



1997 ASSEMBLY BILL 785

February 11, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Judiciary.

1 **AN ACT to repeal** 778.25 (2) (h), 778.25 (4), 778.25 (6) and 778.25 (8) (c); and **to**
2 **amend** 343.305 (9) (a) (intro.), 778.25 (5), 778.25 (9), 807.10 (3), 879.23 (4) (b),
3 895.04 (2) and 948.31 (2) of the statutes; **relating to:** the location of refusal
4 hearings, the citation procedure used for certain violations, judgments
5 regarding minors and interference with custody of a nonmarital child
6 (suggested as remedial legislation by the director of state courts).

Analysis by the Legislative Reference Bureau

Currently, if a person refuses to take a test to determine the presence of alcohol in his or her blood after being arrested for drunk driving, the law enforcement officer who requested the test takes possession of the person's license to drive and gives the person a notice of intent to revoke the person's privilege to operate a motor vehicle. Current law requires the officer to submit or mail a copy of the notice with the person's license to the circuit court for the county in which the refusal is made. Often, the refusal occurs in a county other than the county where the arrest was made because the nearest municipality that has the proper testing equipment is in that county. If the law enforcement officer sends the notice and license to the county in which the refusal is made as the law requires, the circuit court for that county will be required to hold the hearing on the refusal if the person requests a hearing, while the circuit court for the county where the arrest was made hears the drunk driving case. Usually, the law enforcement officer sends the notice of intent to revoke and

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the license to the circuit court for the county where the arrest was made, regardless of where the refusal occurred. This bill requires the law enforcement officer to send the notice of intent to revoke and the driver's license to the circuit court for the county where the arrest was made, not where the refusal occurred.

Current law provides a specific citation procedure for the recovery of a forfeiture in an action involving certain limited violations, including underage drinking and smoking, drug paraphernalia use, sporting event safety and harassment. Under the procedure, if a person is issued a citation for the recovery of a forfeiture, the person may, in lieu of a court appearance, send the amount of money owing with a copy of the citation to the clerk of court or to the headquarters of the law enforcement agency that issued the citation. Current law provides that, as an alternative, a person may make a stipulation of no contest and submit the stipulation and amount owed to the clerk of court or law enforcement agency. However, 1991 Wisconsin Act 134 removed the provision requiring the citation form to include a provision explaining how a person may stipulate to a plea of no contest in lieu of a court appearance. This bill removes the language allowing a person to submit a stipulation of no contest in lieu of a court appearance, while retaining the provision allowing the person to deposit the amount owed with the clerk of court or law enforcement agency in lieu of a court appearance.

Under current law, if a judgment or court order approving a settlement involving a civil claim of a minor does not exceed \$5,000, the court may authorize the payment of the total recovery to the clerk of circuit court. The court also is required to direct the guardian ad litem to satisfy the judgment or exercise releases when the clerk receives the payment and to order the clerk to pay the expenses of the action and dispose of the balance of the proceeds in the same way that estates of \$10,000 or less are distributed to minors. Under that law, the court may order that the balance be paid to the guardian of the minor, to the person having actual custody of the minor or to the minor. Current law also requires a court in a wrongful death action in which a child is eligible for benefits of less than \$1,500 to dispose of the balance of the benefits in the same way as benefits are disposed of under a judgment or court order approving a settlement involving a civil claim of a minor.

This bill allows the court to authorize the payment of the total recovery of a child in a wrongful death action or in another civil action to the clerk of court and the disbursal of that recovery to pay expenses of the action and to pay the balance to the guardian of the minor, to the person having actual custody of the minor or to the minor, if the total amount of the recovery is less than \$10,000.

Under current law, no person may, without the consent of the child's parents, cause a child to leave his or her parents or take away or withhold a child from his or her parents. However, in the case of a nonmarital child whose parents have not intermarried, this prohibition applies only if the person, without the consent of the child's mother, causes a child to leave his or her mother or takes away or withholds a child from his or her mother. Thus, current law does not prohibit causing a nonmarital child to leave his or her father or taking away or withholding a nonmarital child from his or her father, even if the father has been granted legal

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custody of the child. A person who violates the current prohibition may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

This bill prohibits a person from causing a nonmarital child to leave his or her father or taking away or withholding a nonmarital child from his or her father without the consent of the father, if the father has been granted legal custody of the child.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the director of state courts and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 343.305 (9) (a) (intro.) of the statutes is amended to read:

2 343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the
3 law enforcement officer shall immediately take possession of the person's license and
4 prepare a notice of intent to revoke, by court order under sub. (10), the person's
5 operating privilege. If the person was driving or operating a commercial motor
6 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours
7 after the refusal and notify the department in the manner prescribed by the
8 department. The officer shall issue a copy of the notice of intent to revoke the
9 privilege to the person and submit or mail a copy with the person's license to the
10 circuit court for the county in which the refusal is arrest under sub. (3) (a) was made.
11 The officer shall also mail a copy of the notice of intent to revoke to the district
12 attorney for that county and the department. The notice of intent to revoke the
13 person's operating privilege shall contain substantially all of the following
14 information:

