



1997 ASSEMBLY BILL 498

September 2, 1997 - Introduced by Representatives HOVEN, M. LEHMAN, LADWIG, AINSWORTH, BOCK, ALBERS, PLOUFF, GOETSCH, GROTHMAN, GUNDERSON, SYKORA, URBAN and POWERS, cosponsored by Senators HUELSMAN and ROESSLER. Referred to Committee on Judiciary.

1 **AN ACT to amend** 66.119 (1) (b) 7. b., 66.119 (1) (b) 7. c., 66.119 (1) (b) 7. d., 66.119
2 (3) (a), 66.119 (3) (c), 66.119 (3) (d), 66.12 (1) (b), 345.26 (1) (b) 1., 345.26 (1) (b)
3 2., 345.36 (2) (b), 345.37 (1) (b), 345.37 (2), 800.02 (2) (a) 8., 800.02 (2) (a) 9.,
4 800.04 (2) (c), 800.04 (2m) and 800.09 (2) (b); and **to create** 345.11 (3), 345.26
5 (1) (b) 3. and 800.03 (6) of the statutes; **relating to:** requiring a court
6 appearance for certain traffic offenses.

Analysis by the Legislative Reference Bureau

Currently, if a person is served with a citation involving an alleged violation of a traffic regulation for which a forfeiture is the penalty, he or she may deposit the amount stated on the citation and not appear in court. The court considers the payment to be a plea of no contest and enters a judgment accordingly. Under current law, if a person is served with a citation for a violation that involves first-offense drunk driving, he or she is required to appear in court, even though the penalty for that violation is a forfeiture. Under this bill, if an individual dies in an incident related to a violation of a traffic regulation for which a forfeiture is the penalty, the person served with the citation for the violation is required to appear in court if the law enforcement officer who issued the citation states that an individual died in the

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incident and states that the person is required to appear in court at the time fixed in the citation. The bill requires a law enforcement officer who issues a citation for a violation for which a forfeiture is the penalty, if he or she knows that an individual died in the incident related to the violation, to state that fact on the citation and to state on the citation that the person served with the citation is required to appear in court at the time fixed in the citation.

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

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

1 **SECTION 1.** 66.119 (1) (b) 7. b. of the statutes is amended to read:

2 66.119 (1) (b) 7. b. That if the alleged violator makes such a deposit, he or she
3 need not appear in court unless subsequently summoned unless he or she is required
4 to appear in court under s. 66.12 (1) (b).

5 **SECTION 2.** 66.119 (1) (b) 7. c. of the statutes is amended to read:

6 66.119 (1) (b) 7. c. That if the alleged violator makes a cash deposit ~~and~~, does
7 not appear in court; and is not required to appear in court under s. 66.12 (1) (b), he
8 or she either will be deemed to have tendered a plea of no contest and submitted to
9 a forfeiture, a penalty assessment imposed by s. 165.87, a jail assessment imposed
10 by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055
11 (1) not to exceed the amount of the deposit or will be summoned into court to answer
12 the complaint if the court does not accept the plea of no contest.

13 **SECTION 3.** 66.119 (1) (b) 7. d. of the statutes is amended to read:

14 66.119 (1) (b) 7. d. That if the alleged violator does not make a cash deposit and
15 does not appear in court at the time specified, the court may issue a summons or a
16 warrant for the defendant's arrest or, if the person is not required to appear in court
17 under s. 66.12 (1) (b), consider the nonappearance to be a plea of no contest and enter
18 judgment under sub. (3) (d), or the municipality may commence an action against the

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1 alleged violator to collect the forfeiture, the penalty assessment imposed by s. 165.87,
2 the jail assessment imposed by s. 302.46 (1) and any applicable domestic abuse
3 assessment imposed by s. 973.055 (1).

