No. 474, S.] [Publication exempt. Sec. 243.

CHAPTER 631.

AN ACT to revise the criminal procedure, being chapters 353 to 363 of the statutes, and other provisions elsewhere in the statutes relating to that subject.

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

SECTION 1. Title XXXIII of the statutes is revised to read:

TITLE XXXIII
CRIMINAL PROCEDURE

SECTION 2. The title to chapter 353 of the statutes is revised to read:

CHAPTER 353.
GENERAL PROVISIONS.

SECTION 3. 353.01 and 353.04 of the statutes are consolidated, renumbered and revised to read:

353.01 CONVICTION. No person shall be punished for a crime unless he has been duly convicted in a court of competent jurisdiction. A person may be convicted only upon his plea of guilty or nolo contendere (with the consent of the court) or by the verdict of a jury or, if a jury is waived, the findings of the court.

SECTION 4. 353.02 of the statutes is repealed.

SECTION 5. 353.03 of the statutes is repealed.

SECTION 6. 353.05 of the statutes is revised to read:

353.05 PARTIES TO CRIME. Every person concerned in the commission of a crime, whether he directly commits the crime or abets or aids in or hires, counsels or otherwise procures its commission is a principal and may be indicted or informed against as principal and tried in the county where the crime was committed either separately or with others concerned; and may be convicted of any degree of the crime charged or any crime included in the charge, whether the principal actor has been convicted or acquitted or convicted of some other degree of the crime or of some other crime based upon the same occurrence or has not been apprehended or is not amenable to justice or for any other reason has not been tried or is a corporation.

SECTION 7. 353.07 of the statutes is repealed.

SECTION 8. 353.08 and 353.09 of the statutes are consolidated, numbered 353.08 and revised to read:

353.08 ACCESSORY AFTER THE FACT. Every person (except the husband or wife, parent or grandparent, child or grandchild, brother or sister by consanguinity or affinity of the offender) who harbors, conceals or maintains or assists any felon, or who gives him any other aid (knowing that he had committed a felony) with intent that he shall escape punishment, is an accessory after the fact and may be tried and punished, whether the principal felon has or has not been convicted or is or is not amenable to justice, and either in the county where the defendant became an accessory or in the county where the felony was committed.

SECTION 9. 353.13 of the statutes is revised to read:

353.13 POSSESSION OF PROPERTY, WHAT SUFFICIENT. In the prosecution of a crime committed upon or in relation to or in any way affecting real property or any crime committed by stealing, embezzling, destroying, injuring or fraudulently receiving or concealing personal property, it shall be sufficient if it is proved that at the time the crime was committed either the actual or constructive possession or the general or special property in any part of such property was in the person alleged to be the owner thereof.

SECTION 10. 353.15 of the statutes is revised to read:

353.15 TRIAL OF RECEIVER OF STOLEN PROPERTY. In a prosecution for the crime of buying, receiving, concealing or aiding in concealing stolen property known to have been stolen, it shall not be necessary to allege or prove that the person who stole the property has been convicted.

SECTION 11. 353.16 of the statutes is revised to read:

353.16 OFFICER TO SECURE STOLEN PROPERTY. The officer who arrests a thief shall, if possible, secure the property alleged to have been stolen and annex a schedule thereof to the return of the warrant.

SECTION 12. 353.17 of the statutes is revised to read:

353.17 COMPENSATION FOR CARE OF PROPERTY. Upon a conviction of burglary, robbery or larceny, the court shall allow the officer who has secured and kept the stolen property his actual and necessary expenses, to be paid by the county.

SECTION 13. 353.18 of the statutes is repealed.

SECTION 14. 353.19 of the statutes is repealed.

SECTION 15. 353.20 of the statutes is revised to read:

353.20 NO STATUTE OF LIMITATION FOR MURDER. An indictment or information for murder may be found or filed at any time.

SECTION 16. 353.21 of the statutes is revised to read:

353.21 LIMITATION AS TO FELONIES OTHER THAN MURDER. Prosecution for felonies (except murder) must be commenced within 6 years after the commission thereof unless otherwise provided by law.

SECTION 17. 353.22 of the statutes is revised to read:

353.22 LIMITATION AS TO MISDEMEANORS. Prosecutions for misdemeanors must be commenced within 3 years after the commission thereof unless otherwise provided by law.

SECTION 18. 353.23 of the statutes is revised to read:

353.23 COMPUTATION OF TIME LIMIT. (1) The time during which the defendant was not publicly a resident within this state or during which a prosecution against him for a crime was pending shall not be computed as part of the limitation mentioned in sections 353.21 and 353.22.

(2) Notwithstanding the expiration of the time limited by sections 353.21 and 353.22, a prosecution for embezzlement or larceny by a bailee may be commenced within one year after discovery of the loss by the aggrieved party. This subsection does not extend the time limited by sections 353.21 and 353.22 more than 5 years in any case.

(3) A prosecution shall be deemed to be commenced and pending within the meaning of sections 353.21 and 353.22 from and after (a) the issuance of a warrant or summons, (b) the finding of an indictment or (c) the filing of an information.

SECTION 19. 353.24 of the statutes is repealed.

SECTION 20. 353.25 of the statutes is renumbered 353.25 (1) and revised to read:

353.25 IMPRISONMENT FOR NONPAYMENT OF FINES; COSTS; EXECUTION. (1) When a fine is imposed, the court shall also sentence the defendant to pay the costs of the prosecution and the costs incurred by the county at his request and to be committed to the county jail until the fine and costs are paid or discharged; but the time of imprisonment, in addition to any other imprisonment, shall not exceed 6 months; and a property execution may issue against the defendant for said fine and costs. When the costs cannot be so collected from the defendant or when the defendant is acquitted the county shall pay the costs.

SECTION 21. 353.25 (2) and (3) of the statutes are created to read:

353.25 (2) The costs taxable against the defendant shall consist of the following items and no other:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed by the governor or peace officer in returning the defendant from another state or country.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses appointed under section 357.12.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees paid to the defense attorney by the county.

(3) The court may remit the taxable costs, in whole or in part.

SECTION 22. 353.26 of the statutes is repealed.

SECTION 23. 353.27 (1) of the statutes is revised to read:

353.27 (1) PENALTY. Any person who is convicted of any crime the penalty for which is not prescribed by any statute of this state shall be punished only by imprisonment in the county jail not more than one year or by fine not exceeding $250. Common-law penalties are abolished.

SECTION 23a. 353.27 (2) of the statutes is reenacted.

SECTION 24. 353.28 of the statutes is reenacted.

SECTION 25. 353.29 of the statutes is reenacted.

SECTION 26. 353.30 of the statutes is repealed.

SECTION 27. 353.31 of the statutes is revised to read:

353.31 FELONY. A crime punishable by imprisonment in the state prison is a felony. Every other crime is a misdemeanor.

SECTION 28. 353.32 of the statutes is renumbered 370.015 and is reenacted.

SECTION 29. 353.33 of the statutes is reenacted.

SECTION 30. Chapter 361 of the statutes is renumbered chapter 354 and the title is revised to read:

CHAPTER 354.
ARREST AND EXAMINATION.

SECTION 31. 361.01 of the statutes is renumbered and revised to read:

354.01 PROCESS, WHO ISSUES. (1) For the arrest of persons accused of crime, the judges of courts of record, court commissioners, justices of the peace, district attorneys and other officers expressly empowered thereto are authorized to issue process. The officials mentioned in this subsection (except district attorneys) are referred to generally in chapters 355 to 363 as magistrates.

(2) District attorneys are not magistrates, and their authority to issue process is limited to that prescribed in section 354.02.

SECTION 32. 361.02 and 361.03 of the statutes are consolidated, renumbered and revised to read:

354.02 COMPLAINT AND WARRANT OR SUMMONS; SERVICE; RETURN. (1) A complaint is a written statement of the essential facts constituting the offense charged and may be upon information and belief. It shall be made upon oath before a magistrate or other person empowered to issue warrants of arrest.

(2) If it appears from the complaint that there is probable cause to believe that a crime has been committed and that the accused committed it, the magistrate shall issue a warrant or summons.

(3) A complaint may be subscribed and sworn to before the district attorney and thereupon he may issue a warrant for the arrest of the accused returnable before some magistrate of his county. The district attorney shall forthwith deliver the complaint to the magistrate before whom the warrant is returnable. The magistrate shall docket the case as though the proceedings had originated before him and shall then proceed accordingly.

(4) The magistrate or district attorney may issue a summons instead of a warrant. If the defendant fails to appear in response to the summons, the magistrate shall issue a warrant.

(5) (a) The warrant shall be signed by the magistrate or district attorney and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. The warrant shall contain the charge stated in the complaint. It shall command that the defendant be arrested and brought before the magistrate.

(b) The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the magistrate at a stated time and place.

(6) (a) The warrant or summons may be served anywhere in the state. The warrant is served by arresting the defendant. The officer need not have the warrant in his possession, but upon request it shall be shown to the defendant as soon as possible. An arrest may be made by a peace officer when advised by any other peace officer that a warrant has been issued. In such case the officer shall inform the defendant of the crime with which he is charged.

(b) The summons may be served by any person except the complainant. It shall be served by delivering a copy to the defendant personally or by leaving a copy at his usual place of abode with a person of discretion residing therein or by mailing a copy to the defendant's last known address.

(c) The officer serving the warrant shall make return thereof to the magistrate before whom the defendant is brought. An unserved warrant shall, at the request of the district attorney, be returned to the magistrate and canceled. On or before the return hour the person who served the summons shall make return to the magistrate who issued it.

(d) At the request of the district attorney a warrant or summons which is returned unserved may be again delivered for service.

(7) The complaint and warrant and summons may be in the forms prescribed by section 360.36.

SECTION 33. 354.025 of the statutes is created to read:

354.025 JOHN DOE PROCEEDING. If a person complains to a magistrate that he has reason to believe that a crime has been committed within his jurisdiction, the magistrate shall examine the complainant on oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the magistrate may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. If it appears probable from the testi-

mony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. The record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the trial of the accused and then only to the extent that it is so used.

SECTION 34. 361.44 (2) of the statutes is renumbered 354.03 (2) and reenacted; and 361.44 (1) is renumbered and revised to read:

354.03 (1) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor and will not be apprehended unless immediately arrested or that personal or property damage may likely be done unless immediately arrested.

SECTION 35. 361.04 and 361.05 of the statutes are consolidated, renumbered and revised to read:

354.034 BAIL UPON ARREST. (1) BAIL IN ANOTHER COUNTY. (a) If the crime charged is not punishable by imprisonment in the state prison and the arrest is made in a county other than the county from which the warrant issued and the defendant requests to be brought before a magistrate of the county in which arrested, for the purpose of giving bail, the officer having him in custody shall take him before such a magistrate for that purpose and the magistrate may admit him to bail on his bond with sureties, to appear before the magistrate named in the warrant at a time and place stated in the bond.

(b) If the defendant is bailed, the magistrate shall certify the facts upon the warrant; and the warrant and bail bond shall be forthwith delivered by the officer to the magistrate before whom the defendant is bound to appear.

(2) BAIL BY OFFICER. (a) The person issuing the warrant may fix the amount of the bail and indorse it on the warrant. If the defendant offers to give bail, the arresting officer may take his bond, with sufficient sureties, for his appearance before the magistrate at a time and place stated in the bond. In lieu of sureties, the defendant may deposit with the officer the amount of the bail required.

(b) If the defendant is so admitted to bail, the officer shall certify the facts upon the warrant and shall forthwith deliver the warrant and the bond and any deposit to the magistrate named in the warrant.

SECTION 36. 361.06 of the statutes is renumbered and revised to read:

354.034 (3) PROCEEDING IF BAIL NOT GIVEN. If the prisoner is not bailed, the officer shall take him before the magistrate named in the warrant or, in his absence, another magistrate of the county in which the warrant was issued.

SECTION 37. 361.07 of the statutes is renumbered 354.037 and revised to read:

354.037 ARREST ON CHARGE OF FELONY. When the crime charged in a warrant is a felony, the officer making the arrest in some other county shall convey the prisoner to the county where the warrant issued, and he shall be proceeded with in the manner directed in the following sections.

SECTION 38. 361.08 of the statutes is renumbered and revised to read:

354.04 PRISONER TAKEN BEFORE MAGISTRATE. Except as provided otherwise in section 354.034, every person arrested upon a warrant shall be taken before the magistrate before whom it is returnable or if he is unable to attend before another magistrate of the same county. In cases not triable before the magistrate, the defendant shall not be required to plead.

SECTION 39. 361.09 and 361.11 of the statutes are consolidated, renumbered and revised to read:

354.05 ADJOURNMENTS OF HEARING. (1) The magistrate may adjourn the examination from time to time, but not exceeding 10 days at one time without the consent of the defendant, and to any place in his county, and the defendant shall be committed in the meantime unless he is bailed.

(2) If he is not bailed, the magistrate shall order him committed to await examination on a day named in the commitment. On the appointed day he shall be brought before the magistrate.

SECTION 40. 361.10 of the statutes is renumbered and revised to read:

354.06 FORFEITURE OF BAIL. If the defendant does not appear before the magistrate as required by the bail bond, the magistrate shall record the default and shall certify the bond with the record of default to the circuit court; and like proceedings shall be had therein as upon a breach of a bond for appearance before that court. The magistrate may reissue the warrant or issue another warrant for the arrest of the defendant.

SECTION 41. 361.12, 361.13 and 361.14 of the statutes are consolidated, renumbered and revised to read:

354.08 PRELIMINARY EXAMINATION; SEPARATION OF WITNESSES; TRANSFER OF EXAMINATION. (1) WITNESSES EXAMINED AND CROSS-EXAMINED. As soon as may be, the magistrate shall swear and examine or permit the district attorney to examine the witnesses for the state, in the presence of the defendant, in relation to the crime charged in the complaint; and they may be cross-examined. Then the witnesses for the defendant shall be sworn and examined and may be cross-examined. The defendant may be assisted by counsel.

(2) SEPARATION OF WITNESSES. During the examination, the magistrate may exclude from the place of examination all witnesses until they are called to testify; and he may also direct that persons who are expected to be called as witnesses be kept separate until called; and he may prevent them from communicating with one another until they have been examined.

SECTION 42. 354.08 (3) of the statutes is created to read:

354.08 (3) TRANSFER OF EXAMINATION. If it is inconvenient or impractical for the magistrate before whom the defendant is first brought to proceed with the examination within 10 days, the magistrate may transmit the case to another qualified magistrate of the county and he shall proceed with the examination.

