

# State of Wisconsin



2019 Senate Bill 214

Date of enactment: **January 21, 2020**

Date of publication\*: **January 22, 2020**

## 2019 WISCONSIN ACT 70

**AN ACT** to repeal 800.14 (2); to renumber 343.301 (1m) and 814.61 (5); to renumber and amend 800.085 (2), 800.095 (3) and 800.14 (4); to amend 49.90 (12), 49.90 (13) (c), 66.0113 (1) (b) 6., 66.0113 (1) (b) 7. b., 303.18 (2), 755.01 (1), 755.01 (2), 755.01 (4), 755.17 (1m), 755.17 (2), 799.29 (2), 800.035 (2) (e), 800.035 (5) (a), 800.035 (5) (c), 800.05 (3), 800.06 (1), 800.093 (1) (b), 800.095 (6), 800.095 (7), 800.115 (4), 800.115 (5), 800.13 (1), 800.14 (1), 800.14 (3), 800.14 (5), 806.10 (1) (intro.), 806.14, 814.63 (2), 814.63 (4) and 885.04; and to create 343.301 (1m) (b), 800.005, 800.035 (2) (a) 5., 800.085 (2) (a) to (i), 800.09 (4), 800.095 (3) (c), 800.14 (2m), 800.14 (4) (b) and 814.61 (5) (bm) of the statutes; relating to: municipal ordinance enforcement and court procedures.

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

**SECTION 1.** 49.90 (12) of the statutes is amended to read:

49.90 (12) The parent of a dependent person who maintains a child of the dependent person under sub. (1) (a) 2. may, after the dependent person attains the age of 18, apply to the circuit court for the county in which the child resides for an order to compel restitution by the dependent person of the amount of maintenance provided to the dependent person's child by that parent. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and the future ability of the dependent person to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the parties, the court may modify the order. The parent of the dependent person may file a restitution order with the clerk of circuit court. Upon

payment of the fee under s. 814.61 (5) (a) (am) 1., the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent of the dependent person may enforce the order against the dependent person in the same manner as for a judgment in a civil action.

**SECTION 2.** 49.90 (13) (c) of the statutes is amended to read:

49.90 (13) (c) If the parent of the dependent person specified in par. (a) provides maintenance to the dependent person's child and if par. (b) applies, the parent may apply to the circuit court for the county in which the child resides for an order to compel restitution by the parent specified in par. (b) of the amount of maintenance provided. The circuit court shall in a summary way hear the allegations and proof of the parties and, after considering the financial resources and future ability of the parent of the dependent person specified in par. (b) to pay, may by order specify a sum in payment of the restitution, to be paid weekly or monthly, during a period fixed by the order or until further order of the court. Upon application

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

of any party affected by the order and following notice and an opportunity for presentation of allegations and proof by the parties, the court may modify the order. The parent specified in par. (a) may file a restitution order with the clerk of circuit court. Upon payment of a fee under s. 814.61 (5) (a) (am) 1., the clerk of circuit court shall enter the order on the judgment and lien docket under s. 806.10 in the same manner as for a judgment in a civil action. Thereafter, the parent specified in par. (a) may enforce the order against the parent specified in par. (b) in the same manner as for a judgment in a civil action.

**SECTION 3.** 66.0113 (1) (b) 6. of the statutes is amended to read:

66.0113 (1) (b) 6. The time at which the alleged violator may appear in court, and a statement describing whether the appearance is mandatory.

**SECTION 4.** 66.0113 (1) (b) 7. b. of the statutes is amended to read:

66.0113 (1) (b) 7. b. That if the alleged violator makes such a deposit, he or she need not appear in court unless appearance is mandated by the court or he or she is subsequently summoned.

**SECTION 5.** 303.18 (2) of the statutes is amended to read:

303.18 (2) Each city, village or town in the county shall, at a time designated by the county board, pay to the county the actual and reasonable costs of maintenance, as determined by ordinance of the county board, of all persons confined in the house of correction for the violation of any of the ordinances of the city, village or town during the preceding year, except that no costs are due for any period in which the person was also confined for reasons other than the violation of a city, village, or town ordinance.

**SECTION 6.** 343.301 (1m) of the statutes is renumbered 343.301 (1m) (a).

**SECTION 7.** 343.301 (1m) (b) of the statutes is created to read:

343.301 (1m) (b) An order under sub. (1g) does not apply to a vehicle for which the department has not approved an ignition interlock device capable of being installed on the vehicle.

