

1999 SENATE BILL 436

March 3, 2000 – Introduced by Senators MOORE, PLACHE, ROESSLER and DARLING, cosponsored by Representatives JESKEWITZ, COGGS, LA FAVE, KLUSMAN, MUSSER, ALBERS, MILLER, AINSWORTH, RYBA, STASKUNAS, OWENS, BOYLE, F. LASEE, VRAKAS, RILEY, J. LEHMAN, GRONEMUS and YOUNG. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to amend** 345.47 (1) (intro.), 800.09 (1) (a), 800.09 (1) (c), 800.095 (2) (a)
2 (form), 800.095 (4) (a), 800.095 (4) (b) (intro.) and 800.095 (4) (c); and **to create**
3 345.47 (4) and 800.09 (3) of the statutes; **relating to:** payment of judgments in
4 traffic cases and in municipal court and the suspension of operating privileges.

Analysis by the Legislative Reference Bureau

Currently, if a person is found guilty of violating a traffic regulation, the court may enter judgment against the defendant for the forfeiture and for any applicable assessments, such as a penalty assessment. In addition, the court may suspend or revoke the person's operating privilege for a period not exceeding one year. This bill requires the court, when entering judgment, to tell the defendant, or to notify the defendant if he or she is not present in court, that he or she should notify the court if he or she is unable to pay the judgment because of poverty. The bill requires the court to determine if the defendant is unable to pay the judgment because of poverty, and if so, to give the defendant the opportunity to pay the judgment in instalments, based on the defendant's income.

Under current law, if a defendant is found guilty in municipal court of an ordinance violation, the court orders the defendant to pay a forfeiture, restitution and applicable assessments and informs the defendant of the date on which the judgment must be paid and of the penalties of failure to pay the judgment, including imprisonment and operating privilege suspension. The bill requires the municipal court to also notify the defendant at the time the judgment is rendered that, if the defendant cannot pay the judgment because of poverty, he or she should notify the

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court. If a judgment is not paid, current law allows the municipal court to defer payments, provide for instalment payments of the judgment, allow the defendant to perform community service in lieu of paying the judgment, suspend the defendant's operating privilege or imprison the defendant for up to 90 days. This bill prohibits the judge from ordering the defendant imprisoned or the suspension of the defendant's operating privilege if the defendant has notified the municipal court of his or her poverty unless the defendant fails to comply with the court order to pay the judgment in instalments or to perform community service work.

Currently, a person found guilty of violating a traffic regulation or ordinance who fails to pay the ordered judgment may be imprisoned for up to 90 days or may have his or her operating privilege suspended for 30 days or until the judgment is paid, but not to exceed five years. Under this bill, the court may terminate the ordered operating privilege suspension and substitute an instalment plan for the payment of the judgment. The bill requires the court to terminate the ordered operating privilege suspension and substitute an instalment plan for the payment of the judgment if the defendant is unable to pay the judgment because of poverty and the defendant has not previously failed to comply with a court-ordered instalment plan.

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.** 345.47 (1) (intro.) of the statutes, as affected by 1999 Wisconsin Act
2 9, is amended to read:

3 345.47 **(1)** (intro.) If the defendant is found guilty, the court may enter
4 judgment against the defendant for a monetary amount not to exceed the maximum
5 forfeiture, penalty assessment, if required by s. 757.05, the jail assessment, if
6 required by s. 302.46 (1), the railroad crossing improvement assessment, if required
7 by s. 346.177, 346.495 or 346.65 (4r), and the crime laboratories and drug law
8 enforcement assessment, if required by s. 165.755, provided for the violation and for
9 costs under s. 345.53 and, in addition, may suspend or revoke his or her operating
10 privilege under s. 343.30. Upon entering judgment, the court shall notify the
11 defendant personally, if the defendant is present, and in writing that the defendant