SECTION 43. 361.35 of the statutes is renumbered and revised to read:

354.09 CHANGE OF VENUE. If a defendant makes oath before the examination begins that he believes that the magistrate will not decide impartially in the matter, the magistrate shall transmit the case to the nearest magistrate qualified to conduct the examination; and he shall proceed with the examination. No case shall be removed after a second adjournment, and only one removal shall be allowed. If 2 or more defendants are charged with the crime, no removal shall be allowed unless they all join in the oath of prejudice. This section shall not apply to cities where police justices have exclusive criminal jurisdiction to conduct preliminary examinations.

SECTION 44. 361.15 of the statutes is renumbered and revised to read:

354.10 EXCLUSION OF PUBLIC. If the defendant is accused of a crime against chastity or morality or decency, the magistrate may exclude from the hearing all persons not officers of the court or otherwise required to attend.

SECTION 45. 361.16 of the statutes is renumbered and revised to read:

354.11 TESTIMONY TO BE WRITTEN. The testimony shall be written by the magistrate or under his direction.

SECTION 46. 361.17 of the statutes is renumbered and revised to read:

354.12 DISCHARGE; WHEN COMPLAINANT TO PAY COSTS. If it appears to the magistrate upon the examination that no crime has been committed or that there was no probable cause for charging the defendant with a crime, he shall be discharged. If the magistrate certifies in his docket that the complaint was malicious and without probable cause, he shall enter judgment against the complainant and in favor of the county for the taxable costs of the proceeding, and thereafter proceedings shall be as provided in section 360.22.

SECTION 47. 361.18 of the statutes is renumbered and revised to read:

354.13 COMMITMENT, TRIAL, BAIL. (1) If it appears probable that a crime has been committed which is not within the trial jurisdiction of a justice of the peace and that the defendant is probably guilty, he shall be committed to await trial. If the crime is bailable by the magistrate and a sufficient bail is offered he shall be released.

(2) When it appears from the evidence that the crime with which the defendant is accused is within the trial jurisdiction of a justice of the peace, if the magistrate is a justice, he shall amend the complaint and warrant to conform to the evidence; and shall thereupon proceed to try the defendant as though the proceeding had originated before him, under chapter 360. But if the magistrate is not a justice of the peace or if he is a justice but cannot proceed with the trial, he shall amend the warrant and complaint and transmit all the papers and a copy of his docket to the nearest justice of the peace of the county. The defendant shall be taken before the justice designated and he shall proceed to try the defendant pursuant to chapter 360, the same as though the proceeding had originated before him under that chapter.

SECTION 48. 361.19 of the statutes is renumbered and revised to read:

354.14 BAIL IN CASE OF LIFE IMPRISONMENT. Only a justice of the supreme court or the presiding circuit judge may admit to bail a person charged with a crime punishable by imprisonment for life.

SECTION 49. 361.20 and 361.21 of the statutes are consolidated, renumbered and revised to read:

354.15 BAIL, SURETIES, LIEN. (1) Except as provided in this section, no bail bond shall bind property. The bail bond shall be sufficient to secure the appearance of the defendant for trial.

(2) In case of murder the bond shall be signed by the defendant and at least 2 sureties who severally swear that each owns real property in this state not exempt from execution, worth a named sum, which sums shall aggregate double the penalty in the bond. No surety shall be accepted who does not justify in at least one-third of the penalty, and when required by the district attorney or by the court, he shall describe such real property.

(3) In case of murder, the bond shall be filed in the office of the clerk of the circuit court and entered in the judgment docket the same as judgments are docketed. A transcript of the docket may be filed in every county where any of such real property is located. From the time the bond is docketed it shall be a charge upon the real property, except the homesteads, of the parties wherever the same is located, until fully paid and satisfied or otherwise discharged.

SECTION 50. 361.26 of the statutes is renumbered and revised to read:

354.16 BAIL OF PRISONERS. Except as otherwise provided in section 354.14, any judge of a court of record may admit to bail a prisoner who is committed for a bailable offense. He may admit to bail any person committed because he failed to find sufficient surety to insure his appearance as a witness. The judge may increase or decrease the amount of bail that has been required.

SECTION 51. 361.27 of the statutes is renumbered and revised to read:

354.17 EXAMINATIONS RETURNED TO COURT. All examinations and the evidence and bonds taken by a magistrate shall be certified and returned by him within 10 days to the clerk of the court before which the defendant is bound to appear.

SECTION 52. 361.22, 361.23 and 361.25 of the statutes are consolidated, renumbered and revised to read:

354.20 BAIL FOR WITNESS. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and that it may become impractical to secure his presence by subpoena, the court or examining magistrate may, if he is in court, require him to give bail for his appearance as a witness. If the witness is not in court a warrant for his arrest may be issued and upon return thereof the court may require him to give bond for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff pending final disposition of the proceeding. His release may be ordered if he has been detained for an unreasonable length of time; and the court may at any time modify the bail requirement. The general rule as to the form and conditions of the bail bonds of persons accused of crime and forfeiture and enforcement thereof shall apply to bail under this section.

SECTION 53. 361.28 of the statutes is repealed.

SECTION 54. 361.29 of the statutes is repealed.

SECTION 55. 361.30 of the statutes is renumbered and revised to read:

354.30 FORFEITURE OF BAIL. When any person under bail to appear and answer or to prosecute an appeal or to testify fails to perform the condition of his bail, his default shall be recorded and an action may be commenced to enforce the penalty in the bond.

SECTION 56. 361.31 of the statutes is renumbered and revised to read:

354.31 SURETY MAY SATISFY DEFAULT. Any surety may, after default and by leave of the court, pay to the clerk of the court the amount for which he was bound, with such costs as the court directs, and thereupon be discharged.

SECTION 57. 361.32 of the statutes is renumbered and revised to read:

354.32 REMISSION OF PENALTY. In an action on a bail bond and if the penalty is adjudged forfeited, the court may remit part or the whole of the penalty; and may render judgment for the state according to the circumstances and the situation of the party and upon such terms and conditions as to the court seem just.

SECTION 58. 361.33 of the statutes is renumbered and revised to read:

354.33 ACTIONS NOT BARRED. No such action shall be defeated by reason of failure to record the default; nor by reason of any defect in the form of the bail bond if it sufficiently appears therefrom at what court the defendant or witness was bound to appear and that the court or magistrate taking the bond had authority to take it.

SECTION 59. 361.34 of the statutes is renumbered and revised to read:

354.34 EXAMINATION WAIVED. A defendant may waive a preliminary examination; and, except in murder cases, may give bond with sufficient sureties to be approved by the magistrate for his appearance at the trial court.

SECTION 60. 361.36 and 361.37 of the statutes are consolidated, renumbered and revised to read:

354.36 BAIL TO APPEAR FOR TRIAL; FORM. (1) A defendant's bail for his appearance in the trial court shall be conditioned for his appearance at the current term and from term to term thereafter until discharged.

(2) The bail bond may be in substantially the following form:

STATE OF WISCONSIN,
.....County
Town, (city, village) of.....
The State of Wisconsin
v.
Name of defendant

We, A. B., C. D. and E. F. hereby give bail in the sum of..... (the amount fixed as bail) dollars for the appearance of A. B. at the current term of the .....(insert the name of the trial court) to answer a criminal prosecution for (state the crime) and from term to term thereafter until discharged.

Dated....., 19.....

(Signed) A. B.
C. D.
E. F.

Approved.....
Judge, etc.

SECTION 61. 361.38 of the statutes is renumbered and revised to read:

354.38 ENTRY OF BAIL. Bail given in open court shall have the same force and effect as a formal bail bond and may be entered on the minutes thus:

A. B., C. D. and E. F. came into court and gave bail in the sum of..... dollars for the appearance of said A. B., at the current term and from term to term thereafter until discharged, to answer a criminal prosecution for (state the crime).

SECTION 62. 361.39 of the statutes is renumbered and revised to read:

354.39 BONDS VALID; THEIR EFFECT. Bail bonds given or entered in substantially the form prescribed by 354.36 or 354.38 shall bind the principal and sureties jointly and severally for the appearance of the defendant from day to day during the current term and on the first day of each subsequent regular term and from day to day thereafter during each term, unless the defendant is excused from such daily attendance, and for like appearance at any court to which the case may be removed for trial until he is discharged; and that the defendant shall do and receive what the court enjoins upon him, and not depart the court without leave.

SECTION 63. 361.40 of the statutes is renumbered and revised to read:

354.40 OATH OF SURETIES. The oath required of the sureties on a bail bond may be subjoined to the bond in substantially the following form:

STATE OF WISCONSIN,
.....County.

C. D. and E. F., the sureties above named, being severally duly sworn, each for himself says that he owns unincumbered real estate within this state, not exempt from sale on execution, worth at least.....dollars (total amount to be double the sum at which the bail is fixed).

(Signed) C. D.
E. F.

Subscribed and sworn to before me, this....day of....., 19.....

.....
Judge, etc.

SECTION 64. 361.42 of the statutes is renumbered and revised to read:

354.42 SURETY COMPANY BOND OR DEPOSIT OF MONEY. Where bail is required of any person for his appearance to answer a criminal charge (except murder) or as a witness, he may furnish a bail bond executed by himself and a surety company authorized to do business in this state, using the usual form for that purpose, which bond shall be accompanied by a certified copy of the certificate of the commissioner of insurance; or such person may give his personal bond without sureties upon depositing with the court the amount thereof in money, which deposit, on the forfeiture of such bond, shall be paid into the county treasury in discharge of the bond. In case of a witness it shall be refunded to the depositor upon his appearance according to the terms of his bond; and in the case of a defendant, it shall be applied by the magistrate or court before whom the accused is tried, in satisfaction of so much of the judgment as requires the payment of money, rendering the surplus money to the depositor. If money is deposited with a magistrate, it shall be paid over with his return to the clerk of the court in which he is bound to appear.

SECTION 65. 361.43 of the statutes is renumbered and revised to read:

354.43 SURRENDER OF PRINCIPAL BY SURETIES. (1) When the sureties desire to be discharged from the obligations of their bond, they may arrest the principal and deliver

him to the keeper of the jail to which he was committed, or if he has not been so committed he may be surrendered to the officer who had him in custody at the time he was admitted to bail.

(2) The sureties shall at the time of surrendering the principal deliver to the officer into whose custody he is surrendered a certified copy of the original commitment, if any, and of the order admitting him to bail and of the bond thereon; and such delivery of copies shall be sufficient authority for the officer to receive and detain the principal until he is otherwise bailed or discharged.

(3) Upon such surrender to an officer not the keeper of the jail in which the principal is to be detained, the officer shall forthwith convey him to the jail of the county in which the crime is triable, and he shall be received and detained therein as though he had been originally committed there.

(4) Upon such delivery of the principal, the sureties may apply to the court for an order discharging them from liability as sureties; and, upon satisfactory proof being made that this section has been complied with, the court shall make an order discharging them from liability.

SECTION 66. 346.04 of the statutes is renumbered and revised to read:

354.46 ARREST OF WITNESSES FOR PERJURY. If it appears to the trial judge that a witness so testified before him as to induce a reasonable belief that he committed perjury, the judge may order his arrest, stating in the order the reason for the arrest; and such order shall stand as a criminal complaint upon which the clerk of the court shall issue a warrant. Notice of the proceedings shall be given to the district attorney. The accused shall be brought before the judge issuing the order for a preliminary examination. Thereafter the procedure shall be as in other cases.

SECTION 67. 351.61 of the statutes is renumbered and revised to read:

354.47 CAR CONDUCTOR, POLICE POWER. The conductor or other person in charge of a public passenger conveyance may arrest any person violating section 351.60 or 351.55 and deliver him to any policeman, constable, or other peace officer at the earliest reasonable opportunity, and such officer shall bring the offender before a magistrate of the county where the crime was committed and make complaint against him. For such arrest the person in charge of the conveyance shall have the powers of a sheriff.

SECTION 68. 348.391 of the statutes is renumbered and revised to read:

354.48 SUMMARY ARREST AT FISH HATCHERY. The person in charge of any fish hatchery is empowered to arrest any person who in his presence violates sections 348.388, 348.389 or 348.39, and shall deliver him to some peace officer for prosecution.

SECTION 69. The title to chapter 355 of the statutes is revised to read:

CHAPTER 355.

PROCEEDINGS BEFORE AND AT TRIAL.

SECTION 70. 355.01 of the statutes is revised to read:

355.01 DISCHARGE OF DEFENDANT. A prisoner charged with having committed a crime shall be discharged if not indicted or informed against before the end of the second term of the court at which he is held to answer, unless it appears to the court that witnesses on the part of the state have been enticed or kept away, or are prevented from attending the court by sickness or accident.

SECTION 71. 355.02 of the statutes is revised to read:

355.02 ARREST OF DEFENDANT. If an indictment or an information is filed against a defendant who is not in custody, process for his arrest shall issue forthwith.

SECTION 72. 355.03 of the statutes is revised to read:

355.03 COPY OF INDICTMENT OR INFORMATION. As soon as may be after the filing of an indictment or an information for first degree murder the defendant shall be served with a copy thereof by the sheriff, and at least 24 hours before trial.

SECTION 73. 355.04 of the statutes is revised to read:

355.04 PLACE OF TRIAL; JURY LIST; SUBPOENA. All trials shall be before the circuit court; and any defendant shall have compulsory process to compel the attendance of witnesses in his behalf.

SECTION 74. 355.05 of the statutes is revised to read:

355.05 COPY OF INFORMATION. Every person indicted or informed against for a crime for which he may be imprisoned in the state prison shall be entitled to a copy of the indictment or information and of all indorsements thereon without charge.

SECTION 75. 355.06 of the statutes is repealed.

SECTION 76. 355.07 of the statutes is repealed.

SECTION 77. 355.085 of the statutes is renumbered and revised to read:

355.07 ALIBI TO BE PLEADED. In courts of record, if the defendant intends to rely upon an alibi as a defense, he shall give to the district attorney written notice thereof on the day of arraignment, stating particularly the place where he claims to have been when the crime is alleged to have been committed together with the names and addresses of witnesses to his alibi, if known to the defendant. In default of such notice, evidence of the alibi shall not be received unless the court, for good cause shown, shall otherwise order.

SECTION 78. 355.08 of the statutes is revised to read:

355.08 PLEA IF ACCUSED STANDS MUTE. If on the arraignment the defendant fails or refuses to plead, a plea of not guilty shall be entered.