4 **SECTION 4.** 66.119 (3) (a) of the statutes is amended to read:

5 66.119 (3) (a) The person named as the alleged violator in a citation may appear
6 in court at the time specified in the citation or, if the person is not required to appear
7 in court under s. 66.12 (1) (b), may mail or deliver personally a cash deposit in the
8 amount, within the time and to the court, clerk of court or other official specified in
9 the citation. If a person makes a cash deposit, the person may nevertheless appear
10 in court at the time specified in the citation, provided that the cash deposit may be
11 retained for application against any forfeiture, restitution, penalty assessment, jail
12 assessment or domestic abuse assessment that may be imposed.

13 **SECTION 5.** 66.119 (3) (c) of the statutes is amended to read:

14 66.119 (3) (c) If the alleged violator makes a cash deposit and fails to appear
15 in court, and if the person is not required to appear in court under s. 66.12 (1) (b), the
16 citation may serve as the initial pleading and the violator shall be considered to have
17 tendered a plea of no contest and submitted to a forfeiture, the penalty assessment
18 imposed by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable
19 domestic abuse assessment imposed by s. 973.055 (1) not exceeding the amount of
20 the deposit. The court may either accept the plea of no contest and enter judgment
21 accordingly or reject the plea. If the court finds the violation meets the conditions
22 in s. 800.093 (1), the court may summon the alleged violator into court to determine
23 if restitution shall be ordered under s. 800.093. If the court accepts the plea of no
24 contest, the defendant may move within 10 days after the date set for the appearance
25 to withdraw the plea of no contest, open the judgment and enter a plea of not guilty

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1 if the defendant shows to the satisfaction of the court that the failure to appear was
2 due to mistake, inadvertence, surprise or excusable neglect. If the plea of no contest
3 is accepted and not subsequently changed to a plea of not guilty, no costs or fees may
4 be taxed against the violator, but a penalty assessment, a jail assessment and, if
5 applicable, a domestic abuse assessment shall be assessed. If the court rejects the
6 plea of no contest, an action for collection of the forfeiture, penalty assessment, jail
7 assessment and any applicable domestic abuse assessment may be commenced. A
8 city, village, town sanitary district or public inland lake protection and rehabilitation
9 district may commence action under s. 66.12 (1) and a county or town may commence
10 action under s. 778.10. The citation may be used as the complaint in the action for
11 the collection of the forfeiture, penalty assessment, jail assessment and any
12 applicable domestic abuse assessment.

13 **SECTION 6.** 66.119 (3) (d) of the statutes is amended to read:

14 66.119 (3) (d) If the alleged violator does not make a cash deposit and fails to
15 appear in court at the time specified in the citation, the court may issue a summons
16 or warrant for the defendant's arrest or, if the person is not required to appear in
17 court under s. 66.12 (1) (b), consider the nonappearance to be a plea of no contest and
18 enter judgment accordingly if service was completed as provided under par. (e) or the
19 county, town, city, village, town sanitary district or public inland lake protection and
20 rehabilitation district may commence an action for collection of the forfeiture,
21 penalty assessment and jail assessment and any applicable domestic abuse
22 assessment. A city, village, town sanitary district or public inland lake protection
23 and rehabilitation district may commence action under s. 66.12 (1) and a county or
24 town may commence action under s. 778.10. The citation may be used as the
25 complaint in the action for the collection of the forfeiture, penalty assessment and

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1 jail assessment and any applicable domestic abuse assessment. If the court
2 considers the nonappearance to be a plea of no contest and enters judgment
3 accordingly, the court shall promptly mail a copy or notice of the judgment to the
4 defendant. The judgment shall allow the defendant not less than 20 days from the
5 date of the judgment to pay any forfeiture, penalty assessment and jail assessment
6 and any applicable domestic abuse assessment imposed. If the defendant moves to
7 open the judgment within 6 months after the court appearance date fixed in the
8 citation, and shows to the satisfaction of the court that the failure to appear was due
9 to mistake, inadvertence, surprise or excusable neglect, the court shall reopen the
10 judgment, accept a not guilty plea and set a trial date.