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1 should notify the court if he or she is unable to pay the judgment because of poverty,
2 as that term is used in s. 814.29 (1) (d). If the court, using the criteria in s. 814.29
3 (1) (d), determines that the defendant is unable to pay the judgment because of
4 poverty, the court may not suspend the defendant's operating privilege without first
5 providing the defendant with an opportunity to pay the judgment in instalments,
6 taking into account the defendant's income. If the judgment is not paid or if the
7 defendant fails to make any ordered instalment payment, the court shall order:

8 **SECTION 2.** 345.47 (4) of the statutes is created to read:

9 345.47 (4) (a) If the operating privilege of a defendant is suspended under this
10 section, the court may terminate that suspension and substitute an instalment
11 payment plan for paying the amount of the judgment that takes into account the
12 defendant's income.

13 (b) If the operating privilege of a defendant is suspended under this section, the
14 court shall terminate that suspension and substitute an instalment payment plan
15 for the payment of the amount of the judgment that takes into account the
16 defendant's income if all of the following conditions apply:

17 1. The defendant is unable to pay the judgment in full because of poverty, as
18 that term is used in s. 814.29 (1) (d).

19 2. The defendant has not previously failed to comply with an instalment
20 payment plan ordered under this section that takes into account the defendant's
21 income.

22 (c) If the defendant fails to comply with an instalment payment plan ordered
23 under this subsection, the court shall reinstate the suspension of the defendant's
24 operating privilege.

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1 **SECTION 3.** 800.09 (1) (a) of the statutes, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 800.09 (1) (a) The court may defer payment of any judgment or provide for
4 instalment payments. At the time the judgment is rendered, the court shall inform
5 the defendant, orally and in writing, of the date by which restitution and the
6 payment of the forfeiture, the penalty assessment, the jail assessment, the crime
7 laboratories and drug law enforcement assessment, any applicable consumer
8 information assessment and any applicable domestic abuse assessment plus costs
9 must be made, and of the possible consequences of failure to do so in timely fashion,
10 including imprisonment, as provided in s. 800.095, or suspension of the defendant's
11 motor vehicle operating privilege, as provided in par. (c), if applicable. In addition,
12 the court shall inform the defendant, orally and in writing, that if the defendant
13 cannot pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d),
14 the defendant should so notify the court. If the defendant notifies the court of his or
15 her poverty, the court may not order imprisonment or the suspension of the
16 defendant's operating privilege, except as provided in s. 800.095. If the defendant
17 is not present, the court shall ensure that the information is sent to the defendant
18 by mail. In 1st class cities, all of the written information required by this paragraph
19 shall be printed in English and Spanish and provided to each defendant.

20 **SECTION 4.** 800.09 (1) (c) of the statutes, as affected by 1999 Wisconsin Act 9,
21 is amended to read:

22 800.09 (1) (c) The court may suspend the defendant's operating privilege, as
23 defined in s. 340.01 (40), until restitution is made and the forfeiture, assessments
24 and costs are paid, if the defendant has not done so within 60 days after the date the
25 restitution or payments or both are to be made under par. (a) and has not notified the

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1 court that he or she is unable to comply with the judgment, as provided under ~~s.~~
2 ~~800.095 (4) par.~~ (a), except that the suspension period may not exceed 5 years. The
3 court shall take possession of the suspended license and shall forward the license,
4 along with a notice of the suspension clearly stating that the suspension is for failure
5 to comply with a judgment of the court, to the department of transportation. This
6 paragraph does not apply if the forfeiture is assessed for violation of an ordinance
7 that is unrelated to the violator's operation of a motor vehicle.

8 **SECTION 5.** 800.09 (3) of the statutes is created to read:

9 **800.09 (3) JUDGMENT REGARDING OPERATING PRIVILEGE.** (a) If the operating
10 privilege of a defendant is suspended under this section or s. 800.095, the court may
11 terminate that suspension and substitute an instalment payment plan for paying
12 the amount of the judgment that takes into account the defendant's income.