SECTION 79. 355.09 of the statutes is revised to read:

355.09 SPECIAL PLEAS AND MOTIONS BEFORE TRIAL; WAIVER OF JEOPARDY. (1) All pleas in abatement or in bar, demurrers and motions to quash are abolished, and defenses and objections which may or must be raised before trial shall hereafter be raised only by motion to dismiss or for appropriate relief as herein provided.

(2) Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(3) Defenses and objections based on defects in the institution of the proceedings, insufficiency of the information or indictment, invalidity in whole or in part of the statute on which the prosecution is founded, or the use of illegal means to secure evidence (except confessions) must be raised before trial by motion or be deemed waived. But the court may, in its discretion entertain such motion at a later stage of the trial, in which case the defendant waives any jeopardy that may have attached. A motion to suppress evidence shall be so entertained, with waiver of jeopardy, when it appears that defendant is surprised by the state's possession of such evidence.

(4) The motion shall be made before the plea is entered, unless the court permits it to be made within a reasonable time thereafter.

(5) The motion shall be determined before trial of the general issue unless the court orders that it be deferred for determination at such trial. Issues of fact arising on such motion shall be tried by a jury, if that is required by the constitution or any statute, unless waived, and all other issues of fact arising on such motion shall be tried by the court without a jury, in a summary manner, on affidavits or otherwise as the court may direct.

(6) If the court grants a motion to dismiss based on a defect in the indictment or information or in the institution of the proceedings, it may order that the defendant be held in custody or that his bail be continued for a specified time pending issuance of a new summons or warrant or filing of a new indictment or information.

SECTION 80. 357.18 of the statutes is renumbered and revised to read:

355.09 (7) If the motion is based upon a misnomer, the court shall forthwith amend the indictment or information in that respect, and require the defendant to plead thereto.

SECTION 81. 357.19 of the statutes is renumbered and revised to read:

355.09 (8) NONJURISDICTIONAL DEFECTS. No complaint, indictment, information, process, return or other proceedings shall be dismissed or reversed for any error or mistake where the case and the identity of the defendant may be rightly understood by the court; and the court may order an amendment curing such defects.

SECTION 82. 355.10 of the statutes is revised to read:

355.10 PRISONER, WHEN TRIED. Every defendant in prison shall, if he requests it, be tried not later than the next term of court after his imprisonment began or he shall be bailed without sureties, unless it appears to the court that witnesses on behalf of the state have been enticed or kept away or are prevented from attending the court by sickness or accident.

SECTION 83. 355.11 of the statutes is revised to read:

355.11 PROOF OF MOTION. When a dilatory motion is interposed, the court may refuse to receive it until the truth thereof is supported by affidavit or other evidence.

SECTION 84. 355.12 of the statutes is revised to read:

355.12 JURISDICTION. The courts possess the same power and jurisdiction to try prosecutions upon information and to issue writs and process and do all other acts therein as they possess in prosecutions upon indictment.

SECTION 85. 355.13 of the statutes is revised to read:

355.13 INFORMATION; WHO TO FILE. All informations shall be filed in the trial court by the district attorney as informant, and he shall subscribe his name thereto. In the absence or disability of the district attorney a deputy district attorney may sign and file informations, but if there is no deputy, an assistant may do so.

SECTION 86. 355.14, 355.22, 355.23 and 355.33 of the statutes are consolidated, renumbered and revised to read:

355.14 CRIMES, HOW CHARGED; JOINDER. (1) The crime charged shall be stated in plain, concise language, without unnecessary repetition. Different crimes and different degrees of the same crime may be joined in one information or indictment.

(2) The information or indictment shall contain the name of the court in which the action is pending, the title of the action, the name of the defendant or a description sufficient to identify him, and a citation of the statute which he is charged with having violated, and shall conclude with the words "against the peace and dignity of the state".

(3) No indictment or information shall be invalid nor shall the trial, judgment or other proceedings be affected by reason of any defect or imperfection in matters of form which does not tend to the prejudice of the defendant.

(4) The indictment or information is sufficient after verdict if it describes the crime in the words of the statutes, but other words conveying the same meaning may be used.

SECTION 87. 355.15 of the statutes is revised to read:

355.15 LAW RELATING TO INDICTMENTS APPLICABLE. All provisions of law applying to prosecutions upon indictments, to writs and process therein, and issuing and service thereof, to motions, pleadings, trials and punishments, or the passing or execution of any sentence, and to all other proceedings in cases of indictment shall, to the same extent and in the same manner, as near as may be, apply to informations and all prosecutions and proceedings thereon.

SECTION 88. 355.16 of the statutes is repealed.

SECTION 89. 355.17 of the statutes is revised to read:

355.17 DISTRICT ATTORNEY'S DUTIES. (1) The district attorney shall examine all facts and circumstances connected with any preliminary examination touching the commission of any crime whereon the defendant has been held for trial and file an information setting forth the crime committed, according to the evidence on such examination.

(2) If the district attorney determines that an information ought not to be filed, he shall subscribe and file with the clerk of the court a statement of his reasons for not filing an information. Such statement shall be filed at or before the term of court at which the defendant is held for trial. The court or presiding judge shall examine the statement and the evidence filed, and if he is not satisfied with such statement, the district attorney shall file an information and bring the case to trial. If said statement is satisfactory the judge shall indorse "approved" upon it. Thereupon the action shall be dismissed and the defendant shall be discharged.

SECTION 90. 355.18 of the statutes is revised to read:

355.18 PRELIMINARY EXAMINATION; WHEN A PREREQUISITE TO INFORMATION. No information shall be filed until the defendant has had a preliminary examination unless he waives such examination, except that informations may be filed without examination against fugitives from justice within the meaning of the constitution and laws of the United States and against corporations. The omission of a preliminary examination shall not invalidate any information unless the defendant moves to dismiss.

SECTION 91. 355.19 of the statutes is repealed.

SECTION 92. 355.20 of the statutes is revised to read:

355.20 SECOND EXAMINATION. If a preliminary examination has been had and the defendant has been discharged for want of evidence, and the district attorney afterwards discovers evidence sufficient, in his judgment, to convict the defendant, he may cause another complaint to be made, and thereupon a second arrest and examination shall be had.

SECTION 93. 355.21 of the statutes is revised to read:

355.21 FORM OF INFORMATION. The information may be in the following form:

STATE OF WISCONSIN, } In ..... Court.
..... County }

State of Wisconsin
v.
Name of defendant

I,....., district attorney for said county, hereby inform the court that on the ..... day of ....., in the year 19...., at said county (name or alias of defendant) did (state the crime), contrary to section ..... of the statutes and against the peace and dignity of the state.

Dated ....., 19.....

....., District Attorney

SECTION 94. 355.24 of the statutes is revised to read:

355.24 MURDER AND MANSLAUGHTER. It shall be sufficient in an indictment or information for murder to charge that the defendant did feloniously and with premeditation murder the deceased. In any indictment or information for manslaughter it shall be sufficient to charge that the defendant did feloniously slay the deceased.

SECTION 95. 355.25 to 355.30 of the statutes are repealed.

SECTION 96. 355.31 of the statutes is revised to read:

355.31 LARCENY, FALSE PRETENSES, CONFIDENCE GAME AND EMBEZZLEMENT; PLEADING AND EVIDENCE; SUBSEQUENT PROSECUTION. In any case of larceny or of obtaining money or property by false personation or pretenses or by means of a confidence game, where 2 or more thefts of, or acts of obtaining, money or property belonging to the same owner have been committed pursuant to a single intent and design or in execution of a common fraudulent scheme, and in any case of embezzlement or larceny by bailee, all thefts and acts of obtaining or misappropriations of money or property belonging to the owner may be prosecuted as a single crime. In the complaint, indictment or information it shall be sufficient to allege generally a larceny, obtaining or embezzlement of money to a certain amount or property to a certain value committed between certain dates, without specifying any particulars thereof. On the trial evidence may be given of any such larceny, obtaining or embezzlement committed on or between the dates alleged; and it shall be sufficient to maintain the charge and shall not be deemed a variance if it shall be proved that any money or property, of whatever amount or value, was so stolen, obtained or embezzled within the said period. But an acquittal or conviction in any such case shall not bar a subsequent prosecution for any acts of larceny, obtaining or embezzlement concerning which no evidence was received at the trial of the original charge; and in case of a conviction on the original charge on a plea of guilty or nolo contendere, the district attorney may, at any time before sentence, file a bill of particulars or other written statement specifying what particular acts of larceny, obtaining or embezzlement are included in the complaint, indictment or information and said conviction shall in that event not bar a subsequent prosecution for any other acts of larceny, obtaining or embezzlement.

SECTION 97. 355.32 of the statutes is revised to read:

355.32 LARCENY. An indictment or information for larceny may contain a count for obtaining the same property by false tokens or pretenses, or a count for embezzlement thereof, and for receiving or concealing the property knowing it to have been stolen, and the jury may convict of either offense, and may find all or any of the persons indicted or informed against guilty of either of the crimes charged.

SECTION 98. 355.34 of the statutes is revised to read:

355.34 PLEADING JUDGMENT. In pleading a judgment or other determination of or proceeding before any court or officer it shall be sufficient to state that the judgment or determination was duly rendered or made or the proceeding duly had.

SECTION 99. 355.35 of the statutes is repealed.

SECTION 100. 355.36 of the statutes is revised to read:

355.36 LOST INFORMATION OR INDICTMENT. In case of the loss or destruction of an information the district attorney may file another information, and the prosecution shall proceed without delay from that cause. In case of the loss or destruction of an indictment, an information may be filed.

SECTION 101. 355.37 of the statutes is revised to read:

355.37 MISTAKE IN CHARGING CRIME. When it appears before judgment that a mistake has been made in charging the proper crime, the defendant shall not be discharged if there appears to be good cause to detain him in custody to answer to the crime, and the district attorney may forthwith file an information charging said crime.

SECTION 102. 355.38 of the statutes is repealed.

SECTION 103. 355.39 of the statutes is revised to read:

355.39 OWNERSHIP, HOW ALLEGED. In an indictment or information for a crime committed in relation to property it shall be sufficient to state the name of any one of several co-owners, or of any officer of any corporation or association owning the same.

SECTION 104. 355.40 of the statutes is revised to read:

355.40 INTENT TO DEFRAUD. Where the intent to defraud is necessary to constitute the crime it is sufficient to allege the intent generally; and on the trial it shall be sufficient if there appears to be an intent to defraud the United States or any state or any person.

SECTION 105. 355.41 of the statutes is revised to read:

355.41 INFORMATIONS AND INDICTMENTS TO BE RECORDED; EVIDENCE. The clerk of the court shall, immediately upon the filing of an indictment or information, record the same

in the book kept for that purpose in his office, and such record or certified copies therefrom may be read in evidence and shall have the same effect as the originals.

SECTION 106. The title to chapter 356 of the statutes is revised to read:

CHAPTER 356.
PLACE OF TRIAL.

SECTION 107. 353.10 to 353.12, 353.14 and 356.01 of the statutes are consolidated, renumbered and revised to read:

356.01 PLACE OF TRIAL. (1) GENERAL RULE. Criminal actions shall be tried in the county where the crime was committed, except as otherwise provided in this section.

(2) CRIME COMMITTED NEAR COUNTY LINE. Crimes committed within 100 rods of the dividing line between counties may be prosecuted in either county, and the court of the county whose process is first served upon the defendant shall have priority of jurisdiction.

(3) DEATH AND CAUSE OF DEATH IN DIFFERENT COUNTIES. If a wound or other violence is inflicted or poison is administered in one county and causes death which ensues in another county, the crime may be prosecuted in either county.

(4) DEATH RESULTING FROM CAUSE INFLICTED WITHOUT THE STATE. If such wound or other violence is inflicted or poison is administered without this state and death ensues therefrom in this state, the crime may be prosecuted and sentence be imposed in the county where the death occurs.

(5) STOLEN PROPERTY BROUGHT INTO THIS STATE BY THIEF. If property is stolen outside of this state and brought into this state by the thief, he may be punished as though the theft had been committed in this state and the prosecution may be in any county in which he possessed the stolen property.

SECTION 108. 356.01 (6) of the statutes is created to read:

356.01 (6) CRIMES ON BOUNDARY WATERS. When a crime is committed on boundary waters at a place where 2 or more counties have common jurisdiction under sections 2.03 or 2.04 or under any other law, the prosecution may be in either county; the county whose process against the offender is first served shall be conclusively presumed to be the county in which the crime was committed.

SECTION 109. 356.02 of the statutes is renumbered and revised to read:

356.01 (7) PROPERTY STOLEN IN TRANSIT. A person who steals or attempts to steal property which is in transit may be prosecuted in any county into or through which the property passed in transit.

SECTION 110. 356.01 (8), (9) and (10) of the statutes are created to read:

356.01 (8) EMBEZZLEMENT; LARCENY BY BAILEE. Embezzlement and larceny by bailee may be prosecuted in any county where the person charged had possession of the property or thing alleged to have been embezzled or converted.

(9) PRISON PRECINCTS. The place of trial of crimes committed within the precincts of the state prison, the state reformatory or the home for women is governed by section 53.02.

(10) CRIME COMMITTED PARTLY IN ONE COUNTY AND PARTLY IN ANOTHER COUNTY. Where several acts are requisite to the commission of a crime, it may be prosecuted in any county in which any of such acts occurred.

SECTION 111. 356.03 and 356.08 of the statutes are consolidated, numbered 356.03 and revised to read:

356.03 CHANGE OF VENUE OR JUDGE. (1) PREJUDICE OF JUDGE; ANOTHER JUDGE CALLED. If the presiding judge has acted as attorney for the defendant or for the state in the pending action, or if the defendant moves within 20 days after his arraignment and before his case is called for trial and in the manner provided in civil actions, for a change of venue on account of the prejudice of the judge, another judge shall be called in the manner provided by law to try the action. The time of making such motion may be extended for cause but not more than 10 days. Only one such motion shall be allowed.

(2) SECOND TRIAL. If a jury fails to agree on a verdict or if a new trial is granted and if one defendant moves therefor within 20 days, a trial judge shall be called as provided in subsection (1).

(3) COMMUNITY PREJUDICE. If a defendant who is charged with a felony files his affidavit that an impartial trial cannot be had in the county, the court may change the venue of the action to an adjoining county. Only one change may be granted under this subsection.