11 **SECTION 7.** 66.12 (1) (b) of the statutes is amended to read:

12 66.12 (1) (b) Local ordinances, except as provided in this paragraph or ss.
13 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any
14 or all violations under those ordinances, and may designate the manner in which the
15 stipulation is to be made and fix the penalty to be paid. When a person charged with
16 a violation for which stipulation of guilt or no contest is authorized makes a timely
17 stipulation and pays the required penalty and pays the penalty assessment imposed
18 by s. 165.87, the jail assessment imposed by s. 302.46 (1) and any applicable domestic
19 abuse assessment imposed by s. 973.055 (1) to the designated official, the person
20 need not appear in court and no witness fees or other additional costs may be taxed
21 unless the local ordinance so provides. A court appearance is required for a violation
22 of a local ordinance in conformity with s. 346.63 (1). A person on whom a uniform
23 traffic citation is served for an alleged violation of a local ordinance enacted in
24 accordance with s. 349.06 for which operating a motor vehicle is an element of the
25 offense shall appear in court if that citation includes a statement that the alleged

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1 violation is related to an incident that resulted in the death of an individual and a
2 statement that the person on whom the citation is served is required to appear in
3 court at the time fixed in the citation. The official receiving the penalties shall remit
4 all moneys collected to the treasurer of the city, village, town sanitary district or
5 public inland lake protection and rehabilitation district in whose behalf the sum was
6 paid, except that all jail assessments shall be remitted to the county treasurer, within
7 20 days after its receipt by him or her; and in case of any failure in the payment, the
8 treasurer may collect the payment of the officer by action, in the name of the office,
9 and upon the official bond of the officer, with interest at the rate of 12% per year from
10 the time when it should have been paid. In the case of the penalty assessment
11 imposed by s. 165.87, the driver improvement surcharge imposed by s. 346.655 (1)
12 and any applicable domestic abuse assessment imposed by s. 973.055 (1), the
13 treasurer of the city, village, town sanitary district or public inland lake protection
14 and rehabilitation district shall remit to the state treasurer the sum required by law
15 to be paid on the actions so entered during the preceding month on or before the first
16 day of the next succeeding month. The governing body of the city, village, town
17 sanitary district or public inland lake protection and rehabilitation district shall by
18 ordinance designate the official to receive the penalties and the terms under which
19 the official shall qualify.

20 **SECTION 8.** 345.11 (3) of the statutes is created to read:

21 345.11 (3) If an individual dies in an incident related to the alleged violation
22 of a traffic regulation, as defined in s. 345.20 (1) (b), for which operating a motor
23 vehicle is an element of the offense and the death is known to the law enforcement
24 officer at the time that he or she issues a uniform traffic citation for the alleged
25 violation, the citation shall include all of the following:

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1 (a) A statement that the alleged violation is related to an incident that resulted
2 in the death of an individual.

3 (b) A statement that the person on whom the citation is served is required to
4 appear in court at the time fixed in the citation.

5 **SECTION 9.** 345.26 (1) (b) 1. of the statutes is amended to read:

6 345.26 (1) (b) 1. ~~If Except as provided in subd. 3., if~~ the person makes a deposit
7 for a violation of a traffic regulation, the person need not appear in court at the time
8 fixed in the citation, and the person will be deemed considered to have tendered a
9 plea of no contest and submitted to a forfeiture and a penalty assessment, if required
10 by s. 165.87, and a jail assessment, if required by s. 302.46 (1), plus any applicable
11 fees prescribed in ch. 814, not to exceed the amount of the deposit that the court may
12 accept as provided in s. 345.37; ~~and~~

13 **SECTION 10.** 345.26 (1) (b) 2. of the statutes is amended to read:

14 345.26 (1) (b) 2. If the person fails to make a deposit for a violation of a traffic
15 regulation or appear in court at the time fixed in the citation, the court may enter a
16 default judgment finding the person guilty of the offense or issue a warrant for his
17 or her arrest.; and

18 **SECTION 11.** 345.26 (1) (b) 3. of the statutes is created to read:

19 345.26 (1) (b) 3. If the person is arrested for an alleged violation of a traffic
20 regulation for which operating a motor vehicle is an element of the offense and the
21 alleged violation is related to an incident that resulted in the death of an individual,
22 the arresting officer shall inform the alleged violator that he or she is required to
23 appear in court at the time fixed in the citation.