**SECTION 8.** 755.01 (1) of the statutes is amended to read:

755.01 (1) There is created and established in and for each city, town and village, a municipal court designated "Municipal Court for the .... (city, town or village) of .... (name of municipality)". A municipal court created under this subsection is a coequal branch of the municipal government, subject to the superintending authority of the supreme court, through the chief judge of the judicial administrative district. A court shall become operative and function after January 1, 2011, when the city council, town board, or village board adopts an ordinance or bylaw providing for the election of a judge and the operation and maintenance of the court, receives a certification

from the chief judge of the judicial administrative district that the court meets the requirements under ss. 755.09, 755.10, 755.11, and 755.17, and provides written notification to the director of state courts of the adoption of the ordinance or bylaw. A permanent vacancy in the office of municipal judge shall be filled under s. 8.50 (4) (fm). Any municipal court established under this section is not a court of record. The court shall be maintained at the expense of the municipality. The municipal governing body shall determine the amount budgeted for court maintenance and operations. The budget of the municipal court shall be separate from, or contained on a separate line item from, the budget or line items of all other municipal departments, including the budget or line items of the municipal prosecuting attorney and the municipal law enforcement agency.

**SECTION 8m.** 755.01 (2) of the statutes is amended to read:

755.01 (2) The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. 66.0229 or at the end of any term for which the judge has been elected or appointed, but only if the ordinance or bylaw abolishing the court is submitted to the appropriate filing office under s. 11.0102 (1) (c) and to the director of state courts prior to October 1 of the year preceding the end of the term for which the judge has been elected or appointed. The governing body may not abolish the municipal court while an agreement under sub. (4) is in effect.

**SECTION 9.** 755.01 (4) of the statutes is amended to read:

755.01 (4) Two or more cities, towns or villages of this state may enter into an agreement under s. 66.0301 for the joint exercise of the power granted under sub. (1), except that for purposes of this subsection, any agreement under s. 66.0301 shall be effected by the enactment of identical ordinances by each affected city, town or village. Electors of each municipality entering into the agreement shall be eligible to vote for the judge of the municipal court so established. If a municipality enters into an agreement with a municipality that already has a municipal court, the municipalities may provide by ordinance or resolution that the judge for the existing municipal court shall serve as the judge for the joint court until the end of the term or until a special election is held under s. 8.50 (4) (fm). Each municipality shall adopt an ordinance or bylaw under sub. (1) prior to entering into the agreement. The contracting municipalities need not be contiguous and need not all be in the same county. Upon entering into or discontinuing such an agreement, the contracting municipalities shall each transmit a certified copy of the ordinance or bylaw effecting or discontinuing the agreement to the appropriate filing officer under s. 11.0102 (1) (c) and to the director of state courts. Any court formed under this subsection, including the formation of a new court by a change in the municipalities that

have entered into an agreement under s. 66.0301, shall become operative and function when the requirements under this subsection are met, the court receives a certification from the chief judge of the judicial administrative district that the court meets the requirements under ss. 755.09, 755.10, 755.11, and 755.17, and the court provides written notification to the director of state courts. Discontinuation of an agreement under this subsection shall be effective at the end of the term for which the judge has been elected or appointed but only if the ordinance or bylaw discontinuing the agreement is submitted to the appropriate filing office under s. 11.0102 (1) (c) and to the director of state courts prior to October 1 of the year preceding the end of the term for which the judge has been elected or appointed. When a municipal judge is elected under this subsection, candidates shall be nominated by filing nomination papers under s. 8.10 (6) (bm), and shall register with the filing officer specified in s. 11.0102 (1) (c).

**SECTION 10.** 755.17 (1m) of the statutes is amended to read:

755.17 (1m) The clerk of the municipal court shall be attired in appropriate clothing and may not, while performing municipal court functions, wear anything that implies or indicates that he or she is a law enforcement officer or employee of a law enforcement agency.

**SECTION 11.** 755.17 (2) of the statutes is amended to read:

755.17 (2) The governing body of the city, village, or town shall provide a courtroom for a municipal court, which shall be in an adequate facility. The courtroom shall be in a public building if a suitable public building is available within the municipality and shall be located in an area separate from the police department by design or signage. The courtroom shall be designed and furnished to create and promote the proper atmosphere of dignity, safety, and decorum for the operation of the court. Upon request of the municipal judge, the governing body shall provide an armed guard or officer for court sessions.

