



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 402
[2009 Senate Bill 383]

Municipal Courts

2009 Wisconsin Act 402 makes numerous changes to the laws regarding municipal courts, including the following:

1. Current law does not specifically make municipal courts subject to the authority of the Supreme Court, but provides in certain circumstances that the chief judge of a judicial administrative district has specified responsibilities. Act 402 provides that a municipal court is a coequal branch of municipal government, subject to the superintending authority of the Supreme Court, through the chief judge of a judicial administrative district.

2. Current law provides that a municipal court will become operative and function when a municipal governing body adopts an appropriate ordinance or bylaw. Act 402 provides that, in addition to the ordinance or bylaw, the municipal governing body also must receive a certification from the chief judge of the judicial administrative district that the court meets statutory requirements and must provide written notification to the Director of State Courts of the adoption of the ordinance or bylaw. However, this provision only applies to a municipal court when it becomes operative and functions after January 1, 2011. Act 402 also clarifies that the governing body of a municipality may by ordinance or bylaw abolish a municipal court as part of a consolidation with another town, village, or city.

3. Current law provides that a municipal court must be open daily or as directed by the governing body, unless the governing body by ordinance or bylaw allows the judge to determine when a court will be open. Act 402 provides that a municipal court must be open daily or as determined by the judge and approved by the governing body.

4. Current law provides that the municipal court must be maintained at the expense of the governing municipality. Act 402 specifically provides in addition that the budget or line item of the municipal court must be separate from the budget of all other municipal departments. The municipal governing body will determine the amounts budgeted for court maintenance and operations.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

5. Current law provides that a municipal court must appoint a guardian ad litem for any defendant the court has reason to believe is mentally incompetent. Act 402 provides that a social worker also may be appointed, but the purpose of either appointment is to determine whether a defendant lacks substantial mental capacity to understand the proceedings or assist in his or her defense. A determination of incompetency will result in suspended proceedings and the cost of the appointment must be paid by the governing municipality.

6. Under current law, a municipal court judge must be elected for a term of two years, unless a longer term, not exceeding four years, is provided by ordinance or bylaw. Act 402 provides that the term will be for four years unless a charter ordinance provides for a different term that is not less than two years.

7. Current law provides that a municipal court judge has countywide jurisdiction. Act 402 provides that a municipal court judge will have statewide jurisdiction.

8. In general, current law provides that a municipal governing body must provide an adequate office and courtroom for a municipal court judge. The judge may not share this place with a practicing attorney, unless the attorney is the judge's law partner. Act 402 requires the municipality to provide an office or appropriate workspace and removes the prohibition on a municipal court judge holding court or keeping an office with any practicing attorney.

9. Current law requires a municipal court judge to appoint clerks and deputies that are authorized by the municipal governing body. Act 402 provides that the municipal governing body must authorize at least one clerk for each court. Act 402 places the hiring, termination, and work responsibilities of court personnel, when working for the municipal court, under the authority of the judge, except that in the City of Milwaukee, the court administrator has this authority. This authority is a prohibited subject of collective bargaining if the employee is a clerk who is not an employee of a city of the first class. Current law requires a municipal court judge to participate in continuing education required by the Supreme Court. Act 402 also requires court clerks to participate in this education.

10. Act 402 newly requires a municipal court judge to store all records in the office of the court clerk or in another appropriate facility designated by the municipal governing body. Access to the records is restricted to court personnel except as authorized by the judge or by law and except that counsel and parties may read the records.

11. Current law requires a municipal court judge to be properly attired in a robe or other suitable clothing. Act 402 requires the judge to wear a black robe while presiding, except when exceptional circumstances exist.

12. Current law requires a municipal governing body to provide a courtroom for a municipal court judge. It must be in a public building if a suitable public building is available within the same municipality. Act 402 requires that the court must be in an adequate facility and must be located in an area separate from the police department by design or signage. Act 402 also gives the judge the authority to establish court hours as approved by the municipal governing body.

13. Act 402 newly requires that every municipal court must have a telephone number separate from the telephone number or extension of any other governmental department.

14. Under current law, a municipal court will obtain personal jurisdiction over a defendant if the defendant: (a) is served with appropriate documentation; (b) is arrested and brought before the court (or

in a first class city brought before the court through interactive video and audio transmission); or (c) voluntarily appears. Act 402 provides, in addition to current law, that the court will obtain personal jurisdiction if: (a) the defendant has appeared personally in any municipal court through interactive video and audio transmission; (b) the defendant has acknowledged receipt of the appropriate documentation; or (c) the appropriate documentation has been sent to the defendant by first class mail. A person who has received notice only through mail may not lose his or her operating privilege or be imprisoned for failure to pay a monetary judgment imposed by the municipal court.

15. Act 402 newly requires a law enforcement officer or municipal employee who serves a summons to indicate the method of service on the copy of the documents filed or transmitted to the municipal court.

