

1999 DRAFTING REQUEST

Bill

Received: 03/9/99

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Daniel Vrakas (608) 266-3007

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters:

Subject: Drunk Driving - procedures

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Refusal hearing in municipal court

Instructions:

See Attached take language out of -1683 regarding refusals and make separate bill.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	nelsorp1 03/10/99	gilfokm 03/10/99		_____			S&L
/1			hhagen 03/10/99	_____	lrb_docadmin 03/10/99	lrb_docadmin 03/30/99	

FE Sent For:

G 05-10-99
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<END>

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1?	nelsorp1	1-3-10-99 Kmg	3/10	3/10			

FE Sent For:

<END>

2460/1

1999 BILL

req

1 AN ACT ~~to repeal 800.03 (4) and 800.06 (1) (a) and (b); to renumber 342.15 (1)~~
 2 ~~(a); to renumber and amend 800.06 (1) (intro.); to amend 66.12 (1) (b), 165.83~~
 3 ~~(2) (e), 342.09 (1), 342.34 (3m), 343.305 (9) (a) (intro.), 343.305 (9) (am) (intro.),~~
 4 ~~343.305 (9) (c), 343.305 (11), 800.05 (3) and 800.065 (1); and to create 342.09~~
 5 ~~(2m), 342.15 (1) (a) 2. and 800.065 (2m) of the statutes; relating to:~~ *allowing*
 6 ~~court procedures, municipal temporary reserve judges and motor vehicle~~
 7 ~~certificates of title.~~ *to hold refusal hearings*

Analysis by the Legislative Reference Bureau

~~Currently, a court appearance is required for any person who violates a local ordinance that prohibits a person from operating a motor vehicle while under the influence of an intoxicant or controlled substance or while having an alcohol concentration in his or her blood in excess of the statutory maximum (OWI). If a person fails to appear in court as required, under current law the court issues a warrant for the person's arrest. In cases involving violations of other ordinances, if a person fails to appear at the court hearing, the court, upon proof that the person received service of the notice to appear in court, enters a default judgment against the person. This bill removes the requirement that a person who violates a local OWI ordinance must appear in court, thus allowing the court to enter a default judgment against the person if the person has received adequate notice of the requirement to appear in court.~~

BILL

Under current law, if an operator of a motor vehicle refuses to submit to a test to determine the presence of an intoxicant in the person's breath, blood or urine, the law enforcement officer that requested the test takes possession of the person's driver's license and gives the person a notice that the person's operating privilege will be revoked if the refusal was improper. The notice also informs the person that he or she may request a hearing before a circuit court to determine if the refusal was proper. If the person requests a hearing within ten days after receipt of the notice, current law requires the circuit court to hold a hearing to determine if the refusal was proper. Currently, if the person does not request a hearing or if the circuit court determines that the refusal was not proper, the court revokes the person's operating privilege. This bill allows municipal courts to hold refusal hearings and issue revocation orders based on the results of those hearings.

Currently, if a municipal judge is disqualified from hearing a case or if a request is approved for substitution of a municipal judge, the chief justice of the supreme court is required to assign the case to another municipal judge or, if none is available, to the circuit court. If the case is transferred, the matter is heard in the municipal court or circuit court that receives the case. Under this bill, if the case is transferred to a municipal judge, that municipal judge must hold all proceedings regarding that case in the municipal court from which the case was received. If the case is transferred to a circuit court, this bill provides that the prosecutor for the municipality that commenced the action must prosecute the action in the circuit court.

Current law allows a municipal judge who is temporarily absent, sick or disabled to deliver the court records regarding an action to the circuit court of the county to handle the matter or, with the approval of the chief judge of the judicial administrative district, the municipal judge may designate another municipal judge to perform his or her duties for a period not to exceed 30 days. If the municipal judge is from the 1st judicial administrative district (Milwaukee County), current law allows the municipal judge to designate another municipal judge from anywhere in the state. If the municipal judge is not from the 1st judicial administrative district, under current law the municipal judge may only designate another municipal judge from within the same judicial administrative district. This bill allows the municipal judge to designate another municipal judge from anywhere in the state regardless of where the municipal judge making the designation is located.