SECTION 113. 356.04 of the statutes is revised to read:

356.04 TRIAL AND COSTS ON CHANGE OF VENUE. When the place of trial is changed, the district attorney of the county of original venue shall prosecute. In other respects, the

trial shall be conducted as if the crime had been committed in the trial county. The costs accruing upon a change of place of trial shall be paid by the county where the crime was committed.

SECTION 114. 356.05 of the statutes is revised to read:

356.05 BAIL AND CUSTODY OF DEFENDANT ON CHANGE OF VENUE. If the venue is changed, the court shall require the defendant to give bail in such sum as the court or judge or justice directs conditioned for his appearance in the trial court. In default of bail, a warrant shall issue to the sheriff to convey the defendant to the jail of the county where he is to be tried in time for the trial, and there to be kept until discharged; but the judge of that court, in case no trial is had during the pending or next term of court after such change, may order the defendant kept in the jail of any county and may make necessary orders for the defendant's custody, bail and appearance for trial.

SECTION 115. 356.06 of the statutes is revised to read:

356.06 TIME OF TRIAL ON CHANGE OF VENUE. On a change of venue either party may move for trial at the current term. If such motion is not made or is denied, the defendant shall appear for trial at the next term. If the jury for the term has been discharged, the court may order the jurors resummoned; and in case no jury has been summoned the court may summon the jurors of the previous term.

SECTION 116. 356.07 of the statutes is repealed.

SECTION 117. 356.09 of the statutes is revised to read:

356.09 CHANGE OF VENUE AS TO SOME DEFENDANTS. If the venue is changed as to some but not all of the defendants, the clerk shall transmit to the other court a certified transcript of the docket entries in the action and a certified copy of the indictment or information and such other papers as the court directs in lieu of the originals; and the other court shall proceed in the action the same as if the original indictment or information and papers had been transmitted.

SECTION 118. 356.10 of the statutes is repealed.

SECTION 119. The title of chapter 357 of the statutes is revised to read:

CHAPTER 357.
CRIMINAL TRIALS.

SECTION 120. 357.01 of the statutes is revised to read:

357.01 JURY TRIAL; WAIVER. (1) Except as otherwise provided in this section, criminal cases in courts of record shall be tried by a jury of 12 jurors, drawn in the manner prescribed in chapter 270, unless the defendant waives a jury trial in writing or by statement in open court, entered in the minutes, with the approval of the court and the consent of the state.

(2) At any time before verdict the parties may stipulate in writing or by statement in open court, entered in the minutes, with the approval of the court, that the jury shall consist of any number less than 12.

(3) In a case tried without a jury the court shall make a general finding and may in addition find the facts specially.

SECTION 121. 357.02 of the statutes is revised to read:

357.02 GRAND JUROR NOT TO SERVE ON TRIAL JURY. No member of the grand jury which found the indictment shall be a juror for the trial of the indictment if challenged for that cause.

SECTION 122. 357.03 of the statutes is revised to read:

357.03 PEREMPTORY CHALLENGES. Each side in entitled to only 4 peremptory challenges except as provided otherwise in this section. When the crime charged is punishable by life imprisonment, each side is entitled to 12 peremptory challenges. If there is more than one defendant, the court shall divide the challenges as equally as practicable among them; and if their defenses are adverse and the court is satisfied that the protection of their rights so requires, the court may allow the defendants additional challenges. If the crime is punishable by life imprisonment the total peremptory challenges allowed the defense shall not exceed 16 if there are only 2 defendants and 18 if there are more than 2 defendants; in other cases 6 challenges if there are only 2 defendants and 9 challenges if there are more than 2.

SECTION 123. 357.04 of the statutes is revised to read:

357.04 EXERCISE OF CHALLENGES. The parties shall exercise or waive their peremptory challenges alternately as nearly as practicable, the state beginning. Twenty jurors shall be called, and that number (exclusive of those challenged peremptorily and those excused for cause) shall be maintained in the jury box until all peremptory challenges in excess of 8 have been exercised or waived. From the 20 remaining the parties shall exercise in

their order the remaining 8 challenges; and if any party declines to challenge in turn, such challenge shall be made by the clerk by lot.

SECTION 124. 357.065 of the statutes is renumbered and revised to read:

375.05 ALTERNATE JURORS. If the court is of the opinion that the trial of the action is likely to be protracted, it may, immediately after the jury is impaneled and sworn, call one or 2 alternate jurors. They shall be drawn in the same manner and have the same qualifications as regular jurors and shall be subject to like examination and challenge. Each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the oath or affirmation and shall be seated next to the regular jurors and shall attend the trial at all times. If the regular jurors are kept in custody, the alternates shall also be so kept. If before the final submission of the cause a regular juror dies or is discharged, the court shall order an alternate juror to take his place in the jury box. If there are 2 alternate jurors, the court shall select one by lot. Upon entering the jury box, the alternate juror becomes a regular juror.

SECTION 125. 357.07 of the statutes is revised to read:

357.07 DEFENDANT TO BE PRESENT. A defendant accused of a felony shall be personally present during the trial. A defendant accused of a misdemeanor may at his written request and by leave of court be tried in his absence if represented by his attorney duly authorized for that purpose.

SECTION 126. 357.08 of the statutes is revised to read:

357.08 VIEW. The court may order a view by the jury.

SECTION 127. 357.09 of the statutes is revised to read:

357.09 CONVICTION OF INCLUDED CRIME. When a defendant is tried for a crime and is acquitted of part of the crime charged and is convicted of the residue thereof, the verdict may be received and thereupon he shall be adjudged guilty of the crime which appears to the court to be substantially charged by such residue of the indictment or information and shall be sentenced accordingly.

SECTION 128. 357.10 of the statutes is renumbered and revised to read:

340.445 CONVICTION OF ASSAULT WHEN INTENT IS NOT PROVED. Whoever is accused of committing an assault with intent to commit a felony and is acquitted of such intent may nevertheless be found guilty of the assault and if so found shall be punished by imprisonment not exceeding one year or by fine not exceeding $500.

SECTION 129. 357.11 of the statutes is revised to read:

357.11 PLEA OF INSANITY AS DEFENSE. (1) No plea that the defendant indicted or informed against was insane or feeble-minded at the time of the commission of the alleged crime shall be received unless it is interposed at the time of arraignment and entry of a plea of not guilty unless the court for cause shown otherwise orders. When such plea is interposed the special issue thereby made shall be tried with the plea of not guilty; and if the jury finds that the defendant was insane or feeble-minded or that there is reasonable doubt of his sanity or mental responsibility at the time of the commission of the allleged crime, they shall find the defendant not guilty because insane or feeble-minded.

(2) The presumption of the defendant's sanity and mental normality at the time he committed the alleged crime shall prevail on the trial of the special issue unless the evidence creates in the minds of the jury reasonable doubt of his sanity or mental responsibility at said time.

(3) If found not guilty because insane or not guilty because feeble-minded, the defendant shall be committed to the central state hospital or to an institution designated by the state department of public welfare, there to be detained until discharged in accordance with law.

(4) A reexamination of his mental condition may be had as provided in section 51.11, except that his application for rehearing shall be to the committing court. If upon such reexamination the court finds he is insane or feeble-minded, another reexamination shall not be had unless the court is satisfied there is reasonable cause to believe that his mental condition is improved, in which case the court may order another examination. No person so committed shall be discharged unless the court, in addition to finding him sane and mentally responsible, also finds that he is not likely to have a recurrence of insanity or mental irresponsibility as will result in acts which but for insanity or mental irresponsibility would be crimes.

SECTION 130. 357.13 of the statutes is revised to read:

357.13 INSANE AT TIME OF TRIAL. (1) If the court is reliably advised before or at his trial or after conviction and before commitment that the defendant is probably insane or feeble-minded, the court shall in a summary manner make inquiry thereof.

(2) If the court finds that the defendant is insane or feeble-minded, his trial or sentence or commitment shall be postponed indefinitely and the court shall thereupon order

him confined in the central state hospital or an institution designated by the department of public welfare.

(3) Upon the defendant's recovery the hospital superintendent shall notify the committing court thereof. The court shall thereupon issue an order remanding the defendant to the custody of the sheriff pending further proceedings in the cause.

(4) A person committed under this section shall be entitled to a rehearing as to his sanity, as provided by section 51.11, except that his application for rehearing shall be to the court which committed him. If he is found insane or feeble-minded, another rehearing shall not be had unless the court is satisfied there is reasonable cause to believe that there is improvement in his mental condition, in which case the court may order another rehearing. If it is determined upon reexamination that the insanity or feeble-mindedness of the defendant is chronic, he shall be recommitted to such institution and shall not be discharged except upon the order of the court which committed him.

SECTION 131. 357.14 of the statutes is revised to read:

357.14 RULES OF CIVIL TRIALS. The summoning of jurors; the impaneling and qualifications of the jury; the challenge of jurors for cause; the duty of the court in charging the jury and giving instructions and discharging the jury when unable to agree shall be the same in criminal as it is in civil actions, except that section 270.18 shall not apply to criminal actions. Section 327.25 applies to criminal proceedings.

SECTION 132. 357.15 of the statutes is repealed.

SECTION 133. 357.16 of the statutes is revised to read:

357.16 VARIANCES DISREGARDED; AMENDMENT. (1) The trial court may allow amendments in case of variance between the complaint or indictment or information and the proofs in all cases where the variance is not material to the merits of the action. After verdict the pleading shall be deemed amended to conform to the proof if no objection based on such variance was timely raised upon the trial.

SECTION 134. 357.17 of the statutes is renumbered and revised to read:

357.16 (2) Upon allowing an amendment to the complaint or indictment or information, the court may direct other amendments thereby rendered necessary and may proceed with or postpone the trial.

SECTION 135. 357.20 to 357.24 of the statutes are consolidated, renumbered and revised to read:

357.20 ARRAIGNMENT IN COUNTY COURT; PROCEEDINGS; SENTENCE. (1) A defendant charged with a crime not punishable by more than 5 years' imprisonment may request in writing to be arraigned in the county court. Such request shall be delivered to the district attorney and by him filed in the circuit court to which defendant is bound for trial. Within 5 days after receipt thereof the district attorney shall file an information and give the defendant a copy. The clerk of the circuit court shall notify the county judge, who shall fix a time for the arraignment as soon as reasonably possible and notify the district attorney, the defendant and his counsel, if any.

(2) At the time fixed the defendant shall be produced or appear in the county court for arraignment. The clerk of the circuit court shall act as clerk of the county court and shall produce the file of the case. Thereupon the defendant shall be arraigned.

(3) If the defendant pleads not guilty, refuses to plead, or makes a motion under section 355.09, he shall be remanded to jail or, if at large on bail, released, pending the action of the circuit court, and his plea or motion shall be entered of record.

(4) If the defendant pleads nolo contendere the court may either accept such plea and proceed under subsection (5) or reject it and return the case to the circuit court as provided in subsection (3), and the tendering of the plea and its rejection shall be entered of record.

(5) If the defendant pleads guilty the court shall proceed in the same manner as though it were the circuit court and all the proceedings shall be entered in a docket kept for that purpose in the county court as well as in the docket of the circuit court. The sentence or order of probation shall be certified and executed the same as if pronounced or made in the circuit court.

(6) All applicable provisions of law not inconsistent herewith shall apply to proceedings under this section.

(7) This section shall not apply to any county having a court other than the circuit court with trial jurisdiction of such crimes.

SECTION 136. 357.25 of the statutes is revised to read:

357.25 PLEA OF GUILTY AT ANY TIME. Upon the request of a defendant stating that he desires to plead guilty or nolo contendere the trial court may at any time at a regular or special term require the district attorney to file an information against him and may receive his plea and enter judgment thereon. The defendant may be arraigned by read-

ing to him the identical charge stated in the complaint as though it were an information, but the information as so read shall be reduced to writing and filed as soon as possible thereafter.

SECTION 137. 357.26 of the statutes is revised to read:

357.26 COUNSEL FOR INDIGENT DEFENDANTS CHARGED WITH FELONY; ADVICE BY COURT. (1) Courts of record may appoint counsel for defendants charged with felonies and who are without means to employ counsel. Such appointment shall be in time to enable counsel to attend at the taking of any deposition. The county shall pay the attorney so appointed such sum as the court shall order as compensation and expenses, not exceeding $25 for each half day in court, $15 for each half day of preparation not exceeding 5 days, $15 for each half day attending at the taking of depositions, and his actual disbursements for necessary travel and other expense, automobile travel to be compensated at not over 7 cents a mile. The certificate of the clerk of court shall be sufficient warrant to the county treasurer to make such payment.

(2) Upon arraignment and before plea, the court shall advise any person charged with a felony of his right to counsel and that if he is indigent the court will appoint counsel at his request. A record of such advice and of the defendant's reply, if any, shall be made in the docket or in a transcript of the proceedings.

(3) If appointment of counsel has not been so made as to include services upon appeal or writ of error, or if no counsel was appointed in the trial court, the supreme court or the chief justice, upon timely notice to the district attorney and upon being satisfied that review is sought in good faith and upon reasonable grounds (or if the appeal or writ of error is prosecuted by the state) may appoint counsel to prosecute or defend such appeal or writ of error. If no counsel was appointed in the trial court, the defendant shall be required to show his inability to employ counsel. Upon the certificate of the clerk of the supreme court the county treasurer shall pay the attorney such sum for compensation and expenses as the supreme court allows.

(4) Under like circumstances counsel may be appointed and compensated for representing prisoners upon writs of habeas corpus.

SECTION 138. 357.12 of the statutes is renumbered 357.27 and reenacted.

SECTION 139. The title to chapter 358 of the statutes is revised to read:

CHAPTER 358.
APPEALS, NEW TRIALS AND WRITS OF ERROR.

SECTION 140. 358.01 and 360.23 of the statutes are consolidated, numbered 358.01 and revised to read:

358.01 APPEAL FROM JUSTICE'S COURT. Every defendant convicted before a justice of the peace may appeal to the circuit court by giving the justice notice thereof in writing within 5 days. He shall be committed to abide the sentence of the justice until he gives bail in such reasonable sum and with such sureties as the justice requires, with condition to appear at the court appealed to and prosecute his appeal and abide the sentence of the appellate court and in the meantime to keep the peace and be of good behavior.

SECTION 141. 358.02 of the statutes is revised to read:

358.02 DUTY OF JUSTICE. On such appeal the justice shall make a copy of the conviction and the other proceedings in the action and transmit the same with the bail bonds to the clerk of the appellate court. The fees of the justice shall be paid by the county.