**SECTION 12.** 799.29 (2) of the statutes is amended to read:

799.29 (2) STIPULATIONS. The court, ~~judge or municipal judge~~ having trial jurisdiction to recover a forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after the stipulation has been entered into, relieve any person from the stipulation or any order, judgment or conviction entered or made thereon. Where the stipulation was made without appearance in or having been filed in court, the court, ~~judge or municipal judge~~ may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court, ~~judge or municipal judge~~ and costs and fees shall be taxed as provided by law.

**SECTION 13.** 800.005 of the statutes is created to read:

**800.005 Time.** The provisions of s. 801.15 (1) and (5) apply to actions in municipal court.

**SECTION 14.** 800.035 (2) (a) 5. of the statutes is created to read:

800.035 (2) (a) 5. Inform the defendant that he or she must notify the court in writing within 5 days of any change of his or her address during the pendency of the case.

**SECTION 15.** 800.035 (2) (e) of the statutes is amended to read:

800.035 (2) (e) If the defendant pleads not guilty ~~and a trial is not held immediately,~~ the court shall schedule the case for a pretrial conference under s. 800.045, further proceedings, or trial, at the discretion of the court.

**SECTION 16.** 800.035 (5) (a) of the statutes is amended to read:

800.035 (5) (a) If a defendant is charged with a violation of an ordinance in conformity with s. 346.63 (1) or (5), the municipality may, by ordinance, or the judge may by order, require the defendant to appear in person before the court.

**SECTION 17.** 800.035 (5) (c) of the statutes is amended to read:

800.035 (5) (c) If a defendant charged with a violation of an ordinance that is in conformity with s. 346.63 (1) or (5) pleads not guilty and within 10 days after entry of the plea requests a jury trial and pays the required fees, the municipal ~~judge~~ court shall promptly transmit all papers and fees in the cause, including any other citations or complaints arising from the same incident, to the clerk of the circuit court of the county where the violation occurred for a jury trial under s. 345.43. The plea of not guilty and request for jury trial may be made in writing. If the person refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305 (9) to determine if the person's refusal was proper, the papers and fees involved in that action shall be transferred to the same circuit court, which shall conduct the refusal hearing. Upon receipt of the request, the circuit court shall set a time for trial. Any deposit made personally or in writing is forfeited upon nonappearance at the time set for trial. The required fee for a jury is prescribed in s. 814.61 (4).

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

800.05 (3) Upon receipt of the written request under sub. (1), the original judge shall have no further jurisdiction in the case except as provided in sub. (1) and except to determine if the request was made timely and in proper form. Upon such a determination, or if no determination is made within 7 days, the court shall transfer the matter to the chief judge of the judicial administrative district for the determination and reassignment of the action as necessary. If the request is determined to be proper, the case shall be transferred as provided in s. 751.03 (2). Upon transfer, the municipal judge shall immediately transmit to the appropriate ~~court~~ judge all the records in the action.

Upon receipt of the records, the new judge shall specify the court's location in which the case will be heard and shall consider any objection to the proposed location in making the determination. In all such cases, the parties shall remain the same, the prosecutor of the transferring court shall be responsible for prosecution ~~in~~ before the new ~~court~~ judge, and the judgment, if any, shall be payable to the transferring court.

**SECTION 19.** 800.06 (1) of the statutes is amended to read:

800.06 (1) If any municipal judge is to be temporarily absent or is sick or disabled, the municipal 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.

**SECTION 20.** 800.085 (2) of the statutes is renumbered 800.085 (2) (intro.) and amended to read:

800.085 (2) (intro.) The court finds good cause after considering the following factors ~~under s. 807.13 (2) (c);~~

**SECTION 21.** 800.085 (2) (a) to (i) of the statutes are created to read:

800.085 (2) (a) Whether any undue surprise or prejudice would result.

(b) Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness.

(c) The convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony.

(d) Whether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination.

(e) The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully.

(f) Whether the quality of the communication is sufficient to understand the offered testimony.

(g) Whether a physical liberty interest is at stake in the proceeding.

(h) Financial or physical limitations on the ability of the defendant or counsel for the defendant to be physically present.

(i) Any other factors as the court may, in each individual case, determine to be relevant.