Under current law, the chief judge of a judicial administrative district may appoint a person as a temporary reserve judge to act as a municipal court judge in a municipality in that district to perform duties on a day-to-day basis as directed by the chief judge. To be eligible to be appointed as a temporary reserve judge, a person must have served eight or more years as a municipal court judge or served four or more years as a municipal court judge and not been defeated in his or her last judicial office race. This bill allows the chief judge of a judicial administrative district to appoint any eligible person to act as a temporary reserve judge within that judicial district, regardless of where the person resides at the time of the appointment.

Current law requires the owner of a vehicle, when transferring an interest in a vehicle, to record certain information on the vehicle's certificate of title and deliver

BILL

the certificate of title to the person taking the interest in the vehicle. Upon receiving the certificate, the person must promptly complete an application for a new certificate of title and submit the application and the old certificate of title to the department of transportation (DOT). Until DOT receives the completed application and the old certificate of title, DOT's records will continue to show the previous owner as the titled owner of the vehicle, regardless of who then possesses the vehicle.

This bill requires DOT to include a form with each certificate of title, which form may be used by an owner who transfers an interest in a vehicle to notify DOT that the owner has transferred an interest in the vehicle to another person. The bill requires DOT to keep records of such transfer notices received from vehicle owners.

For further information see the *state and 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.** 66.12 (1) (b) of the statutes is amended to read:

2 66.12 (1) (b) Local ordinances, except as provided in this paragraph or ss.
3 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any
4 or all violations under those ordinances, and may designate the manner in which the
5 stipulation is to be made and fix the penalty to be paid. When a person charged with
6 a violation for which stipulation of guilt or no contest is authorized makes a timely
7 stipulation and pays the required penalty and pays the penalty assessment imposed
8 by s. 165.87, the jail assessment imposed by s. 302.46 (1), the crime laboratories and
9 drug law enforcement assessment imposed by s. 165.755 and any applicable
10 domestic abuse assessment imposed by s. 973.055 (1) to the designated official, the
11 person need not appear in court and no witness fees or other additional costs may be
12 taxed unless the local ordinance so provides. ~~A court appearance is required for a~~
13 ~~violation of a local ordinance in conformity with s. 346.63 (1).~~ The official receiving
14 the penalties shall remit all moneys collected to the treasurer of the city, village, town
15 sanitary district or public inland lake protection and rehabilitation district in whose

BILL

1 behalf the sum was paid, except that all jail assessments shall be remitted to the
2 county treasurer, within 20 days after its receipt by him or her; and in case of any
3 failure in the payment, the treasurer may collect the payment of the officer by action,
4 in the name of the office, and upon the official bond of the officer, with interest at the
5 rate of 12% per year from the time when it should have been paid. In the case of the
6 penalty assessment imposed by s. 165.87, the crime laboratories and drug law
7 enforcement assessment imposed by s. 165.755, the driver improvement surcharge
8 imposed by s. 346.655 (1) and any applicable domestic abuse assessment imposed by
9 s. 973.055 (1), the treasurer of the city, village, town sanitary district or public inland
10 lake protection and rehabilitation district shall remit to the state treasurer the sum
11 required by law to be paid on the actions so entered during the preceding month on
12 or before the first day of the next succeeding month. The governing body of the city,
13 village, town sanitary district or public inland lake protection and rehabilitation
14 district shall by ordinance designate the official to receive the penalties and the
15 terms under which the official shall qualify.

16 **SECTION 2.** 165.83 (2) (e) of the statutes is amended to read:

17 165.83 (2) (e) Obtain and file a copy or detailed description of each arrest
18 warrant issued in this state for the offenses under par. (a) ~~or s. 800.03 (4)~~ but not
19 served because the whereabouts of the person named on the warrant is unknown or
20 because that person has left the state. All available identifying data shall be
21 obtained with the copy of the warrant, including any information indicating that the
22 person named on the warrant may be armed, dangerous or possessed of suicidal
23 tendencies.