SECTION 142. 358.03 of the statutes is revised to read:

358.03 FEES NOT ADVANCED ON APPEAL. The appellant shall not be required to advance any fees, but if he is convicted in the appellate court or if sentenced for failure to prosecute his appeal, he may be required to pay the whole or any part of the costs.

SECTION 143. 358.04 of the statutes is revised to read:

358.04 FAILURE TO PROSECUTE; JUDGMENT FOR COSTS. (1) DEFAULT. If the appellant fails to diligently prosecute his appeal, he may be defaulted on his bail bond and the appellate court may sentence him as if he had been convicted in that court; and process may issue to bring him into court. If he is fined, judgment shall be for the fine and for the costs in both courts against him and his sureties.

(2) APPEAL DISMISSED. If the defendant fails to bring the action to trial before the end of the term following the one during which his appeal was taken, the appeal may be dismissed; and the judgment of the lower court enforced.

SECTION 144. 358.05 of the statutes is revised to read:

358.05 FORFEITURE; HOW INFORMER PAID. In an action brought upon such a bail bond the penalty thereof may be forfeited, or if by leave of court such penalty had been paid without an action or before judgment is given and if by law any forfeiture accrues to any person, the court may award to him such sum as he may be entitled to out of such forfeiture.

SECTION 145. 358.06 and 358.065 of the statutes are consolidated, numbered 358.06 and revised to read:

358.06 NEW TRIAL; SERVICE OF AFFIDAVITS; WRIT OF ERROR. (1) Within one year after the trial and on motion of the defendant the court may grant a new trial for any cause for which a new trial may be granted in civil cases, but on such terms and conditions as the court directs. The motion shall be signed by the defendant or his attorney and shall set forth grounds upon which the defendant relies for a new trial. The motion shall be filed with the clerk of the court at least 20 days before the argument of the motion, but the court may, by order, fix a shorter time. If the trial judge is disabled or no longer in office, his successor or another judge may hear and determine the motion.

(2) If the defendant desires to use affidavits upon his motion, copies of the same shall be served on the district attorney at least 20 days before the argument of the motion or such shorter time as the court designates. If a new trial is denied, the supreme court shall issue a writ of error on the application of the defendant, and may review the order refusing a new trial and may render such judgment as it deems proper.

(3) A new trial shall proceed in all respects as if there had been no former trial. On the new trial the defendant may be convicted of any crime charged in the indictment or information irrespective of the verdict or finding on the former trial. The former verdict or finding shall not be used or referred to on the new trial.

SECTION 146. 358.07 of the statutes is repealed and a new section created to read:

358.07 WRIT OF ERROR CORAM NOBIS. The writ of error coram nobis may be issued by the trial court at any time upon the verified petition of the defendant showing sufficient grounds therefor, which may be supported by one or more affidavits. The petition and writ shall be served on the district attorney, who may move to quash the writ or make return thereto, or both. The court may hear and determine the writ either upon the affidavits submitted by the parties or upon testimony or both, in its discretion. The party aggrieved may have the determination of the trial court reviewed by the supreme court upon appeal or writ of error.

SECTION 147. 358.08 of the statutes is renumbered 358.08 (1) and is revised to read:

358.08 REPORTING CASE TO SUPREME COURT. (1) WHEN AUTHORIZED. If there is a conviction, and a question of law arose upon the trial which in the opinion of the court is so important or doubtful as to require the decision of the supreme court, the trial court shall, if the defendant consents, report the question to the supreme court, and further proceedings shall be stayed in the trial court.

SECTION 148. 358.09 of the statutes is renumbered and revised to read:

358.08 (2) BAIL. A defendant (other than one accused of a crime punishable by imprisonment for life) for whose benefit a report is made as provided in subsection (1) may give bail in such sum as the judge orders, with sufficient sureties for his appearance in the supreme court at the next term thereof, and for his good behavior in the meantime.

SECTION 149. 358.10 of the statutes is renumbered and revised to read:

358.08 (3) COMMITMENT; WRIT OF ERROR. If the defendant does not give bail, he shall be committed to jail to await the decision of the supreme court. The clerk of the trial court shall file a certified copy of the record and proceedings in the case in the supreme court. After the case is remanded by the supreme court, the trial court shall render such judgment or make such order thereon as law and justice require. The proceedings here prescribed shall not deprive the defendant of a writ of error.

SECTION 150. 358.11 of the statutes is revised to read:

358.11 HOW WRIT OF ERROR ISSUES. In criminal cases writs of error shall issue of course out of, and shall be returnable to the supreme court, but they shall not stay execution of judgment except as provided in section 358.14.

SECTION 151. 358.115 of the statutes is created to read:

358.115 BILLS OF EXCEPTIONS. The laws relating to serving, settling and signing bills of exceptions in civil actions shall apply in criminal cases, but the time for serving a proposed bill of exceptions shall be one year from the time sentence is imposed.

SECTION 152. 358.12 of the statutes is revised to read:

358.12 STATE'S APPEAL. (1) A writ of error or appeal may be taken by the state from any:

(a) Final order or judgment adverse to the state made before jeopardy has attached or after waiver thereof;

(b) Order granting a new trial;

(c) Judgment and sentence or order of probation not authorized by law;

(d) Judgment adverse to the state, upon questions of law arising upon the trial, with the permission of the trial judge, in the same manner and with the same effect as if taken by the defendant. A judgment acquitting the defendant of all or part of the charge shall

be deemed adverse to the state.

(2) Whenever the defendant appeals or prosecutes a writ of error, the state may move to review rulings of which it complains, in the manner provided by section 274.12.

SECTION 153. 358.13 of the statutes is revised to read:

358.13 APPEALS; TIME FOR TAKING. In lieu of prosecuting a writ of error, either party may appeal to the supreme court in the manner provided in civil cases. Either party has one year, after entry of the order or judgment appealed from, to serve notice of appeal or procure the issuance of a writ of error.

SECTION 154. 358.14 of the statutes is revised to read:

358.14 STAY OF EXECUTION. If a defendant appeals or procures a writ of error, the trial court at any time before the record is filed in the supreme court or a justice of that court thereafter, may, by order, stay execution of the judgment pending the appeal or writ of error if the trial court or justice certified that upon the record there is reasonable doubt that the judgment should stand. No stay shall be granted except upon reasonable notice to the district attorney or the attorney-general. If a stay is granted, the defendant shall give bail in such sum as the court or the justice ordering the stay requires, with sufficient sureties for his appearance in the supreme court at the current or next term thereof to prosecute his appeal or writ of error and to abide the sentence thereon.

SECTION 156. The title to chapter 359 of the statutes is revised to read:

CHAPTER 359.
JUDGMENT AND EXECUTION.

SECTION 157. 359.01 of the statutes is repealed.

SECTION 158. 359.02 of the statutes is revised to read:

359.02 CERTIFICATE OF CONVICTION. When a defendant is sentenced to imprisonment or to pay a fine, the clerk of the court shall make a certificate of conviction and sentence citing the statute which he violated and the statute under which he was sentenced and showing his name, the crime which he committed, the date of conviction and a copy of the sentence, and deliver such certificate to the sheriff to be retained by him if the defendant is sentenced to the county jail or workhouse or to be transmitted with the defendant in case of sentence to some other prison.

SECTION 159. 359.03 of the statutes is revised to read:

359.03 FORM OF CERTIFICATE OF CONVICTION. The certificate of conviction mentioned in section 359.02 may be substantially in the following form:

STATE OF WISCONSIN
.... County, ... Court

The state of Wisconsin
v.
Name of defendant
} Certificate of conviction

As the clerk of said court, I hereby certify that at a term of said court, held at the courthouse in the city of ....., on the ..... day of ....., 19...., ... was convicted of the crime of (here give a brief description of the crime) in violation of section ..... of the statutes, and upon said conviction the court did, on the ..... day of ....., 19...., sentence him under section ..... of the statutes as follows: (here give the sentence in full, as pronounced by the court).

Given under my hand and the seal of said court, this ..... day of ....., 19.....

[Seal] ...., Clerk

SECTION 160. 359.04 of the statutes is revised to read:

359.04 OFFENSES; HOW STATED. It shall be sufficient in describing the crime in the certificate of conviction to set it out in the language of the statute.

SECTION 161. 359.053 of the statutes is renumbered 359.045 and is reenacted.

SECTION 161a. 359.05 of the statutes is revised to read:

359.05 INDETERMINATE SENTENCE, FORM, EXCEPTIONS. Except persons convicted of a crime for which the minimum imprisonment is life or 20 years or more, if imprisonment in the state prison is imposed, the court may fix a term less than the prescribed maximum and the form of such sentence shall be substantially as follows:

"You are hereby sentenced to the state prison at hard labor for an indeterminate term of not less than ..... (the minimum fixed by statute) years and not more than ..... (the maximum as fixed by the court) years."

The sentence shall have the effect of a sentence for the maximum term fixed by the court, subject to the power of actual release from confinement by parole by the state department of public welfare or by pardon by the governor. If a person is sentenced for a definite time for an offense for which he may be sentenced under this section, he is in legal effect sentenced as required by this section, said definite time being the maximum

period. A defendant convicted of a crime for which the minimum penalty is life or 20 years or more shall be sentenced for a fixed term.

SECTION 162. 359.051 of the statutes is revised to read:

359.051 INDETERMINATE SENTENCE, DISCHARGE. (1) Except persons convicted of a crime for which the minimum imprisonment is life or 20 years or more, if imprisonment in the Wisconsin state reformatory or the Wisconsin home for women is imposed, the court may fix a term less than the prescribed maximum. The form of such sentence shall be substantially as follows:

"You are hereby sentenced to the Wisconsin state reformatory (or to the Wisconsin home for women) for an indeterminate term of not less than ..... (the minimum fixed by statute) years, and not more than ..... (the maximum as fixed by the court) years."

Such sentence shall have the force and effect of a sentence for the maximum term subject to the power of actual release from confinement by parole by the state department of public welfare or by pardon as provided by law. If, through mistake or otherwise, any person shall be sentenced for a definite period of time for any offense for which he may be sentenced under the provisions of this section, such sentence shall not be void, but the prisoner shall be deemed to be sentenced nevertheless as provided and required by the terms of this section.

(2) Upon the recommendation of the superintendent and the state department of public welfare, the governor may, without the procedure required by chapter 57 of these statutes, discharge absolutely, or upon such conditions and restrictions, and under such limitations as he may think proper, any inmate of the reformatory after he shall have served the minimum term of punishment prescribed by law for the offense for which he was sentenced. Such discharge shall have the force and effect of an absolute or conditional pardon, respectively.

(3) In lieu of the penalty provided by statute, under which a female offender is tried, the court may commit such person except one convicted of murder in the first or second degree to the home for women for an indeterminate term, which term shall not exceed 5 years in any case, subject to the power of release from actual confinement, by parole or absolute discharge by the state department of public welfare or by pardon, as provided by law.

(4) All courts of record having criminal jurisdiction, regardless of their jurisdictions as otherwise defined by statute, shall have the power to commit as provided in subsection (3).

SECTION 163. 359.052 of the statutes is revised to read:

359.052 TRIAL AND COMMITMENT RECORDS; EXECUTION. (1) When any offender is sentenced to the state prison or to the reformatory or to the home for women, the commitment papers shall consist of the certificate of conviction, and certified copies of the information, indictment or complaint, the plea of the accused, the verdict and the judgment and sentence, which copies shall be delivered with the certificate of conviction to the officer executing it, and by him to the superintendent of the institution when the convict is delivered. The copy of the transcript of testimony when filed at the institution shall become a part of the commitment papers.

(2) In case no testimony is taken, a statement of the prosecuting attorney, giving the facts in the case, and the statement of the defendant in court, shall be delivered in lieu thereof.

(3) The clerk's fees for furnishing such copies shall be fixed by the trial judge, and shall be paid by the county in which trial is had as part of the court expenses.

(4) Whenever any woman is sentenced to the home for women the sheriff shall assign a woman deputy to execute the commitment. She shall receive the same fee as is provided for the sheriff.

(5) When any person is sentenced to the reformatory the court shall immediately notify the superintendent thereof. If the institution be filled to capacity, the convict shall be retained in the county jail until he can be received into the reformatory; but, if convicted of a felony, the court may commit him temporarily to the state prison to be thence transferred as soon as may be. Notice of such temporary commitment shall be given to the superintendent, and the commitment papers shall be delivered with the convict to the warden of the prison, who shall deliver them to said superintendent when the convict is transferred.

SECTION 165. 359.06 of the statutes is revised to read:

359.06 JAIL SENTENCE. If at the time of passing sentence upon a defendant who is to be imprisoned in a county jail there is no jail in the county suitable for said defendant, the court may sentence him to any suitable county jail. The expenses of supporting him there shall be borne by the county in which the crime was committed.

SECTION 166. 359.07 of the statutes is revised to read:

359.07 SENTENCE, TERMS, ESCAPES. All sentences to the state prison shall be for one year or more. Except as otherwise provided in this section, all sentences commence at noon on the day of sentence, but time which elapses after sentence while the defendant is in the county jail or is at large on bail shall not be computed as any part of his term of imprisonment. The court may impose as many sentences as there are convictions and may provide that any such sentence shall commence at the expiration of any other sentence; and if the defendant is then serving a sentence, the present sentence may provide that it shall commence at the expiration of the previous sentence. If a convict escapes, the time during which he is unlawfully absent from the prison after such escape shall not be computed as part of his term.

SECTION 167. 359.08 of the statutes is revised to read:

359.08 TIME OUT. If an order or judgment releasing a prisoner on habeas corpus is reversed, the time during which he was at liberty thereunder shall not be reckoned as part of his term.

SECTION 168. 359.09 of the statutes is revised to read:

359.09 SENTENCE TO STATE PRISON. If a male defendant is convicted of a felony and it is established at the trial that he had previously been convicted of a felony and the sentence is for more than one year, he shall be sentenced to the Wisconsin state prison.

SECTION 169. 359.10 of the statutes is revised to read:

359.10 JUDGMENT AGAINST CORPORATION. If a corporation fails to appear within 20 days after an indictment or information is served by leaving a copy thereof with the persons upon whom a circuit court summons in a civil action against the corporation may be served, the default of such corporation may be recorded and the charges against it taken as true, and judgment shall be rendered accordingly.

SECTION 170. 359.11 of the statutes is revised to read:

359.11 COLLECTION OF JUDGMENT AGAINST CORPORATION. The judgment against a corporation shall be collected in the same manner as judgments in civil actions against it.