24 **SECTION 12.** 345.36 (2) (b) of the statutes is amended to read:

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1 345.36 (2) (b) ~~Deem~~ If the person is not required to appear in court under s.
2 345.26 (1) (b) 3., consider the nonappearance a plea of no contest and enter judgment
3 accordingly. If the defendant has posted bond for appearance at that date, the court
4 may also order the bond forfeited. The court shall promptly mail a copy of the
5 judgment to the defendant. The judgment shall allow not less than 20 days from the
6 date thereof for payment of any forfeiture, penalty assessment, jail assessment and
7 costs imposed. If the defendant moves to open the judgment within 20 days after the
8 date set for trial, and shows to the satisfaction of the court that the failure to appear
9 was due to mistake, inadvertence, surprise or excusable neglect, the court shall open
10 the judgment, reinstate the not guilty plea and set a new trial date. The court may
11 impose costs under s. 814.07. The court shall immediately notify the department to
12 delete the record of conviction based upon the original judgment.

13 **SECTION 13.** 345.37 (1) (b) of the statutes is amended to read:

14 345.37 (1) (b) ~~Deem~~ If the person is not required to appear in court under s.
15 345.26 (1) (b) 3., consider the nonappearance a plea of no contest and enter judgment
16 accordingly. If the defendant has posted bond for appearance at that date, the court
17 may also order the bond forfeited. The court shall promptly mail a copy or notice of
18 the judgment to the defendant. The judgment shall allow not less than 20 days from
19 the date thereof for payment of any forfeiture, penalty assessment and costs
20 imposed. If the defendant moves to open the judgment within 6 months after the
21 court appearance date fixed in the citation, and shows to the satisfaction of the court
22 that the failure to appear was due to mistake, inadvertence, surprise or excusable
23 neglect, the court shall open the judgment, accept a not guilty plea and set a trial
24 date. The court may impose costs under s. 814.07. The court shall immediately notify
25 the department to delete the record of conviction based upon the original judgment.

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1 If the offense involved is a nonmoving traffic violation and the defendant is subject
2 to s. 345.28 (5) (c), a default judgment may be entered and opened as provided in s.
3 345.28 (5) (c).

4 **SECTION 14.** 345.37 (2) of the statutes is amended to read:

5 345.37 (2) If the defendant has made a deposit under s. 345.26, and is not
6 required to appear in court under s. 345.26 (1) (b) 3., the citation may serve as the
7 initial pleading and the defendant shall be deemed to have tendered a plea of no
8 contest and submitted to a forfeiture and a penalty assessment, if required by s.
9 165.87, and a jail assessment, if required by s. 302.46 (1), plus costs, including any
10 applicable fees prescribed in ch. 814, not exceeding the amount of the deposit. The
11 court may either accept the plea of no contest and enter judgment accordingly, or
12 reject the plea and issue a summons under ch. 968. If the defendant fails to appear
13 in response to the summons, the court shall issue a warrant under ch. 968. If the
14 court accepts the plea of no contest, the defendant may move within 6 months after
15 the date set for the appearance to withdraw the plea of no contest, open the judgment
16 and enter a plea of not guilty upon a showing to the satisfaction of the court that the
17 failure to appear was due to mistake, inadvertence, surprise or excusable neglect.
18 If on reopening the defendant is found not guilty, the court shall immediately notify
19 the department to delete the record of conviction based on the original proceeding
20 and shall order the defendant's deposit returned.

21 **SECTION 15.** 800.02 (2) (a) 8. of the statutes is amended to read:

22 800.02 (2) (a) 8. Notice that if the defendant makes a deposit and fails to appear
23 in court at the time fixed in the citation, and is not required to appear in court under
24 s. 800.03 (6), the defendant is deemed to have tendered a plea of no contest and
25 submits to a forfeiture, penalty assessment, jail assessment and any applicable

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1 domestic abuse assessment plus costs, including the fee prescribed in s. 814.65 (1),
2 not to exceed the amount of the deposit. The notice shall also state that the person
3 is required to appear in court if the citation states that he or she is required to appear
4 and that the court may decide to summon the defendant rather than accept the
5 deposit and plea.