16. Current law describes the commencement of a municipal court action in terms of a municipal court obtaining personal jurisdiction over a defendant. Act 402 differentiates between commencement of an action and obtaining personal jurisdiction over a defendant. For purposes of commencement of the action, the Act provides that ordinance violation cases are commenced when a complaint or citation is filed with or transmitted to the municipal court.

17. Current law provides that a citation must include various pieces of information, including the date, time, and place for a court appearance and a notice to appear. Act 402 removes the phrase “notice to appear” and provides that the citation must include a statement as to whether an appearance is mandated by the judge.

18. Act 402 newly requires that the citation form include the identification of any permit issued to a defendant or the license number of the defendant, if applicable.

19. Current law provides that a citation or complaint may be amended once prior to the initial appearance of a defendant. Otherwise, an amendment may be made only at the discretion of the court or by written consent of the defendant. Act 402 provides that, after the initial appearance, a citation or complaint may be amended upon notice and an opportunity to be heard, at the discretion of the court. At trial, the court may amend the document to conform to the evidence while allowing parties an opportunity to present evidence with respect to the amendment.

20. Act 402 newly requires that a copy of an amended complaint made before an initial appearance be served on the defendant or sent to the defendant by first class mail.

21. Current law provides that a person may enter an initial appearance in person. Act 402 provides that a person may also make an appearance by submitting a written response to a citation or complaint, except when the court requires a personal appearance.

22. Current law provides that a municipal judge may release a defendant with or without requiring the defendant to provide a deposit. If the defendant fails to make a required deposit, or if the defendant fails to make an initial appearance and a warrant is issued, he or she may be committed to jail pending trial or prior to the initial appearance, respectively. Act 402 provides that a person may be committed to jail for failure to provide a deposit, or for failing to respond to a warrant to make an initial appearance, for no more than 48 hours.

23. Act 402 newly specifies that a municipal court may schedule a pretrial conference. If the parties reach an agreement, the agreement must be submitted to the court for the court’s approval. If an

agreement is not reached, or if the court does not approve an agreement, the court must schedule the action for further proceedings.

24. Current law generally provides that a person may request one substitution of a municipal judge. Act 402 provides that in such a case, the parties must remain the same, the prosecutor of the transferring court will be responsible for the prosecution in the new court, and the judgment, if any, must be payable to the transferring court.

25. Act 402 newly provides that if a municipal court judge disqualifies himself or herself, the case will be transferred in the same manner as a judge substitution transfer.

26. Current law provides that if a municipal court judge will be temporarily absent, the judge may deliver a pending action to the circuit court of the county and the circuit court may try the action or the judge may, with the approval of the chief judge of the judicial administrative district, appoint another person to perform his or her duties for a period not to exceed 30 days. Act 402 provides that in a case of temporary absence, the municipal court judge may, by written request, subject to the order of the chief judge of the judicial administrative district, designate another municipal judge from any municipality within the state to perform his or her duties for a period not to exceed 30 days.

27. Current law provides that if there is a permanent vacancy, the chief judge of the judicial administrative district may, upon request by the municipal governing body, designate another municipal court judge until the municipal governing body fills the vacancy by temporary appointment. Act 402 provides that the chief judge need not wait for a request from the municipal governing body before designating another municipal court judge to perform the duties of an absent municipal court judge. The interim municipal court judge may come from any municipality in the state.

28. Current law provides that a municipal governing body may provide a prosecutor in a municipal court. Act 402 requires the municipal governing body to provide a prosecutor. The Act also provides that a party, witness, or interpreter may appear by telephone or by audiovisual means if: (a) the parties so stipulate and the court approves; or (b) the court finds good cause after considering specified factors.

29. Act 402 specifies that if a defendant in a municipal action is impoverished, the defendant must be notified of alternatives to the payment of forfeitures and other charges. These alternatives include installment payments, community services, or a stay of judgment. Also, when a monetary judgment is not paid, a driver's license is suspended, and a defendant is unable to pay, the municipal court must withdraw the suspension and grant additional time to pay or order one or more other sanctions, including imprisonment, wage assignment, or community service.

30. Current law provides that a defendant in a municipal court action must make a motion for pretrial discovery within 30 days after an initial appearance. Act 402 clarifies that the defendant may move for pretrial discovery at any other time upon a showing of cause for that discovery.

31. Current law provides that if a judgment is not paid, a municipal court may order a defendant to perform community service work if the defendant agrees to perform this work. Service in lieu of restitution may be performed only if agreed to by the entity receiving the service and by the person to whom restitution is owed. Act 402 removes the requirement that the defendant must agree to perform the service.

32. Current law provides that a municipal court may order restitution if a defendant is guilty of violating an ordinance that prohibits conduct that is the same as, or is similar to, conduct prohibited by state statute punishable by fine or imprisonment, or both. Act 402 amends this provision to provide that restitution may be ordered if the defendant is guilty of violating a nontraffic ordinance or an ordinance authorizing restitution for a drunk driving conviction.