SECTION 171. 359.12 to 359.15 of the statutes are consolidated, numbered 359.12 and revised to read:

359.12 SENTENCE OF REPEATER. (1) DEFINITIONS. As used in this section, unless context or subject matter otherwise requires:

(a) "Repeater" means a person convicted of a crime punishable by imprisonment, (except escapes under section 346.40 or 346.45 (2)), who, within 5 years prior to commission thereof, had been convicted of a felony or on 3 separate occasions during such 5-year period had been convicted of misdemeanors by any criminal court or courts of this state or of the United States or of any other state or territory of the United States, which conviction or convictions remain of record and unreversed, whether pardoned therefor or not (except on grounds of innocence) and whether or not sentence on such conviction was stayed, suspended or withheld. No time during which such person was in actual confinement serving a criminal sentence shall be included in such 5-year period.

(b) As to crimes committed in Wisconsin, "felony" and "misdemeanor" have the meaning given in section 353.31; otherwise "felony" is any crime under the laws of the United States or any other state or territory which carries a possible penalty of imprisonment for one year or more in a state prison or penitentiary or a federal penitentiary; and "misdemeanor" is any crime under the laws of the United States or any other state or territory which does not carry a possible penalty sufficient to constitute it a felony, and includes crimes punishable only by a fine. Motor vehicle offenses under chapter 85, fish and game law offenses in violation of chapter 23 or 29 or offenses against equivalent laws of other states are not to be considered crimes for purposes of this section.

(c) In determining whether a crime is a felony or misdemeanor "possible penalty" means the maximum penalty provided by law for the crime, notwithstanding that because of age or any other reason the defendant could not be sentenced to such maximum penalty; but juvenile court proceedings under chapter 48 or equivalent proceedings under the law of the United States or any other state or territory shall not be considered in determining whether the defendant is a repeater.

(2) HOW PRIOR CONVICTION CHARGED AND DETERMINED. Whenever a person charged with a crime will be a repeater if convicted, his prior conviction or convictions may be alleged in the complaint, indictment or information or otherwise brought to the attention of the court at any time before execution of sentence has commenced, and if such prior conviction or convictions be admitted by the defendant or proved by the state he shall be subject to be sentenced under this section unless he shall establish that he was pardoned on grounds of innocence for any crime necessary to constitute him a repeater. If the defendant be alleged to be a repeater after conviction, the

charge shall be reduced to writing unless it be admitted in open court, and the defendant may have a jury trial on that issue if it be demanded, otherwise the issue shall be tried by the court. An official report of the federal bureau of investigation or of any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported. Any sentence so reported shall be deemed prima facie to have been fully served in actual confinement or to have been so served for such period of time as is shown by or is consistent with the report. The court shall take judicial notice of United States and foreign statutes in determining whether the prior conviction was for a felony or a misdemeanor. If sentence has already been passed but execution thereof has not commenced before the court is informed that the defendant is a repeater, the court may set aside such sentence and resentence the defendant under this section.

(3) SENTENCE. The court may sentence repeaters as follows:

(a) If the present conviction be for a crime punishable by imprisonment only in the county jail, the sentence may be to imprisonment in the county jail not less than the minimum provided by law for the crime nor more than one year or to the state prison not less than one nor more than 3 years.

(b) If the present conviction be for a crime punishable by imprisonment in either the county jail or the state prison, and the prior convictions were for misdemeanors, the sentence may be to the state prison for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime or, if a prior conviction was for a felony, not more than 3 years in excess of such maximum.

(c) If the present conviction be for a crime punishable only by imprisonment in the state prison and the prior convictions were for misdemeanors, the sentence may be for a maximum term of not more than 2 years in excess of the maximum provided by law for the crime, or if a prior conviction was for a felony, not more than 15 years in excess of such maximum.

(4) FORM OF SENTENCE; ERRORS CURED. In every such case the sentence shall be imposed for the present conviction, but if the court indicates in passing sentence how much thereof is imposed because the defendant is a repeater, it shall not constitute reversible error but the combined terms shall be construed as a single sentence for the present conviction; and if in any case the court shall impose a maximum penalty in excess of that authorized by this section, such excess shall be void and the sentence shall be valid only to the extent authorized by this section and shall stand automatically commuted to that extent without any further proceedings.

SECTION 171a. 359.16 is repealed.

SECTION 172. 359.17 of the statutes is revised to read:

359.17 MASKING AGGRAVATES CRIME. If the defendant committed the crime while masked, he may, in addition to the maximum punishment fixed for such crime, in case of conviction for a misdemeanor, be imprisoned not to exceed one year in the county jail, and in case of a felony not to exceed 5 years in the state prison.

SECTION 173. The title to chapter 360 of the statutes is revised to read:

CHAPTER 360.
CRIMINAL PROCEEDINGS IN JUSTICE COURTS.

SECTION 174. 360.01 of the statutes is revised to read:

360.01 JUSTICES' JURISDICTION. Except as otherwise provided in this chapter, justices of the peace shall have jurisdiction throughout their respective counties to:

(1) Cause the laws for the preservation of peace to be kept;

(2) Cause to come before any of them persons who break or attempt to break the peace and commit such persons to jail or bail;

(3) Cause to come before them the keepers of houses of ill fame and frequenters of the same or common prostitutes, and compel them to give security for good behavior;

(4) Cause to come before them persons who are charged with committing any crime and commit them to jail or bail; and

(5) Hold court to try and determine all charges for crimes arising within their counties, the punishment whereof does not exceed 6 months' imprisonment in the county jail or a fine of $200 or both such fine and imprisonment.

SECTION 175. 360.02 of the statutes is repealed and a new section 360.02 created to read:

360.02 PROSECUTIONS AGAINST CORPORATIONS. If the defendant is a corporation, the justice or district attorney shall issue a summons returnable not less than 10 days after service; the summons shall be served in the same manner as summonses in civil actions are served on corporations. Upon default of the defendant, the justice shall enter judgment for a fine, and execution shall issue as in civil cases.

SECTION 175a. 360.03 of the statutes is created to read:

360.03 APPLICABILITY OF CHAPTER 354. All provisions of chapter 354 relating to complaints, warrants and summonses shall apply to proceedings under this chapter. Provisions of chapter 354 relating to adjournments, changes of venue, affidavits of prejudice relating to preliminary examinations shall apply to trials under this chapter.

SECTION 176. 360.04 and 361.41 of the statutes are consolidated, numbered 360.04 and revised to read:

360.04 GENERAL STATUTES APPLY. (1) Statutes relating to form or substance or amendment of indictments or informations, the statement of crimes and the evidence thereunder, so far as applicable, shall apply to complaints, amendments, proceedings and trials before justices of the peace.

(2) The forms prescribed by chapter 354 may be used as far as applicable in all criminal proceedings in justice courts.

SECTION 177. 360.05 of the statutes is revised to read:

360.05 DOCKET ENTRIES. The justice shall enter an action in his docket in which the state of Wisconsin is plaintiff and the accused is the defendant, and shall make the other entries required in civil cases.

SECTION 178. 360.06 of the statutes is revised to read:

360.06 TRIAL; CHANGE OF VENUE. On the return of the warrant with the defendant or on the defendant's appearing pursuant to a summons, the justice shall proceed to try the action, unless continued for cause. If the defendant, before he pleads to the complaint, makes oath that from prejudice he believes the justice will not decide impartially in the action, the justice shall transmit all the papers and a copy of his docket entries to the nearest justice of the county who is able to try the action, and he shall proceed with the action as though originally begun before him, and the defendant, if in custody, shall be taken before such nearest justice.

SECTION 179. 360.07 of the statutes is revised to read:

360.07 BAIL, COMMITMENT. The defendant may give bail in such sum, with or without sureties, as the justice directs, for his appearance at the trial and at any time thereafter until discharged by law. On his failure to give bail, he shall be committed to jail.

SECTION 180. 360.08 of the statutes is revised to read:

360.08 FORM OF BAIL. The following form of bail may be used in all actions and examinations under this chapter and under chapter 354 upon the adjournment of the action, proceeding or examination:

STATE OF WISCONSIN,
..... County,
Town (city, village) of.....

State of Wisconsin
v.
Name of defendant

We, A. B. and C. D. and E. F. hereby give bail in the sum of ..... dollars, for the appearance of said A. B. upon the ..... day of ....., 19...., at M. of that day, before G. H., a ..... of said county, at his office in the (town, village or city) of ....., in said county, to answer a (criminal prosecution, examination or proceeding) for (state the crime), and from time to time thereafter until discharged by law.

Dated ....., 19.....

(Signed) A. B.
C. D.
E. F.

Bail, entered in substantially the foregoing form, shall bind the principal and sureties jointly and severally for the appearance of the defendant and his attendance upon the specified court or magistrate at all times to which the trial or examination may be adjourned and until he is discharged by law.

SECTION 181. 360.09 of the statutes is revised to read:

360.09 DEFENDANT TO PLEAD. The charge stated in the warrant or complaint shall be read to the defendant and he shall plead thereto. The justice shall enter the plea in his docket. The defendant may plead guilty, not guilty or nolo contendere; if he refuses to plead, the justice shall enter a plea of not guilty.

SECTION 182. 360.10 of the statutes is revised to read:

360.10 WHEN JUSTICE TO TRY ISSUE. If the defendant pleads not guilty and no jury is demanded by him, the justice shall try and determine the action according to the evidence.

SECTION 183. 360.11 of the statutes is revised to read:

360.11 JUDGMENT ON PLEA OF GUILTY. If the defendant pleads guilty or nolo contendere, the justice shall convict him of the crime charged and render judgment.

SECTION 184. 360.12 and 360.13 of the statutes are consolidated, numbered 360.12 and revised to read:

360.12 JURY, HOW OBTAINED. If a jury is demanded by the defendant before the trial begins, the justice shall direct the sheriff or any constable of the county to write the names of 18 residents of the county qualified to serve as jurors in courts of record, from which list the defendant and the complainant may each strike 6 names. If either party neglects to strike out names, the justice shall strike out names for him. The justice shall issue a venire to the sheriff or constable to summon the 6 persons whose names are not struck out to appear at the time and place named in the venire.

SECTION 185. 360.14 of the statutes is revised to read:

360.14 SERVICE OF VENIRE. The officer shall summon the jurors personally and shall make a list of the persons summoned, which he shall certify and annex to the venire and return to the justice within the time therein specified.

SECTION 186. 360.15 of the statutes is revised to read:

360.15 TALESMEN. If a juror named in the venire fails to attend or if there is any legal objection to any who appears, the justice shall direct the sheriff or constable to summon bystanders to act as jurors.

SECTION 187. 360.16 of the statutes is revised to read:

360.16 SECOND JURY. If the officer fails to return the venire as required or if the jury fails to agree and is discharged, a new jury shall be selected and summoned in the same manner as the preceding one, and the same proceedings shall thereupon be had as that prescribed in respect to the first jury, unless the defendant consents to be tried by the justice, in which case he shall proceed as if no jury had been demanded.

SECTION 188. 360.17 of the statutes is revised to read:

360.17 CHALLENGES FOR CAUSE. Either party may challenge a juror for cause, as in civil actions.

SECTION 189. 360.19 of the statutes is revised to read:

360.19 JURY, DUTY. After the jurors are sworn they shall sit together and hear the evidence in the action, which shall be delivered publicly in the presence of the defendant unless he has waived the right to be present. After hearing the evidence the jury shall be kept together in some convenient place until they agree on a verdict or are discharged. The sheriff or a constable shall be sworn to take charge of the jury.

SECTION 190. 360.20 of the statutes is revised to read:

360.20 VERDICT. The jury shall deliver their verdict publicly to the justice, who shall copy it in his docket.

SECTION 191. 360.21 of the statutes is revised to read:

360.21 JUDGMENT AND SENTENCE. If the defendant is found guilty, the justice shall render judgment according to law and shall issue a commitment or order as may be required.

SECTION 192. 360.22 of the statutes is revised to read:

360.22 DISCHARGE OF ACCUSED; COSTS; APPEAL. (1) If the defendant is acquitted, he shall be discharged; and if the justice certifies in his docket that the complaint was malicious and without probable cause, he shall enter judgment against the complainant to pay all the taxable costs that have accrued, including the fees of witnesses.

(2) The complainant may stay such judgment for 30 days by giving a bond to the state with one or more sureties conditioned for the payment of the judgment at the expiration of 30 days; but if the complainant neglects to give such bond, the court may (if the complainant gave security for costs in the manner provided in section 360.33) issue execution against both the complainant and the surety, and if the complainant does not satisfy the execution and the officer cannot find sufficient property belonging to him upon which to levy, the officer shall levy upon the property of the surety; and in case the complainant has not given such security, the court may issue a body execution against the complainant, as in civil actions.

(3) The complainant may appeal from the judgment as in civil actions, and the action shall be tried and determined on such appeal upon the records in the action certified and returned by the justice.

SECTION 193. 360.24 of the statutes is revised to read:

360.24 EXECUTION OF JUDGMENT. The judgment shall be carried out by the sheriff or constable in accordance with the commitment or execution issued by the court.

SECTION 194. 360.25 of the statutes is revised to read:

360.25 NONATTENDANCE OF JURORS AND WITNESSES. If any person summoned to appear before a justice of the peace as a juror or witness fails to appear or if any witness refuses to be sworn or to testify, he shall be liable to the same penalties and may be proceeded against in the manner provided in respect to jurors and witnesses in justices' courts in civil proceedings.

SECTION 195. 360.26 of the statutes is revised to read:

360.26 CERTIFICATE OF CONVICTION. If there is a conviction, the justice shall make and sign a certificate of conviction in which it shall be sufficient to state the crime charged and the conviction and judgment thereon, and if any fine has been collected the amount thereof.

SECTION 196. 360.27 of the statutes is revised to read:

360.27 CERTIFICATE FILED. Within 20 days after conviction the justice shall file such certificate in the office of the clerk of the circuit court of the county; except in counties having a court other than a circuit court vested with exclusive appellate criminal jurisdiction, in which case the certificate shall be filed with the clerk of that court. The clerk shall make an alphabetical record thereof.

SECTION 197. 360.28 of the statutes is revised to read:

360.28 CERTIFICATE AS EVIDENCE. Such certificate of conviction or a duly certified copy thereof shall be evidence of the facts therein contained.

SECTION 198. 360.29 of the statutes is revised to read:

360.29 BREACH OF BAIL BOND. If a bail bond is breached, that fact shall be certified to the circuit court and a rearrest may be had as provided in section 354.06.