6 **SECTION 16.** 800.02 (2) (a) 9. of the statutes is amended to read:

7 800.02 (2) (a) 9. Notice that if the defendant does not make a deposit and fails
8 to appear in court at the time fixed in the citation, the court may issue a summons
9 or a warrant for the defendant's arrest or, if the person is not required to appear in
10 court under s. 800.03 (6), may enter a default judgment against the defendant.

11 **SECTION 17.** 800.03 (6) of the statutes is created to read:

12 800.03 (6) Notwithstanding sub. (1), a person on whom a uniform traffic
13 citation is served for an alleged violation of a local ordinance enacted in accordance
14 with s. 349.06 for which operating a motor vehicle is an element of the offense shall
15 appear in court if that citation includes a statement that the alleged violation is
16 related to an incident that resulted in the death of an individual and a statement that
17 the person on whom the citation is served is required to appear in court at the time
18 fixed in the citation.

19 **SECTION 18.** 800.04 (2) (c) of the statutes is amended to read:

20 800.04 (2) (c) If the defendant has made a deposit under par. (b) or s. 800.03
21 and does not appear, and if the person is not required to appear in court under s.
22 800.03 (6), he or she is deemed to have tendered a plea of no contest and submits to
23 a forfeiture, a penalty assessment imposed by s. 165.87, a jail assessment imposed
24 by s. 302.46 (1) and any applicable domestic abuse assessment imposed by s. 973.055
25 (1) plus costs, including the fee prescribed in s. 814.65 (1), not exceeding the amount

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1 of the deposit. The court may either accept the plea of no contest and enter judgment
2 accordingly, or reject the plea and issue a summons. If the court finds that the
3 violation meets the conditions in s. 800.093 (1), the court may summon the alleged
4 violator into court to determine if restitution shall be ordered under s. 800.093. If
5 the defendant fails to appear in response to the summons, the court shall issue a
6 warrant under s. 968.09. If the defendant has made a deposit but does appear, the
7 court shall allow the defendant to withdraw the plea of no contest.

8 **SECTION 19.** 800.04 (2m) of the statutes is amended to read:

9 800.04 (2m) If a defendant does not appear at the initial appearance, the court
10 may issue a warrant to bring the defendant before the court. Upon proof of personal
11 service of the summons or citation under s. 800.01 (1), or upon proof of service of the
12 summons or citation under s. 801.11 (1) (b), and if the person is not required to appear
13 in court under s. 800.03 (6), the court may enter a default judgment by reason of the
14 failure of a defendant to respond to a citation under s. 800.02 (2) (a) or a summons
15 under s. 800.02 (4). If a warrant is issued for a defendant under this subsection, the
16 defendant may be detained in jail prior to the initial appearance.

17 **SECTION 20.** 800.09 (2) (b) of the statutes is amended to read:

18 800.09 (2) (b) If the person charged fails to appear personally or by an attorney
19 at the time fixed for hearing of the case, and if the person is not required to appear
20 in court under s. 800.03 (6), the defendant may be deemed to have entered a plea of
21 no contest and the money deposited, if any, or such portion thereof as the court
22 determines to be an adequate penalty, plus the penalty assessment, the jail
23 assessment and any applicable domestic abuse assessment plus costs, including the
24 fee prescribed in s. 814.65 (1), may be declared forfeited by the court or may be
25 ordered applied upon the payment of any penalty which may be imposed, together

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1 with the penalty assessment, the jail assessment and any applicable domestic abuse
2 assessment plus costs. If the court finds that the violation meets the conditions in
3 s. 800.093 (1), the court may summon the alleged violator into court to determine if
4 restitution shall be ordered under s. 800.093. Any money remaining after payment
5 of any penalties, assessments, costs and restitution shall be refunded to the person
6 who made the deposit.

7 **SECTION 21. Initial applicability.**

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

10 **SECTION 22. Effective date.**

11 (1) This act takes effect on the first day of the 4th month beginning after
12 publication.

13 (END)