24 **SECTION 3.** 342.09 (1) of the statutes is amended to read:

BILL

1 342.09 (1) The department shall maintain a record of each application for
2 certificate of title received by it and, when satisfied as to its genuineness and
3 regularity and that the applicant is entitled to the issuance of a certificate of title,
4 shall issue and deliver a certificate to the owner of the vehicle. The department shall
5 include with each certificate of title issued under this chapter a copy of the form
6 prescribed under s. 342.15 (1) (a) 2. and instructions as to the form's use.

7 **SECTION 4.** 342.09 (2m) of the statutes is created to read:

8 342.09 (2m) The department shall maintain a record of all notices of transfers
9 of interests provided under s. 342.15 (1) (a) 2. The record shall be maintained in the
10 manner provided under sub. (2).

11 **SECTION 5.** 342.15 (1) (a) of the statutes is renumbered 342.15 (1) (a) 1.

12 **SECTION 6.** 342.15 (1) (a) 2. of the statutes is created to read:

13 342.15 (1) (a) 2. If an owner transfers an interest in a vehicle, the owner may,
14 on a form prescribed by the department, notify the department in writing of the
15 transfer. The department shall prescribe a form for use under this subdivision.
16 Notice provided under this subdivision does not satisfy the requirement under sub.
17 (2).

18 **SECTION 7.** 342.34 (3m) of the statutes is amended to read:

19 342.34 (3m) In determining whether a vehicle meets the definition of a junk
20 vehicle for purposes of this section or s. 342.15 (1) (a) 1, the department may
21 promulgate rules specifying the conditions under which a vehicle shall be considered
22 incapable of operation or use upon a highway.

23 **SECTION 8.** 343.305 (9) (a) (intro.) of the statutes is amended to read:

24 343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the
25 law enforcement officer shall immediately take possession of the person's license and

BILL

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

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

15 343.305 (9) (am) (intro.) If a person driving or operating or on duty time with
16 respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
17 enforcement officer shall immediately take possession of the person's license, issue
18 an out-of-service order to the person for the 24 hours after the refusal and notify the
19 department in the manner prescribed by the department, and prepare a notice of
20 intent to revoke, by court order under sub. (10), the person's operating privilege. The
21 officer shall issue a copy of the notice of intent to revoke the privilege to the person
22 and submit or mail a copy with the person's license to the circuit court for the county
23 in which the refusal is made or to the municipal court in the municipality in which
24 the refusal is made if the person's refusal was in violation of a municipal ordinance
25 and the municipality has a municipal court. The officer shall also mail a copy of the

BILL

1 notice of intent to revoke to the attorney for that municipality or to the district
2 attorney for that county, as appropriate, and to the department. The notice of intent
3 to revoke the person's operating privilege shall contain substantially all of the
4 following information:

5 **SECTION 10.** 343.305 (9) (c) of the statutes is amended to read:

6 343.305 (9) (c) If a law enforcement officer informs the circuit or municipal
7 court that a person has refused to submit to a test under sub. (3) (a) or (am), the court
8 shall be prepared to hold any requested hearing to determine if the refusal was
9 proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5.
10 or (am) 5. Section 967.055 applies to any hearing under this subsection.

11 **SECTION 11.** 343.305 (11) of the statutes is amended to read:

12 343.305 (11) RULES. The department shall promulgate rules under ch. 227
13 necessary to administer this section. The rules shall include provisions relating to
14 the expeditious exchange of information under this section between the department
15 and law enforcement agencies, circuit courts, municipal courts and district
16 attorneys. The rules may not affect any provisions relating to court procedure.

17 **SECTION 12.** 800.03 (4) of the statutes is repealed.