SECTION 199. 360.30 of the statutes is revised to read:

360.30 PROCEDURE IF JUSTICE HAS NO JURISDICTION TO TRY. If in the progress of a trial before a justice under this chapter it appears to the justice from the evidence that there is probable cause to believe the defendant guilty of a crime of which the justice has not trial jurisdiction and that the defendant ought to be put upon trial for a crime cognizable before another court, the justice shall stop the trial and bind the defendant over or commit him to jail to answer to said court in the same manner as he would have done had the defendant been brought before the justice for a preliminary examination for the crime of which the justice finds there is probable cause to believe him guilty.

SECTION 200. 360.31 of the statutes is renumbered and revised to read:

360.31 WITNESSES; SUBPOENAS. (1) The justice shall subpoena all persons whose testimony is deemed material.

SECTION 201. 360.32 of the statutes is renumbered and revised to read:

360.31 (2) If the trial is continued it is not necessary for the justice to again subpoena any witness who is present, but the justice shall verbally notify such witnesses as either party may require to attend before him to testify in the action on the day set for trial, which notice shall be effective as a subpoena.

SECTION 202. 360.33 of the statutes is revised to read:

360.33 SECURITY FOR COSTS. The justice may require the complainant to give security for costs as in civil actions, and if he refuses, the justice may dismiss the complaint.

SECTION 203. 360.34 of the statutes is revised to read:

360.34 FINES; RECORD, PAYMENT, ENTRY, REPORT. All fines imposed by a justice court, police court, municipal court or other magistrate, if paid before the defendant is committed, shall be received by the court or magistrate. The amount thereof, the date when received and the title of the action shall be entered on the docket or other record required to be kept and be paid to the county treasurer within 30 days after the receipt thereof. And the court or magistrate shall at the same time report in writing to the treasurer the date of conviction, the title of the action and the crime for which the fine was imposed.

SECTION 204. 360.35 of the statutes is revised to read:

360.35 PAYMENT TO SHERIFF. If the defendant is committed, payment of his fine and the costs may be made to the sheriff, who shall, within 30 days after receipt thereof, pay the same to the county treasurer.

SECTION 205. 360.03 and 360.36 of the statutes are consolidated, numbered 360.36 and revised to read:

360.36 FORMS. The following forms may be used:

COMPLAINT

STATE OF WISCONSIN }
.... County, } In Justice Court,
Town (city, village) of .... } Before ...., Justice of the Peace
The State of Wisconsin
v.
Name of defendant

...., being duly sworn, says that on the .... day of ...., 19.., at said county (name of the defendant or alias) did (state the crime), contrary to section .... of the statutes and against the peace and dignity of the state.

....

Subscribed and sworn to before me this .... day of ...., 19...

....
Justice of the Peace

SUMMONS

(If the defendant is a corporation, strike the words "arrested and" and amend last clause to read: "and in case of your failure to appear, judgment will be rendered against you.")

STATE OF WISCONSIN }
.... County, } In Justice Court,
Town (city, village) of .... } Before ...., Justice of the Peace
The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to said defendant:

Whereas, ... has this day complained in writing to me on oath that you did, on the .... day of ...., 19.., in said county (here insert the complaint), and has prayed that you might be arrested and dealt with according to law; now, therefore, you are summoned to appear before me at my office in (state the location) in said town (city, village), to answer said complaint, on the .... day of ...., 19.., at 10 o'clock in the forenoon, and in case of your failure to appear a warrant for your arrest will be issued.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

WARRANT

STATE OF WISCONSIN }
.... County, } In Justice Court,
Town (city, village) of .... } Before ...., Justice of the Peace
The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, ... has on this day complained in writing to me on oath that .... did, on the .... day of ...., 19.., in said county (here insert the complaint), and prayed that said .... might be arrested and dealt with according to law; now, therefore, you are commanded forthwith to arrest him and to bring him before me.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

CERTIFICATE OF CONVICTION

STATE OF WISCONSIN }
.... County, } In Justice Court,
Town (city, village) of .... } Before ...., Justice of the Peace
The State of Wisconsin
v.
Name of defendant

At a justice's court held at my office in said town before me, ..., a justice of the peace for said county, for the trial of .... for the crime hereinafter stated, the said .... was convicted of having, on the .... day of ...., 19.., in said county (here state the crime as in the warrant), and upon such conviction the court adjudged that he pay a fine of .... dollars and costs (and if imprisonment be imposed, add), and be imprisoned in the county jail .... days; (if the fine be paid, add) and said fine has been paid to me.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

EXECUTION

STATE OF WISCONSIN
.... County,
Town (city, village) of ....
In Justice Court,
Before ...., Justice of the Peace

The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, at a justice's court held at my office in said town for the trial of .... for the crime hereinafter stated he was convicted of having, on the .... day of ...., 19.., is said county (here state the crime as in the warrant), and upon conviction the court adjudged that he pay a fine of .... dollars and costs; and whereas, said fine and costs have not been paid, you are commanded to levy on the personal property, etc. (as in an execution against the goods or body in civil cases).

COMMITMENT UPON SENTENCE

STATE OF WISCONSIN
.... County,
Town (city, village) of ....
In Justice Court,
Before ...., Justice of the Peace

The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, at a justice's court held before me at my office in said town for the trial of ...., for the crime hereinafter stated, he was convicted of having, on the .... day of ...., 19.., in said county (here state the crime as in the warrant), and upon conviction the court adjudged that he be imprisoned in the county jail for .... days, therefore you are commanded forthwith to convey and deliver said .... to the keeper of such jail; and the keeper is commanded to keep him there until the expiration of said .... days or until he is discharged by due course of law.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

COMMITMENT AFTER ARREST AND BEFORE TRIAL

STATE OF WISCONSIN
.... County,
Town (city, village) of ....
In Justice Court,
Before ...., Justice of the Peace

The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, ... has been this day brought before me, a justice of the peace in and for said county, charged with having on the .... day of ...., 19.., in said county (here state the crime as in the warrant), and said .... not having given bail to appear and answer for the crime, therefore you are commanded forthwith to deliver him to the keeper of the county jail; and said keeper is commanded to keep him there until he is brought before the court or is otherwise discharged by due course of law.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

ORDER TO BRING UP PRISONER

STATE OF WISCONSIN
.... County,
Town (city, village) of ....
In Justice Court,
Before ...., Justice of the Peace

The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff of said county:

The undersigned, a justice of the peace in and for said county, sitting as a court for the trial of ...., now in your custody, do hereby order you to bring him forthwith before me at my office in said town, together with the warrant by which he was committed to your custody.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

COMMITMENT WHERE JUSTICE HAS NOT JURISDICTION

STATE OF WISCONSIN } In Justice Court,
.... County, } Before ...., Justice of the Peace
Town (city, village) of ....
The State of Wisconsin
v.
Name of defendant

THE STATE OF WISCONSIN, to the sheriff or any peace officer of said county:

Whereas, ... has been brought before the undersigned, a justice of the peace of said county, charged with having, on the .... day of ...., 19.., in said county, committed the crime of (here state the crime charged in the warrant), and in the trial on said charge it appearing to me that there is probable cause to believe that the defendant is guilty of the crime of (here state the new crime found on trial), committed at the time and place aforesaid, of which crime the justice has not trial jurisdiction; and whereas, after an examination had in due form of law, touching the crime last aforesaid, I found that said crime had been committed and that there was probable cause to believe the defendant is guilty thereof; now, whereas he has not offered sufficient bail for his appearance to answer for said crime, you are commanded to take him to the county jail, and the keeper thereof is required to detain him in said jail until he is discharged according to law.

Given under my hand this .... day of ...., 19...

...., Justice of the Peace

SECTION 206. The title to chapter 362 of the statutes is revised to read:

CHAPTER 362.
CRIME PREVENTION.

SECTION 207. 362.01 of the statutes is revised to read:

362.01 SECURITY FOR GOOD CONDUCT. Judges of the courts of record and court commissioners and justices of the peace have power to enforce the laws for the preservation of the public peace and in the execution of that power may require persons to give security to keep the peace or for their good behavior or both, in the manner provided in this chapter.

SECTION 208. 362.02 of the statutes is revised to read:

362.02 COMPLAINT OF THREATS. When a complaint is made to any such magistrate that any person has threatened to commit a crime against the person or property of another, the magistrate shall examine the complainant and any witnesses produced on oath and reduce the complaint to writing and require the complainant to sign it.

SECTION 209. 362.03 of the statutes is revised to read:

362.03 WARRANT AND ARREST. If upon examination it appears that there is probable cause to fear that any such crime will be committed, the magistrate shall issue a warrant reciting the substance of the complaint and require the officer to whom it is directed to arrest the defendant and bring him before such magistrate or some other magistrate or court having jurisdiction.

SECTION 210. 362.04 of the statutes is revised to read:

362.04 EXAMINATION. The magistrate before whom the defendant is brought shall, as soon as may be, examine the complainant and the witnesses to support the prosecution on oath in presence of the defendant in relation to the charge. The defendant may cross-examine them.

SECTION 211. 362.05 of the statutes is revised to read:

362.05 WITNESSES AND COUNSEL. The witnesses for the defendant shall then be sworn and examined. The defendant may have counsel.

SECTION 212. 362.06 of the statutes is revised to read:

362.06 BAIL BOND. If it appears upon examination that there is cause to fear that any such crime will be committed by the defendant, he shall be required to give a bond with sufficient sureties in such sum as the magistrate directs to keep the peace toward all of the people of this state and especially toward the person requiring such security for such time as the magistrate orders, not exceeding 6 months.

SECTION 213. 362.07 of the statutes is revised to read:

362.07 DISCHARGE. Upon complying with the order of the magistrate, the defendant shall be discharged.

SECTION 214. 362.08 of the statutes is revised to read:

362.08 WHEN COMMITTED. If the defendant fails to comply with the order, the magistrate shall commit him to the county jail during the period for which he was required to

give security or until he gives security, stating in the commitment the cause, the sum and the time for which security was required.

SECTION 215. 362.09 of the statutes is revised to read:

362.09 DISCHARGE; COSTS. If upon examination it does not appear that there is cause to fear that any such crime will be committed by the defendant, he shall be discharged, and if the magistrate deems the complaint unfounded, frivolous or malicious, he shall so certify in his docket and enter judgment against the complainant for the taxable costs of prosecution as provided in section 360.22.

SECTION 216. 362.10 of the statutes is revised to read:

362.10 COSTS IN OTHER CASES. When no order respecting the costs is made, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for good behavior, the magistrate may further order the costs of prosecution or any part thereof to be paid by him, and he shall stand committed until such costs are paid, or he is otherwise legally discharged.

SECTION 217. 362.11 of the statutes is revised to read:

362.11 APPEAL. A person so required to give security for his behavior may appeal to the circuit court. The appeal shall not stay the order.

SECTION 218. 362.12 of the statutes is repealed.

SECTION 219. 362.13 of the statutes is revised to read:

362.13 PROCEEDINGS ON APPEAL. The appellate court shall, without a jury, hear and determine the complaint in the manner prescribed for the examining magistrate and may affirm the order of the magistrate or discharge the defendant or require him to enter into a new bond with sureties, and may also make such order in relation to the costs of prosecution as he deems just.

SECTION 220. 362.14 of the statutes is revised to read:

362.14 EFFECT OF BOND. If the appellant fails to prosecute his appeal, the bond shall remain in force and shall also stand as security for costs which are ordered to be paid by him.

SECTION 221. 362.15 of the statutes is repealed.

SECTION 222. 362.16 of the statutes is revised to read:

362.16 SECURITY, TRANSMITTAL OF. Every bond taken in pursuance of this chapter shall be transmitted by the magistrate to the circuit court of the county before the first day of the next term and shall be filed by the clerk.

SECTION 223. 362.17 of the statutes is revised to read:

362.17 ARREST WITHOUT PROCESS. Whoever in the presence of any magistrate or court mentioned in this chapter makes an affray or threatens to kill or beat another or commit any violence or outrage against his person or property, and whoever in such presence contends with hot and angry words, to the disturbance of the peace may be ordered to recognize to keep the peace and to be of good behavior for not exceeding 6 months and in case of refusal may be committed.

SECTION 224. 362.18 of the statutes is revised to read:

362.18 ARMED PERSONS TO GIVE SECURITY. If a person goes armed with a dangerous weapon without reasonable cause to fear violence to his person or family or property, he may, on complaint of any person having reasonable cause to fear an injury or breach of the peace, be required to give security to keep the peace for not exceeding 6 months.

SECTION 225. 362.19 of the statutes is revised to read:

362.19 REMISSION OF PENALTY. In an action brought on any such security, if the penalty thereof is adjudged forfeited, the court may remit such portion of the penalty as the circumstances render just.

SECTION 226. 362.20 of the statutes is revised to read:

362.20. SURRENDER OF PRINCIPAL. A surety on a bond to keep the peace or for good behavior shall have the right to surrender his principal and upon such surrender shall be discharged from liability for any act of the principal subsequent to surrender and the defendant may give a new bond before any justice of the peace for the residue of the term.

SECTION 227. 362.21 of the statutes is revised to read:

362.21 ARREST WITHOUT COMPLAINT. If a magistrate has knowledge that an assault and battery is about to be committed or that an affray is about to occur, he shall forthwith issue a warrant and proceed as though a complaint had been made; and if such crime is committed, threatened or attempted in his presence, he shall immediately arrest the offender or cause him to be arrested, and for this purpose no process is necessary; and he may summon to his assistance any person present to aid him in preserving the peace and arresting and securing the offenders. All who obstruct or prevent the magistrate or

any of his assistants in the performance of duty may be arrested. Any person who, when summoned to aid in such arrests, refuses to give such assistance shall forfeit $5.

SECTION 228. 362.22 of the statutes is reenacted.

SECTION 228a. The title to chapter 363 is reenacted to read:

CHAPTER 363.
SEARCH WARRANTS.

SECTION 229. 363.01 of the statutes is revised to read:

363.01 SEARCH WARRANT, WHO TO ISSUE. A search warrant may be issued by any magistrate who is authorized to issue a criminal warrant.

SECTION 230. 363.02 (except the last sentence of (9)) and 29.05 (3) of the statutes are consolidated, numbered 363.02 and revised to read:

363.02 SEARCH WARRANTS; WHEN ISSUED. Upon presentation of a sworn complaint or affidavit, or of oral testimony recorded by a phonographic reporter, showing probable cause therefor, such magistrate shall issue a warrant to search for and seize any of the following:

(1) STOLEN PROPERTY. Property stolen, embezzled or obtained by false tokens or pretenses or by means of a confidence game.

