

2001 DRAFTING REQUEST

Bill

Received: 01/22/2001

Received By: nelsorp1

Wanted: As time permits

Identical to LRB:

For: Daniel Vrakas (608) 266-3007

By/Representing: Bonnie

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Addl. Drafters:

Subject: Courts - civil procedure

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Jury trials in municipal court for drunk driving

Instructions:

See Attached 99-1761

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 01/22/2001	jdye 02/08/2001		_____			Local
/1			pgreensl 02/08/2001	_____	lrb_docadmin 02/08/2001	lrb_docadminLocal 02/13/2001	
/2	nelsorp1 02/14/2001	jdye 02/14/2001	rschluet 02/15/2001	_____	lrb_docadmin 02/15/2001	lrb_docadminS&L 02/15/2001	

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/?	nelsorp1	1 2/8 JD	2/8 DG	2/8 SetB			

FE Sent For:

<END>

ASSEMBLY BILL 381

An Act to repeal 800.04 (1) (b) 1. c. and 800.04 (1) (d); and to amend 345.43 (1), 755.045 (1) (a), 800.02 (2) (a) 7. and 800.02 (3) (a) 6. of the statutes; relating to: jury trials in municipal court.

(FE)

1999

06-10-99. A. Introduced by Representatives Vrakas, Klusman, Ladwig, Turner, Brandemuehl, Townsend, Hahn, Grothman, Owens, Albers and Powers; cosponsored by Senators Drzewiecki and Darling.

06-10-99. A. Read first time and referred to committee on Judiciary and Personal Privacy **225**

06-28-99. A. **Fiscal estimate received.**

07-02-99. A. **Fiscal estimate received.**

07-06-99. A. **Fiscal estimate received.**

07-20-99. A. Public hearing held.

08-03-99. A. **Fiscal estimate received.**

2000

04-06-00. A. Failed to pass pursuant to Senate Joint Resolution 1 **915**

2001
~~1999~~ ASSEMBLY BILL 381

jld

June 10, 1999 - Introduced by Representatives VRAKAS, KLUSMAN, LADWIG, TURNER, BRANDEMUEHL, TOWNSEND, HAHN, GROTHMAN, OWENS, ALBERS and POWERS, cosponsored by Senators DRZEWIECKI and DARLING. Referred to Committee on Judiciary and Personal Privacy.

Regen regarding first offense drunk driving

1 AN ACT to repeal 800.04 (1) (b) 1. c. and 800.04 (1) (d); and to amend 345.43 (1),
2 755.045 (1) (a), 800.02 (2) (a) 7. and 800.02 (3) (a) 6. of the statutes; relating
3 to: jury trials in municipal court.

Analysis by the Legislative Reference Bureau

Under current law, in municipal court a person charged with a violation of either of the following ordinances has the right to request a jury trial:

- 1. An ordinance that is in conformity with the state law that prohibits the operation of a motor vehicle while under the influence of an intoxicant, controlled substance, or other drug (OWI).
- 2. An ordinance that is in conformity with the state law that prohibits the operation of a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.1%.

If the violator requests a jury trial and pays the required fees, currently, the municipal court is required to transfer the case to the clerk of circuit court in the county where the violation occurred. The circuit court is then required to set a date for a jury trial.

This bill removes the right to a jury trial in municipal court cases regarding OWI.

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:

ASSEMBLY BILL 381

SECTION 1. 345.43 (1) of the statutes is amended to read:

345.43 (1) If a case has been transferred under s. 800.04 (1) (d), or if in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the circuit court. The number of jurors shall be 6. If no party demands a trial by jury, the right to trial by jury is permanently waived.

SECTION 2. 755.045 (1) (a) of the statutes is amended to read:

755.045 (1) (a) If the action is transferred under s. 800.04 (1) or 800.05 (3) to a court of record.

SECTION 3. 800.02 (2) (a) 7. of the statutes is amended to read:

800.02 (2) (a) 7. Notice that the defendant may by mail prior to the court appearance enter a plea of not guilty and may within 10 days after entry of the plea request a jury trial.

SECTION 4. 800.02 (3) (a) 6. of the statutes is amended to read:

800.02 (3) (a) 6. Notice that the defendant may by mail prior to the court appearance enter a plea of not guilty and may within 10 days after entry of the plea request a jury trial.

SECTION 5. 800.04 (1) (b) 1. c. of the statutes is repealed.

SECTION 6. 800.04 (1) (d) of the statutes is repealed.

(END)

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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 8, 2001

MEMORANDUM

To: Representative Vrakas

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-2170 Jury trials in municipal court for drunk driving

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

2001 BILL

Regen

1 AN ACT to repeal 800.04 (1) (b) 1. c. and 800.04 (1) (d); and to amend 345.43 (1),
 2 755.045 (1) (a), 800.02 (2) (a) 7. and 800.02 (3) (a) 6. of the statutes; relating
 3 to: jury trials in municipal court regarding first offense drunk driving.

Analysis by the Legislative Reference Bureau

Under current law, in municipal court a person charged with a violation of either of the following ordinances has the right to request a jury trial:

1. An ordinance that is in conformity with the state law that prohibits the operation of a motor vehicle while under the influence of an intoxicant, controlled substance, or other drug (OWI).