18 **SECTION 13.** 800.05 (3) of the statutes is amended to read:

19 800.05 (3) In municipal court, upon receipt of the written request, the original
20 judge shall have no further jurisdiction in the case except as provided in sub. (1) and
21 except to determine if the request was made timely and in proper form. If no
22 determination is made within 7 days, the court shall refer the matter to the chief
23 judge for the determination and reassignment of the action as necessary. If the
24 request is determined to be proper, the case shall be transferred as provided in s.
25 751.03 (2). If the case is transferred to another municipal judge, that municipal

BILL**SECTION 13**

1 ~~judge shall hold all court proceedings regarding the case in the municipal court from~~
2 ~~which the case was transferred. If the case is transferred to a circuit court, the~~
3 ~~prosecutor for the municipality that commenced the action shall prosecute the action~~
4 ~~in the circuit court. Upon transfer, the municipal judge shall transmit to the~~
5 ~~appropriate municipal judge or circuit court all the papers in the action and the~~
6 ~~action shall proceed as if it had been commenced in that court.~~

7 **SECTION 14.** 800.06 (1) (intro.) of the statutes is renumbered 800.06 (1) and
8 amended to read:

9 800.06 (1) If any municipal judge is to be temporarily absent or is sick or
10 disabled, the municipal judge may deliver the court record and all papers relating
11 to any pending action to the circuit court of the county and the circuit court may try
12 the action and enter judgment as though the action was begun before that court or
13 the municipal judge may by written order, filed in the court and with the approval
14 of the chief judge of the judicial administrative district, ~~do one of the following:~~
15 designate another municipal judge from any municipality within the state to
16 perform his or her duties for a period not to exceed 30 days.

17 **SECTION 15.** 800.06 (1) (a) and (b) of the statutes are repealed.

18 **SECTION 16.** 800.065 (1) of the statutes is amended to read:

19 800.065 (1) DEFINITIONS. In this section, “temporary reserve judge” means a
20 person appointed to act as a judge for a municipal court for any municipality within
21 the judicial administrative district appointed by the chief judge of that the judicial
22 administrative district in which the municipality is located to perform such specified
23 duties on a day-by-day basis as the chief judge may direct.

24 **SECTION 17.** 800.065 (2m) of the statutes is created to read:

BILL

1 800.065 (2m) APPOINTING AUTHORITY. The chief judge of a judicial
2 administrative district may appoint any person who is eligible under sub. (2) to serve
3 as a temporary reserve judge regardless of where that person resides at the time of
4 the appointment.

SECTION 18. Initial applicability.

6 (1) The treatment of section 343.305 (9) (a) (intro.), (am) (intro.) and (c) of the
7 statutes first applies to refusals committed on the effective date of this subsection,
8 but does not preclude the counting of previous suspensions, revocations or
9 convictions for purposes of determining the period that a person's operating privilege
10 is revoked.

11 (2) The treatment of section 342.09 (1) of the statutes first applies to certificates
12 of title for which application is made on the effective date of this subsection.

SECTION 19. Effective date.

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

16 (END)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 3/10/99

To: Representative Vrakas

Relating to LRB drafting number: LRB-2460

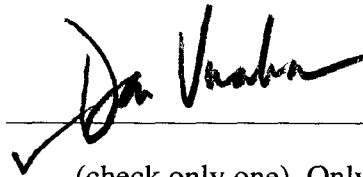
Topic

Refusal hearing in municipal court

Subject(s)

Drunk Driving - procedures

1. **JACKET** the draft for introduction

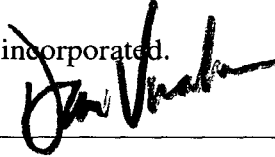


in the **Senate** ___ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction



If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robert P. Nelson, Senior Legislative Attorney
Telephone: (608) 267-7511

Barman, Mike

From: Barman, Mike
Sent: Thursday, April 08, 1999 2:59 PM
To: Hubbard, Gregory
Subject: LRB 99-2460/1 (per your request)



99-2460/1

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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