(2) COUNTERFEIT MONEY, FORGED INSTRUMENTS. Counterfeit or spurious money or coin, forged bank notes or other forged instruments, or tools, machines or materials prepared or provided for making either of them.

(3) OBSCENE MATTER. Obscene literature, matter or things prohibited by section 351.38 or which may be evidence in any case arising under such section.

(4) LOTTERY TICKETS. Lottery tickets or materials for a lottery made, provided or procured for the purpose of drawing a lottery.

(5) GAMBLING APPARATUS. Gaming apparatus or implements used or kept to be used in unlawful gaming.

(6) FIGHTING COCKS AND ANIMALS. Animals, birds or articles used or about to be used in violation of the law relating to baiting and fighting animals.

(7) NARCOTICS. Any drugs manufactured, obtained or possessed in violation of chapter 161; or any smoking preparation, pipe, attachment or contrivance prohibited by said chapter.

(8) BLUE SKY LAW. Books, records or papers used or kept or to be used in the sale of securities contrary to chapter 189.

(9) ALCOHOLIC BEVERAGES. Intoxicating liquor, fermented malt beverages or alcoholic beverages possessed for the purpose of evading or violating any law of this state or property designed for the unlawful manufacture of intoxicating liquor, fermented malt beverages or alcohol.

(10) ARTICLES USED IN COMMITTING CRIME. Instruments or other articles which have been used in the commission of or may constitute evidence of a crime.

(11) GAME LAW VIOLATIONS. Any wild animal or carcass or part thereof caught, killed or had in possession in violation of chapter 29.

SECTION 231. 363.02 (9) (last sentence) of the statutes is renumbered and revised to read:

363.025 REPLEVIN OF SEIZED PROPERTY; MOTION TO RETURN SEIZED PROPERTY AND TO SUPPRESS EVIDENCE. Property seized on a search warrant and property seized by the officer without a warrant shall not be replevied. But the owner of the seized property may move before the criminal trial court for a return of the property or to suppress the evidence obtained under the warrant on the ground that (1) the warrant is insufficient on its face, or that (2) the property seized is not that described in the warrant, or that (3) there was not probable cause for issuing the warrant, or that (4) the warrant was executed illegally. If the seizure was made illegally without a warrant, the motion may be made on that ground. If the motion is granted, the property shall be restored unless it is subject to confiscation or was stolen or embezzled or obtained by false pretenses or by confidence game, in which case it shall not be returned.

SECTION 232. 363.03 of the statutes is revised to read:

363.03 WARRANT; TO WHOM DIRECTED; WHAT TO CONTAIN. The search warrant shall be directed to the sheriff or any constable or other peace officer of the county, commanding him to search the place where the things for which he is required to search are believed to be concealed, or the person believed to have them in his possession, or both, which person or place and things shall be described in the warrant, and to bring such things and the person in possession of them before the magistrate who issued the warrant or before some other magistrate or court having cognizance of the case.

SECTION 233. 363.04 of the statutes is revised to read:

363.04 DISPOSITION OF PROPERTY. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer (who may leave it in the custody of the sheriff, taking a receipt therefor) so long as necessary for the purpose of being produced as evidence on any trial. As soon as may be thereafter it shall be disposed of as follows, upon the order of the court:

(1) STOLEN PROPERTY. Property stolen, embezzled or obtained by false tokens or pretenses or by means of a confidence game shall be restored to the owner.

(2) MONEY. Money shall be restored to the owner unless it was a part of a slot machine, in which case it shall be forfeited and paid over to the county treasurer who shall account for and pay it over to the state treasurer pursuant to section 59.20 (5) for the use of the school fund.

(3) LIQUOR LAW VIOLATIONS. Intoxicating liquors, fermented malt beverages and personal property used in connection therewith shall, if seized in connection with a violation of section 66.054 or chapter 139 or 176, be disposed of as provided in section 176.62.

(4) UNCLAIMED PROPERTY. Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction to be held by the sheriff once a year and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid into the county treasury. Money which is unclaimed or the ownership of which is unknown shall be paid into the county treasury.

(5) CONTRABAND. Articles of contraband shall be destroyed. This includes without limitation gambling devices, lottery tickets, obscene or otherwise illegal literature, counterfeit, forged or spurious money, coin or written instruments and the tools, dies, machines or materials for making them, and narcotic drugs and the implements for smoking them. But if any such articles shall be capable of innocent use, the court may in its discretion order the same to be sold and the proceeds paid over to the county treasurer who shall account for and pay them over to the state treasurer pursuant to section 59.20 (5) for the use of the school fund. Narcotic drugs may be so sold only to a person legally entitled to possess them.

(6) FIGHTING COCKS AND ANIMALS. Animals and birds seized under section 363.02 (6) shall be returned to the owner if acquitted, but if he is convicted they shall be forfeited and sold forthwith by the sheriff, and the proceeds disposed of as provided in subsection (5).

(7) FISH AND GAME VIOLATIONS. Property seized in connection with any violation of chapter 23 or 29 shall be disposed of as therein provided.

(8) FIREARMS, EXPLOSIVES, ETC. Firearms, ammunition, explosives, bombs, infernal machines, and like devices, which have been used in the commission of a crime, shall be shipped to and become the property of the state crime laboratory. Articles mentioned in subsection (5) shall be turned over to said laboratory at the request of the superintendent, in lieu of destruction. The superintendent may, in his discretion, destroy any such material for which the laboratory has no use.

(9) ALL OTHER. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct, the intention of this subsection being that useful articles be returned to their owners and other articles be destroyed or otherwise disposed of as the court may deem best.

SECTION 234. 363.05 of the statutes is created to read:

363.05 FORMS. The following forms for use under this chapter are illustrative and not mandatory:

AFFIDAVIT OR COMPLAINT

STATE OF WISCONSIN, }
.... County. } In the .... court of the .... of ....:

A. B., being duly sworn, says that on the .... day of ...., A. D., 19.., in said county, in and upon certain premises in the (city, town or village) of .... in said county, occupied by .... and more particularly described as follows: (describe the premises) there are now located and concealed therein certain things, to-wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section .... of the Wisconsin statutes) (or, which things were stolen, or embezzled, or obtained by false tokens or pretenses or by means of a confidence game from their true owner, in violation of section .... of the Wisconsin statutes) (or, which things were used in the commission of (or may constitute evidence of) a crime, to-wit: (describe crime) committed in violation of section .... of the Wisconsin statutes).

The facts tending to establish the grounds for issuing a search warrant are as follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

Wherefore, the said A. B. prays that a search warrant be issued to search such premises for the said property, and to bring the same, if found, and the person in whose possession the same is found, before the said court (or, before the .... court for .... county), to be dealt with according to law.

(Signed) A. B.

Subscribed and sworn to before me this .... day of ...., 19...

.... Judge of the .... Court.

SEARCH WARRANT

STATE OF WISCONSIN, } In the .... court of the .... of ....:
.... County. }

THE STATE OF WISCONSIN, to the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the .... day of ...., A. D., 19.., in said county, in and upon certain premises in the (city, town or village) of .... in said county, occupied by .... and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to-wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section .... of the Wisconsin statutes) (or, which things were stolen, or embezzled, or obtained by false tokens or pretenses or by means of a confidence game from their true owner, in violation of section .... of the Wisconsin statutes) (or which things were used in the commission of (or, may constitute evidence of) a crime, to-wit: (describe crime) committed in violation of section .... of the Wisconsin statutes) and prayed that a search warrant be issued to search said premises for said property.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said court (or, before the .... court for .... county), to be dealt with according to law.

Dated this .... day of ...., 19...

....
Judge of the .... Court.

INDORSEMENT ON WARRANT

Received by me ...., 19.., at .... o'clock ..M.

....
Sheriff (or peace officer)

RETURN OF OFFICER

State of Wisconsin in .... Court,
.... County.

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following things: (describe things seized) and have the same now in my possession subject to the direction of the court.

Dated this .... day of ...., 19...

....
Sheriff (or peace officer)

SECTION 235. 363.06 of the statutes is created to read:

363.06 EXECUTION OF WARRANT; EVIDENCE NOT SUPPRESSED. A search warrant may be executed at any reasonable time of the day or night, but shall be executed in the daytime if practicable. No evidence seized under a search warrant shall be suppressed because the warrant was executed in the night time.

SECTION 236. 363.07 of the statutes is created to read:

363.07 SECRECY. A search warrant shall be issued with all practicable secrecy and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk of court or made public in any way until the warrant is executed. Whoever discloses prior to its execution that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be imprisoned not more than 30 days or fined not more than $100 or both, or he may be punished as for a criminal contempt of court.

SECTION 237. 363.08 of the statutes is created to read:

363.08 SUBSTANTIAL COMPLIANCE. No evidence seized under a search warrant shall be suppressed because of technical irregularities not affecting the substantial rights of the accused.

SECTION 238. 2.04 of the statutes is revised to read:

2.04 JURISDICTION OF COUNTIES ON BOUNDARY LAKES AND STATE BOUNDARY WATERS. The counties now or hereafter organized upon the westerly shore of Lake Michigan shall have jurisdiction in common of all offenses committed on said lake. The counties now or hereafter organized on the shores of Green Bay shall have jurisdiction in common of all offenses committed on Green Bay. The counties now or hereafter organized on the southerly shore of Lake Superior shall have jurisdiction in common of all offenses committed on said lake. The counties now or hereafter organized on the easterly shore of the Mississippi river shall have jurisdiction in common of all offenses committed on said river. The counties now or hereafter organized on the shores of Lake Winnebago, shall have jurisdiction in common of all offenses committed on any part of said lake. The counties now or hereafter organized on the easterly shore of the St. Croix river or lake shall have jurisdiction in common of all offenses committed on any part of said river or lake; and all offenses committed against this state on any part of said waters may be heard and tried in either of the counties having, as aforesaid, common jurisdiction over such waters where such offense may be committed in which legal process against the offender shall be first served, and may be alleged and shall be conclusively deemed to have been committed within such county; and all civil process from either of the counties aforesaid may be executed within and upon such waters as are within the jurisdiction of such county above given. In the construction of this section all wharves and piers shall be deemed part of the land with which they are connected.

SECTION 239. 59.45 of the statutes is revised to read:

59.45 ASSISTANTS IN OTHER THAN SPECIAL COUNTIES. The district attorney, except in counties containing a city of the first class, may, when authorized by the county board by a majority of all of its members, appoint one or more assistant district attorneys and a stenographer and a clerk to aid him in the performance of his duties. Such assistant district attorneys shall be attorneys admitted to practice law in this state. The assistant district attorneys so appointed shall have authority to perform all the duties of the district attorney. No assistant district attorney so appointed shall be required to give an official bond.

SECTION 240. 59.46 (1) of the statutes is revised to read:

59.46 (1) The district attorney of any county containing more than 200,000 population may appoint 2 deputy district attorneys, a corporation counsel, and such assistants as may be authorized by the county board. The corporation counsel, as to civil, and the deputies according to rank, as to all other matters, shall have authority to perform all the duties of the district attorney, under his direction, and in the absence or disability of the district attorney such corporation counsel, as to civil, and such deputies according to rank, as to all other matters, may do and perform all the acts required by law to be performed by the district attorney. Such deputies shall each have practiced law in this state at least 2 years prior to such appointment, and shall hold office during the pleasure of the district attorney. Such assistants, when appointed, shall have full authority to perform all the duties of the district attorney, under his direction. The district attorney of such county may when he deems necessary appoint such temporary counsel as may be authorized by the county board.

SECTION 241. 326.06 of the statutes is revised to read:

326.06 DEPOSITIONS IN CRIMINAL PROCEEDINGS. (1) WHEN TAKEN. If it appears that a prospective witness may be unable to attend or prevented from attending a criminal trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(2) NOTICE OF TAKING. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(3) DEFENDANT'S COUNSEL. If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel.

(4) HOW TAKEN. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(5) ATTENDANCE OF DEFENDANT; WAIVER OF RIGHT TO FACE WITNESS. (a) If the state or a witness procures such an order, the notice shall inform the defendant that he is required to personally attend at the taking of the deposition and that his failure so to do is a waiver of his right to face the witness whose deposition is to be taken; and failure to attend shall constitute such waiver unless the defendant was physically unable to attend.

(b) If the defendant is not in custody, he shall be paid witness fees for travel and attendance. If he is in custody, his custodian shall, at county expense, produce him at the taking of the deposition. If the defendant is in custody, leave to take a deposition on motion of the state shall not be granted unless all states which the custodian will enter with the defendant in going to the place the deposition is to be taken have conferred upon the officers of this state the right to convey prisoners in and through them.

(6) USE OF DEPOSITION. At the trial or upon any hearing, a part or all of a deposition (so far as otherwise admissible under the rules of evidence) may be used if it appears: That the witness is dead; or that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(7) OBJECTION TO ADMISSIBILITY. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

SECTION 242. 351.38 (1) of the statutes is revised to read:

351.38 CIRCULATION OF OBSCENE BOOKS, ETC. (1) Whoever imports, prints, publishes, exhibits, sells or distributes or has in possession or gives away any book or pamphlet, ballad, printed paper, moving picture or film or other thing containing obscene language, prints, pictures, figures or descriptions tending to the corruption of morals; or introduces into any family or school or buys, procures, receives or has in his possession any such thing either for the purpose of loan, sale, exhibition or circulation or giving away, or with intent to introduce the thing into any family or school shall be punished by imprisonment in the county jail not less than 3 months or more than one year or by imprisonment in the state prison not less than one year or more than 5 years or by a fine of not less than $100 or more than $5,000.

SECTION 242a. 348.61 is created to read:

348.61 RADIO BROADCAST OF CRIMINAL TRIAL OR EXAMINATION. Any person who shall, either directly from the courtroom or by means of any recorded transcription made in the courtroom, broadcast by radio or any like means of disseminating information all or any part of the proceedings in any criminal trial or examination in this state purporting to be the actual voices of witnesses, counsel or judge, shall be guilty of a misdemeanor. No court or judge shall permit the making of any such recorded transcription for the purpose of broadcasting the same.

SECTION 243. Printing of this act in the Wisconsin session laws shall constitute the publication required by section 21 of article VII of the constitution. It shall not be published in the official state paper.

SECTION 244. This act shall take effect on July 1, 1950. Except for provisions altering penalties, the provisions of this act shall apply to prosecutions pending on that date, but it shall not be error to proceed under the statutes of 1947 in such prosecutions.

Approved August 8, 1949.