NOTE: The amendment to this statute changes current law to require an arresting officer in an operating while intoxicated case to submit or mail a copy of a notice of intent

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to revoke a person's operating privilege to the circuit court for the county in which the arrest is made, rather than to the circuit court for the county in which a refusal to take a test to determine the presence of alcohol in one's blood is made. According to the director of state courts, this revision to the statute reflects actual practice, and avoids the problem of having 2 different courts handling the refusal and the arrest in an operating while intoxicated case.

1 **SECTION 2.** 778.25 (2) (h) of the statutes, as affected by 1997 Wisconsin Act 27,
2 is repealed.

3 **SECTION 3.** 778.25 (4) of the statutes, as affected by 1997 Wisconsin Act 27, is
4 repealed.

5 **SECTION 4.** 778.25 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is
6 amended to read:

7 778.25 (5) ~~Except as provided by sub. (6) a~~ A person receiving a deposit shall
8 prepare a receipt in triplicate showing the purpose for which the deposit is made,
9 stating that the defendant may inquire at the office of the clerk of court regarding
10 the disposition of the deposit, and notifying the defendant that if he or she fails to
11 appear in court at the time fixed in the citation he or she will be deemed to have
12 tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail
13 assessment and crime laboratories and drug law enforcement assessment plus costs,
14 including any applicable fees prescribed in ch. 814, not to exceed the amount of the
15 deposit which the court may accept. The original of the receipt shall be delivered to
16 the defendant in person or by mail. If the defendant pays by check, the check is the
17 receipt.

18 **SECTION 5.** 778.25 (6) of the statutes, as affected by 1997 Wisconsin Act 27, is
19 repealed.

20 **SECTION 6.** 778.25 (8) (c) of the statutes, as affected by 1997 Wisconsin Act 27,
21 is repealed.

22 **SECTION 7.** 778.25 (9) of the statutes is amended to read:

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1 778.25 (9) If a citation or summons is issued to a defendant under this section
2 and he or she is unable to appear in court on the day specified, the defendant may
3 enter a plea of not guilty by mailing a letter stating that inability to the judge court
4 at the address indicated on the citation. The letter must show the defendant's return
5 address. The letter may include a request for trial during normal daytime business
6 hours. Upon receipt of the letter, the judge court shall reply by letter notice to the
7 defendant's address setting forth a time and place for trial, and the time shall be
8 during normal business hours if so requested. The date of the trial shall be at least
9 10 days ~~from~~ after the mailing by date on which the judge court sent the notice.
10 Nothing in this subsection forbids the setting of the trial at any time convenient to
11 all parties concerned.

NOTE: 1991 Wisconsin Act 134 was remedial legislation which conformed the citation procedure under ch. 778 to the changes made to the uniform traffic citation procedure by 1989 Wisconsin Act 170. One of these provisions removed the stipulation-by-signature requirement on the back of the citation for certain forfeitures. According to the director of state courts, the provisions in SECTIONS 2 to 7 of this bill change certain provisions in ch. 778 to reflect the changes which were made to the stipulation-by-signature requirement in 1991 Wisconsin Act 134.

12 **SECTION 8.** 807.10 (3) of the statutes is amended to read:

13 807.10 (3) If the amount awarded to a minor by judgment or by an order of the
14 court approving a compromise settlement of a claim or cause of action of the minor
15 does not exceed ~~\$5,000~~ \$10,000 (exclusive of interest and costs and disbursements),
16 and if there is no general guardian of the ward, the court may upon application by
17 the guardian ad litem after judgment, or in the order approving settlement, fix and
18 allow the expenses of the action, including attorney fees and fees of guardian ad
19 litem, authorize the payment of the total recovery to the clerk of the court, authorize
20 and direct the guardian ad litem upon the payment to satisfy and discharge the
21 judgment, or to execute releases to the parties entitled thereto and enter into a

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1 stipulation dismissing the action upon its merits. The order shall also direct the
2 clerk upon the payment to pay the costs and disbursements and expenses of the
3 action and to dispose of the balance in one of the manners provided in s. 880.04 (2)
4 as selected by the court. The fee for the clerk's services for handling, depositing and
5 disbursing funds under this subsection is prescribed in s. 814.61 (12) (a).

NOTE: This amendment allows a court in a civil action to authorize payment of the total recovery of a child to the clerk of court and the disbursal of that recovery to pay expenses of the action and to pay the balance to the guardian of the minor, to the person having actual custody of the minor or to the minor, if the total amount of the recovery is less than \$10,000.

