinances that prohibit conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both.

SECTION 24. Effective date. This act takes effect on the first day of the 4th month commencing after its publication.