2. An ordinance that is in conformity with the state law that prohibits the operation of a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.1%.

If the violator requests a jury trial and pays the required fees, currently, the municipal court is required to transfer the case to the clerk of circuit court in the county where the violation occurred. The circuit court is then required to set a date for a jury trial.

This bill removes ~~the~~ a person's right to ~~request a jury trial~~ in municipal court cases regarding OWI.

to request that his or her
 be transferred to the circuit court for a jury trial

BILL

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:

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5 prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the
6 circuit court. The number of jurors shall be 6. If no party demands a trial by jury,
7 the right to trial by jury is permanently waived.

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10 a court of record.

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12 800.02 (2) (a) 7. Notice that the defendant may by mail prior to the court
13 appearance enter a plea of not guilty ~~and may within 10 days after entry of the plea~~
14 ~~request a jury trial.~~

15 **SECTION 4.** 800.02 (3) (a) 6. of the statutes is amended to read:

16 800.02 (3) (a) 6. Notice that the defendant may by mail prior to the court
17 appearance enter a plea of not guilty ~~and may within 10 days after entry of the plea~~
18 ~~request a jury trial.~~

19 **SECTION 5.** 800.04 (1) (b) 1. c. of the statutes is repealed.

20 **SECTION 6.** 800.04 (1) (d) of the statutes is repealed.

21

(END)

Nelson, Robert P.

From: Deering, Bonnie
Sent: Wednesday, April 25, 2001 12:04 PM
To: Nelson, Robert P.
Subject: 1st offense OWI bill/refusal hearing

Well, guess what. In talking to the Judges Association, they would like to introduce these as two separate bills, now that they have seen them combined. So I just have a request that we somehow clarify LRB 2170/2 (which I will send the jacketed copy back to you immediately). I would like the same clarification language in this LRB as we put in LRB 2808/2 (the combination bill) or something that clarifies the fact that this bill just says that the municipal court must hear the case before a request for a jury trial in circuit court can be granted. We are not removing the person's right to appeal to circuit court, just saying that the municipal court must hear the case first.

And maybe you can help me out with a question. If a case is appealed to circuit court, I know you get a "new" trial (I know there is some Latin word for the new trial, but I can't remember the term) in circuit court, but what happens to the municipal court decision? Does that decision stay on your permanent record?

Thanks for all your help on this. I believe everything is okay with the refusal hearing draft (LRB 2462). If not I will be back in touch with you. Sorry about all this confusion!!!

Bonnie Deering
Office of Representative Dan Vrakas
119 West, State Capitol



2001 ASSEMBLY BILL

Insert Anc-I ✓

1 **AN ACT to repeal** 800.04 (1) (b) 1. c. and 800.04 (1) (d); and **to amend** 345.43 (1),
 2 755.045 (1) (a), 800.02 (2) (a) 7. and 800.02 (3) (a) 6. of the statutes; **relating**
 3 **to: jury trials in municipal court regarding first offense drunk driving.**

Analysis by the Legislative Reference Bureau

No R → Under current law, in municipal court a person charged with ^{an OWI} violation of either of the following ordinances has the right to request a jury trial.

1. An ordinance that is in conformity with the state law that prohibits the operation of a motor vehicle while under the influence of an intoxicant, controlled substance, or other drug (OWI). ^{OWI}

2. An ordinance that is in conformity with the state law that prohibits the operation of a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.1%.

If the violator requests a jury trial and pays the required fees, ^{current law requires} the municipal court is required to transfer the case to the clerk of circuit court in the county where the violation occurred. The circuit court is then required to set a date for a jury trial.

This bill removes a person's right in municipal court to request that his or her case regarding OWI be transferred to the circuit court for a jury trial.

ASSEMBLY BILL

*Insert
Arl- II*

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

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5 prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the
6 circuit court. The number of jurors shall be 6. If no party demands a trial by jury,
7 the right to trial by jury is permanently waived.

8 **SECTION 2.** 755.045 (1) (a) of the statutes is amended to read:

9 755.045 (1) (a) If the action is transferred under s. ~~800.04 (1) or~~ 800.05 (3) to
10 a court of record.

11 **SECTION 3.** 800.02 (2) (a) 7. of the statutes is amended to read:

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20 **SECTION 6.** 800.04 (1) (d) of the statutes is repealed.

21

(END)

Insert 2-20

2001 BILL

or from operating a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.08% (offense) ↑ %

1 AN ACT to repeal 800.04 (1) (b) 1. c. and 800.04 (1) (d); and to amend 343.305
2 (9) (a) (intro.), 343.305 (9) (am) (intro.), 343.305 (9) (c), 343.305 (11), 345.43 (1),
3 755.045 (1) (a), 800.02 (2) (a) 7., 800.02 (3) (a) 6. and 800.07 of the statutes;
4 relating to: jury trials in municipal court regarding first offense drunk driving
5 and allowing municipal courts to hold refusal hearings regarding first offense
6 drunk driving.