33. Current law provides that when a defendant fails to pay a municipal court judgment, the court may order that the defendant's operating privilege be suspended until the obligation is met, except that the suspension may not exceed two years. Act 402 provides that the authority to impose a suspension does not apply if the ordinance violation in question was unrelated to the operation of a motor vehicle and the judgment is not ordered under the juvenile code. The Act also provides that nonmoving traffic offenses are considered to be related to the operation of a motor vehicle.

34. Current law provides that if a defendant fails to appear for a hearing concerning the nonpayment of a judgment or noncompliance with a work order, a municipal court may order the defendant be imprisoned for a maximum period of 90 days. The person will receive a credit of \$25 for each day of imprisonment that will offset the monetary costs of the judgment. Act 402 provides that a defendant may be imprisoned for a maximum period of 90 days for any one judgment and that the defendant will be credited \$50 each day. Imprisonment is allowed only if: (a) the defendant has the ability to pay; (b) the defendant has failed to perform community service; (c) the defendant has failed to attend an indigency hearing; or (d) the defendant has failed to complete an assessment or treatment program related to alcohol or drugs that was ordered in lieu of a monetary forfeiture.

35. Act 402 provides that if a court terminates a driver's license suspension because the defendant agrees to a payment plan or community service and the defendant defaults, a new suspension will be reduced by the amount of time that the suspension was served before being terminated by the court.

36. Act 402 provides that a defendant with an inability to pay may seek a waiver from the circuit court for costs or fees relating to an appeal or installation of a jury. Act 402 also provides that the defendant must seek waiver of costs or fees relating to the setting of bond or preparation of a transcript from the municipal court.

37. Act 402 provides that appeals from determinations regarding whether a defendant is unable to pay a judgment because of poverty may be taken by either party to the circuit court of the county where the offense occurred.

38. Act 402 newly authorizes a municipal court, in a case of noncompliance with an order, to receive not more than 25% of the defendant's income, including lottery winnings, for the payment of the judgment.

39. Under current law, a municipal court must, within seven days of receipt, transfer moneys it receives to the municipal treasurer. Act 402 increases this time period to 30 days.

40. Under current law, a transcript of a judgment in a municipal court must include the name, address, and vocation of the defendant. Act 402 removes the requirement to describe the vocation of the defendant.

41. In general, current law provides that a defendant in an action involving a statutory counterpart ordinance may ask to reopen a judgment no later than six months after the judgment was

entered. A defendant may move for relief from a judgment at any time if: (a) a prior predicate judgment has been reversed or vacated; (b) prospective application of the judgment is no longer equitable; or (c) there are other reasons justifying relief from the operation of the judgment. Act 402 provides that any party, and the court on its own motion, may at any time move to reopen a judgment for reasons of fraud, misrepresentation, or other misconduct, because the judgment is void, or for other equitable reasons. A defendant may within six months after the judgment is entered move for relief from the judgment because of mistake, inadvertence, surprise, or excusable neglect.

42. Act 402 newly provides that an appeal may not be taken from a default judgment.

43. Current law authorizes a municipal court judge to impose a sanction for contempt of court. Act 402 specifies that contempt means either: (a) misconduct in the presence of the court that interferes with the court proceeding or with the administration of justice, or that impairs the respect due the court; or (b) refusal of a witness to appear without reasonable excuse.

44. Under current law, contempt of court may be punished by a forfeiture not to exceed \$50. Act 402 raises this maximum amount to \$200.

45. Act 402 newly provides that, for a witness who has refused to appear without reasonable excuse, a municipal court judge may issue a warrant to bring the witness before the court for the contempt and to testify and to order the witness to pay the costs of apprehending the witness, plus any forfeiture imposed for the contempt.

46. Current law requires a defendant to execute a bond in order to appeal a municipal court judgment. Act 402 requires that a bond must be executed at the discretion of the municipal court judge.

47. Under current law, execution of a municipal court judgment is stayed pending the final disposition of the appeal. Act 402 also provides that the enforcement of an order of the municipal court is stayed pending appeal.

48. Current law provides that an appeal to a circuit court will involve a new trial upon the request of either party. Act 402 provides that an appeal from a judgment where a trial has been held in a municipal court must be on the record unless, within 20 days after notice of appeal, either party requests that a new trial be held in the circuit court.

49. Current law provides that if an appeal is based upon a review of a transcript of the proceedings, a municipal court judge must direct that the transcript be prepared from an electronic recording and certify the transcript. Act 402 provides that when testimony has been recorded a transcript of the electronic recording shall be ordered and that the appellant must pay for the transcript.

50. Act 402 newly provides that if an appellate decision requires payment of a forfeiture by the defendant, the forfeiture and attendant costs, fees, and surcharges must be paid directly to the governing municipality.

Effective date: The Act generally takes effect on January 1, 2011.

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