6 **SECTION 9.** 879.23 (4) (b) of the statutes is amended to read:

7 879.23 (4) (b) In matters relating to the probate of an estate in which a minor
8 has an interest that is unlikely to exceed ~~\$1,000~~ \$10,000 in value, the guardian ad
9 litem shall be a surviving parent, unless the court finds that no surviving parent is
10 qualified and willing to serve as the guardian ad litem. If no parent of the minor is
11 qualified and willing to serve as guardian ad litem, the guardian ad litem shall be
12 an attorney as provided in par. (a).

NOTE: This amendment provides that in matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed \$10,000 in value, the guardian ad litem shall be a surviving parent, unless no surviving parent is qualified and willing to serve.

13 **SECTION 10.** 895.04 (2) of the statutes is amended to read:

14 895.04 (2) If the deceased leaves surviving a spouse, and minor children under
15 18 years of age with whose support the deceased was legally charged, the court before
16 whom the action is pending, or if no action is pending, any court of record, in
17 recognition of the duty and responsibility of a parent to support minor children, shall
18 determine the amount, if any, to be set aside for the protection of such children after
19 considering the age of such children, the amount involved, the capacity and integrity
20 of the surviving spouse, and any other facts or information it may have or receive,

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1 and such amount may be impressed by creation of an appropriate lien in favor of such
2 children or otherwise protected as circumstances may warrant, but such amount
3 shall not be in excess of 50% of the net amount received after deduction of costs of
4 collection. If there are no such surviving minor children, the amount recovered shall
5 belong and be paid to the spouse of the deceased; if no spouse survives, to the
6 deceased's lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the
7 deceased's brothers and sisters. If any such relative dies before judgment in the
8 action, the relative next in order shall be entitled to recover for the wrongful death.
9 A surviving nonresident alien spouse and minor children shall be entitled to the
10 benefits of this section. In cases subject to s. 102.29 this subsection shall apply only
11 to the surviving spouse's interest in the amount recovered. If the amount allocated
12 to any child under this subsection is less than \$1,500 \$10,000, s. 807.10 may be
13 applied. Every settlement in wrongful death cases in which the deceased leaves
14 minor children under 18 years of age shall be void unless approved by a court of
15 record authorized to act hereunder.

NOTE: This amendment allows a court to authorize the payment of the total recovery of a child in a wrongful death action to the clerk of court and the disbursement of that recovery to pay expenses of the action and to pay the balance to the guardian of the minor, to the person having actual custody of the minor, or to the minor, if the total amount of recovery is less than \$10,000.

NOTE: The amendments in SECTIONS 8 to 10 of this bill update statutes relating to judgments regarding minors. In 1989, Wisconsin Act 138, s. 880.04 (2) of the statutes was amended to provide for certain dispositions of the estate of a minor if the value of the minor's estate is \$10,000 or less. According to the director of state courts, because the statutes amended in SECTIONS 8 to 10 reference each other or s. 880.04 (2), the judgment amounts in these statutes should be consistent and therefore revised to use the same \$10,000 amount.

16 **SECTION 11.** 948.31 (2) of the statutes is amended to read:

17 948.31 (2) Whoever causes a child to leave, takes a child away or withholds a
18 child for more than 12 hours from the child's parents, or ~~the child's mother~~, in the case
19 of a nonmarital child where whose parents do not subsequently intermarry under s.

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1 767.60, from the child's mother or, if he has been granted legal custody, the child's
2 father, without the consent of the parents ~~or~~, the mother or the father with legal
3 custody, is guilty of a Class E felony. This subsection is not applicable if legal custody
4 has been granted by court order to the person taking or withholding the child.

NOTE: Under current law, a person who causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents without their consent is guilty of a Class E felony. The penalty also applies if any of these actions is taken with respect to a nonmarital child whose parents have not subsequently intermarried but only if the person affected by those actions is the child's mother. The statute does not include a father of a nonmarital child who has been granted legal custody. This SECTION includes the father of a nonmarital child in the protections of the statute if he has been granted legal custody of the child.

5 **SECTION 12. Initial applicability.**

6 (1) CITATION PROCEDURES. The treatment of section 778.25 (2) (h), (4), (5), (6),
7 (8) (c) and (9) of the statutes first applies to forfeitures imposed on the effective date
8 of this subsection.

9 (2) JUDGMENTS REGARDING MINORS. The treatment of sections 807.10 (3) and
10 895.04 (2) of the statutes first applies to judgments or court orders rendered on the
11 effective date of this subsection.

12 (3) INTERFERENCE WITH CUSTODY. The treatment of section 948.31 (2) of the
13 statutes first applies to offenses committed on the effective date of this subsection.

14 (END)