**SECTION 22.** 800.09 (4) of the statutes is created to read:

800.09 (4) Notwithstanding ss. 755.045 or 800.115 (2), no municipal judgment alleged by the defendant to be void due to the existence of a conviction, suspension, or revocation arising from another matter that existed at the time of the municipal judgment shall be considered void by any court unless the defendant disclosed the con-

viction, suspension, or revocation with specificity and in writing to the municipal court and to the prosecuting attorney prior to the entry of municipal judgment.

**SECTION 23.** 800.093 (1) (b) of the statutes is amended to read:

800.093 (1) (b) The violation resulted in damage to or theft of the property of or physical injury to or death of a person other than the defendant.

**SECTION 24.** 800.095 (3) of the statutes is renumbered 800.095 (3) (intro.) and amended to read:

800.095 (3) (intro.) Subsection (1) (a) and (b) does not apply to ~~orders~~ any of the following:

(a) Orders for restitution under s. 800.093 ~~or in cases,~~

(b) Cases where service of the summons and complaint or citation is made by mail as authorized in s. 800.01 (2) (e), unless the defendant subsequently appeared in the action or was personally served with a copy of the judgment and notice of the right to request review of the findings under sub. (1) (b) 2.

**SECTION 25.** 800.095 (3) (c) of the statutes is created to read:

800.095 (3) (c) Failure to pay a monetary judgment within 60 days of the judgment under s. 800.09 (1b), unless the court finds good cause and orders otherwise.

**SECTION 26.** 800.095 (6) of the statutes is amended to read:

800.095 (6) The court or collection company may obtain payment through a setoff ~~against the defendant's tax refund~~ under s. 71.935.

**SECTION 27.** 800.095 (7) of the statutes is amended to read:

800.095 (7) In addition to the procedures under this section, the court or a municipality may enforce the judgment in the same manner as for a judgment in an ordinary civil action, including entry into the judgment and lien docket as provided under s. 806.12.

**SECTION 28.** 800.115 (4) of the statutes is amended to read:

800.115 (4) The court may impose costs on the motion as allowed under s. 814.07, except that any costs shall be based on the expense associated with the motion and the court shall consider the defendant's ability to pay the costs using the factors in s. 814.29 (1) (d) 1. to 3. No costs may be imposed as a requirement of filing the motion.

**SECTION 29.** 800.115 (5) of the statutes is amended to read:

800.115 (5) Upon ~~receiving or~~ making a motion under this section, the court shall provide notice to all parties and schedule a hearing on the motion. Upon receiving a motion under this section, the court may enter an order denying the motion for failure to state grounds upon which relief may be granted, schedule a hearing on the motion, or enter an order based on written submissions from the parties.

**SECTION 30.** 800.13 (1) of the statutes is amended to read:

800.13 (1) Every proceeding in which testimony is taken under oath or affirmation, hearing on a motion under s. 800.115, and hearing regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), in a municipal court shall be recorded by electronic means for purposes of appeal.

**SECTION 31.** 800.14 (1) of the statutes is amended to read:

800.14 (1) Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge court and other party written notice of appeal and paying any required fees within 20 days after the judgment or decision. No appeals may be taken from default judgments.

**SECTION 32.** 800.14 (2) of the statutes is repealed.

**SECTION 33.** 800.14 (2m) of the statutes is created to read:

800.14 (2m) Upon receipt by the municipal court of the notice of appeal and any required fees and, if a trial has been held, after the 20 day time period under sub. (4) has passed, the appeal has been perfected. Within 30 days after perfection, the municipal court shall transmit the case to the circuit court as provided under sub. (5), and shall comply with the requirements of s. 343.325, if applicable.

**SECTION 34.** 800.14 (3) of the statutes is amended to read:

800.14 (3) ~~On meeting the requirements for appeal~~ Upon perfection of the appeal under sub. (2m), execution on the judgment of the municipal court or enforcement of the order of the municipal court shall be stayed until the final disposition of the appeal, unless otherwise ordered by the municipal court prior to transmittal to the circuit court or unless ordered by the circuit court thereafter. An order lifting a stay may be reviewed by the circuit court at any time following transmittal to the circuit court, upon motion and good cause shown.

**SECTION 35.** 800.14 (4) of the statutes is renumbered 800.14 (4) (intro.) and amended to read:

800.14 (4) (intro.) An appeal from a judgment where a trial has been held shall be on the record unless, within 20 days after notice of appeal has been filed with the municipal court under sub. (1), either party requests that a new trial be held in circuit court. The new trial shall be conducted by the court without a jury unless ~~either party~~ one of the following applies:

(a) If the defendant is charged with a violation of an ordinance that is in conformity with s. 346.63 (1) or (5)

and did not proceed under s. 800.035 (5) (c), the municipality requests a 6-person jury trial and posts the jury fee under s. 814.61 (4) within 10 days after the order for a new trial.