13 (b) If the operating privilege of a defendant is suspended under this section or
14 s. 800.095, the court shall terminate that suspension and substitute an instalment
15 payment plan for the payment of the amount of the judgment that takes into account
16 the defendant's income if all of the following conditions apply:

17 1. The defendant is unable to pay the judgment in full because of poverty, as
18 that term is used in s. 814.29 (1) (d).

19 2. The defendant has not previously failed to comply with an instalment
20 payment plan ordered under this section that takes into account the defendant's
21 income.

22 (c) If the defendant fails to comply with an instalment payment plan ordered
23 under this subsection, the court shall reinstate the suspension of the defendant's
24 operating privilege.

25 **SECTION 6.** 800.095 (2) (a) (form) of the statutes is amended to read:

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1 800.095 (2) (a) (form):

2 STATE OF WISCONSIN

3 City/Village/Town

4 State of Wisconsin

5 vs.

6 Defendant(s)

7 THE STATE OF WISCONSIN TO THE DEFENDANT

8 A judgment, a copy of which is attached, has been entered against you for
9 (restitution and) the payment of a civil forfeiture. You were ordered by the court on
10 ..., ... (year) to (make the following payments: ...) (perform the following community
11 service work order: ...) (make the following restitution: ...).

12 You have failed to comply with that order.

13 YOU ARE THEREFORE ORDERED to appear before the Honorable ... in ...
14 Courtroom, at the ... Courthouse, in the City/Town/Village of ... at ... a.m./p.m. TO
15 SHOW THAT YOU ARE UNABLE TO (PAY THE FORFEITURE OR MAKE
16 RESTITUTION FOR GOOD CAUSE OR BECAUSE OF YOUR ~~INDIGENCE~~
17 POVERTY) (TO COMPLY WITH THE COMMUNITY SERVICE WORK ORDER
18 FOR GOOD CAUSE). If (good cause or your indigence poverty has prevented you
19 from paying the forfeiture or making restitution) (good cause has prevented you from
20 complying with the community service work order), the court will modify the order.

21 IF YOU FAIL TO APPEAR AT THE TIME AND PLACE DESIGNATED
22 ABOVE, AN ORDER FOR COMMITMENT SHALL BE ISSUED AND YOU WILL
23 BE IMPRISONED IN THE JAIL/HOUSE OF CORRECTIONS. IN ADDITION, AN
24 ORDER MAY BE ISSUED TO SUSPEND YOUR MOTOR VEHICLE OPERATING
25 PRIVILEGE.

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1 Dated:, (year)

2 Signature:.....

3 (Municipal Court Judge)

4 **SECTION 7.** 800.095 (4) (a) of the statutes is amended to read:

5 800.095 (4) (a) If the defendant appears before the court pursuant to a warrant
6 or summons issued under sub. (1) or the defendant otherwise notifies the court that
7 he or she is unable to comply with the judgment or community service work order,
8 the court shall conduct a hearing. If the defendant failed to pay the forfeiture, make
9 restitution or comply with the work order, the court shall determine if the defendant
10 is unable to comply with the judgment for good cause or because of the defendant's
11 indigence poverty, as that term is used in s. 814.29 (1) (d), or is unable to comply with
12 the work order for good cause.

13 **SECTION 8.** 800.095 (4) (b) (intro.) of the statutes is amended to read:

14 800.095 (4) (b) (intro.) If the defendant fails to appear before the court for a
15 hearing conducted under par. (a) or if the court determines at a hearing under par.
16 (a) that the failure of the defendant to comply with the judgment is not for good cause
17 or because of the defendant's indigence poverty, as that term is used in s. 814.29 (1)
18 (d), or that the failure of the defendant to comply with the work order is not for good
19 cause, the court shall order one of the following:

20 **SECTION 9.** 800.095 (4) (c) of the statutes is amended to read:

21 800.095 (4) (c) If the court determines that the failure of the defendant to
22 comply with the judgment is for good cause or because of the defendant's indigence
23 poverty, as that term is used in s. 814.29 (1) (d), or that the failure of the defendant
24 to comply with the work order is for good cause, the court may enter an order under
25 par. (b) 2. or 3.