NO #
If the offense is the person's or second subsequent OWI offense, the offense is

either of these

Analysis by the Legislative Reference Bureau

Insert A-1-I

Current law allows a municipality to create an ordinance prohibiting a person from operating a vehicle while under the influence of an intoxicant. Under current law, if a person is charged with violating an ordinance, the case is heard by a municipal court if there is a municipal court in that municipality. Second and subsequent OWI offenses are criminal and are heard in circuit court.

In addition, 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,

BILL

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.

Under current law, in municipal court a person charged with a violation of either of the following ordinances has the right to request a jury trial:

1. An ordinance that is in conformity with the state law that prohibits OWI.
2. An ordinance that is in conformity with the state law that prohibits the operation of a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.1%.

If the violator requests a jury trial and pays the required fees, currently, the municipal court is required to transfer the case to the clerk of circuit court in the county where the violation occurred. The circuit court is then required to set a date for a jury trial.

This bill requires an OWI ordinance violation case to be held in the municipal court by removing a person's right in municipal court to request that his or her case regarding OWI be transferred to the circuit court for a jury trial. The bill does not affect the person's right to appeal the municipal court's decision to the circuit court.

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. 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 arrest under sub. (3) (a) was made or to the
- 11 municipal court in the municipality in which the arrest was made if the arrest was

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BILL

1 800.02 (3) (a) 6. Notice that the defendant may by mail prior to the court
2 appearance enter a plea of not guilty and may within 10 days after entry of the plea
3 request a jury trial.

4 **SECTION 9.** 800.04 (1) (b) 1. c. of the statutes is repealed.

5 **SECTION 10.** 800.04 (1) (d) of the statutes is repealed.

6 **SECTION 11.** 800.07 of the statutes is amended to read:

7 **800.07 Discovery in municipal court.** Neither party is entitled to pretrial
8 discovery in any action in municipal court, including refusal hearings held by a
9 municipal court under s. 343.305 (9), except that if the defendant moves within 30
10 days after the initial appearance in person or by an attorney and shows cause
11 therefor, the court may order that the defendant be allowed to inspect documents,
12 including lists of names and addresses of witnesses, if available, and to test under
13 s. 804.09, under such conditions as the court prescribes, any devices used by the
14 plaintiff to determine whether a violation has been committed.

15 **SECTION 12. Initial applicability.**

16 (1) This act first applies to violations ~~and refusals~~ committed on the effective
17 date of this subsection.

18 **SECTION 13. Effective date.**

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

21 (END)

1/2 ser 7
2-20



2001 ASSEMBLY BILL

Reger

- 1 AN ACT *to repeal* 800.04 (1) (b) 1. c. and 800.04 (1) (d); and *to amend* 345.43 (1),
2 755.045 (1) (a), 800.02 (2) (a) 7. and 800.02 (3) (a) 6. of the statutes; **relating**
3 **to:** jury trials in municipal court regarding first offense drunk driving.

Analysis by the Legislative Reference Bureau

Current law allows a municipality to create an ordinance prohibiting a person from operating a vehicle while under the influence of an intoxicant or from operating a commercial motor vehicle while the person has a blood alcohol concentration of 0.04% or more but less than 0.1% (OWI offense). Under current law, if a person is charged with violating either of these ordinances, the case is heard by a municipal court if there is a municipal court in that municipality. If the offense is the person's second or subsequent OWI offense, the offense is criminal and heard in circuit court. Under current law, in municipal court a person charged with an OWI violation has the right to request a jury trial.

If the violator requests a jury trial and pays the required fees, current law requires the municipal court to transfer the case to the clerk of circuit court in the county where the violation occurred. The circuit court is then required to set a date for a jury trial.

This bill requires an OWI ordinance violation case to be held in the municipal court by removing a person's right in municipal court to request that his or her case regarding OWI be transferred to the circuit court for a jury trial. The bill does not affect the person's right to appeal the municipal court's decision to the circuit court.

ASSEMBLY BILL

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5 prescribed in s. 814.61 (4), the court shall place the case on the jury calendar of the
6 circuit court. The number of jurors shall be 6. If no party demands a trial by jury,
7 the right to trial by jury is permanently waived.

8 **SECTION 2.** 755.045 (1) (a) of the statutes is amended to read:

9 755.045 (1) (a) ~~If the action is transferred under s. 800.04 (1) or 800.05 (3) to~~
10 a court of record.

11 **SECTION 3.** 800.02 (2) (a) 7. of the statutes is amended to read:

12 800.02 (2) (a) 7. Notice that the defendant may by mail prior to the court
13 appearance enter a plea of not guilty ~~and may within 10 days after entry of the plea~~
14 ~~request a jury trial.~~

15 **SECTION 4.** 800.02 (3) (a) 6. of the statutes is amended to read:

16 800.02 (3) (a) 6. Notice that the defendant may by mail prior to the court
17 appearance enter a plea of not guilty ~~and may within 10 days after entry of the plea~~
18 ~~request a jury trial.~~

19 **SECTION 5.** 800.04 (1) (b) 1. c. of the statutes is repealed.

20 **SECTION 6.** 800.04 (1) (d) of the statutes is repealed.

21 **SECTION 7. Initial applicability.**