**SECTION 36.** 800.14 (4) (b) of the statutes is created to read:

800.14 (4) (b) If par. (a) does not apply, either party requests a 6-person jury trial and posts the jury fee under s. 814.61 (4) within 10 days after the order for a new trial.

**SECTION 37.** 800.14 (5) of the statutes is amended to read:

800.14 (5) If there is no request ~~or motion~~ under sub. (4), or if the appeal is from a judgment or decision in which a trial has not been held, the appeal shall be based upon a review of the proceedings in the municipal court. ~~The, and the~~ municipal court shall transmit to the circuit court a copy of the entire record, including any electronic recording created under s. 800.13 (1). ~~When testimony has been recorded in the municipal court~~ If there is a request under sub. (4), the municipal court shall transmit to the circuit court as much of the record as deemed appropriate by the municipal court, but the transmission shall include, at the minimum, a copy of the citation or complaint and the judgment. The municipal court may supplement the transmission upon request of either party or the circuit court. The circuit court may order the preparation of a transcript of the proceedings by any qualified court reporter, at the cost of the appellant, from the electronic recording and shall certify the transcript and transmit it with the record. An appellant shall, within 20 days after notice of appeal, submit payment of the estimated cost of the transcript, as determined by the municipal court, but shall be responsible for the actual cost of preparing the transcript. The transcript shall be deemed accurate unless determined otherwise by the municipal court, by request of either party or the circuit court.

(5m) A defendant claiming an inability to pay with regard to the bond or the transcript fee may petition the municipal court for a waiver. A defendant claiming an inability to pay with regard to the appeal fee, or the jury fee may petition the circuit court for a waiver.

**SECTION 38.** 806.10 (1) (intro.) of the statutes is amended to read:

806.10 (1) (intro.) At the time of entry of a judgment directing in whole or in part the payment of money, or a judgment naming a spouse under s. 806.15 (4), and upon payment of the exact amount of the fee prescribed in s. 814.61 (5) (b) ~~(am) 2.~~, the clerk of circuit court shall enter the judgment in the judgment and lien docket, arranged alphabetically, including all of the following:

**SECTION 39.** 806.14 of the statutes is amended to read:

**806.14 Enforcement of real estate judgment in other counties.** If a judgment affecting real property is rendered in any county other than that in which the property is situated, the clerk of circuit court of the county

where the property is situated shall, upon production of a duly certified copy of the judgment and payment of the fee specified by s. 814.61 (5) ~~(b)~~ (am) 2., file and enter the judgment in the judgment and lien docket. The judgment may be enforced in the circuit court for either county.

**SECTION 40.** 814.61 (5) of the statutes is renumbered 814.61 (5) (am).

**SECTION 41.** 814.61 (5) (bm) of the statutes is created to read:

814.61 (5) (bm) Paragraph (am) does not apply to a judgment rendered in municipal court.

**SECTION 42.** 814.63 (2) of the statutes is amended to read:

814.63 (2) Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district, or public inland lake protection and rehabilitation district ordinance, except for an action for a financial responsibility violation under s. 344.62 (2) ~~or~~, for a violation under s. 343.51 (1m) (b) ~~or~~, for a safety belt use violation under s. 347.48 (2m), or for a case transferred under s. 800.035 (5) (c), the county, town, city, village, town sanitary district, or public inland

lake protection and rehabilitation district shall pay a non-refundable fee of \$5 to the clerk of circuit court.

**SECTION 43.** 814.63 (4) of the statutes is amended to read:

814.63 (4) In forfeiture actions in which a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district prevails, costs and disbursements shall be allowed to the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district subject only to sub. (2) and such other limitation as the court may direct. For a case transferred under s. 800.035 (5) (c), the court shall disburse all forfeitures it collects to the municipality.

**SECTION 44.** 885.04 of the statutes is amended to read:

**885.04 Municipal judge; subpoena served in state.** A subpoena to require attendance before a municipal judge may be served anywhere in the state if authorized by the municipal judge, and shall require the attendance of any witness so served. A subpoena to require the attendance of the defendant, whether the defendant is within or without the state, may be served by mailing it to the defendant at the address on file with the court.