

No. 497, S.

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CHAPTER 463

AN ACT to renumber 52.055; to amend 52.05 (5) and (6); and to create 52.055 (2) and (3) of the statutes, relating to failure to support one's family.

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

SECTION 1. 52.05 (5) and (6) of the statutes are amended to read:

52.05 (5) If the court * * * is satisfied by information and due proof under oath, that at any time during said period of 2 years the defendant has violated the term of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her

under the original conviction, or enforce the suspended sentence, or *punish for violation of such order as for contempt and sentence the said person to confinement in the county jail under s. 56.08*, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children, *or to the county welfare department*.

(6) No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, whether legitimate or illegitimate, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children * * *, *but neither shall be compelled to give evidence incriminating himself or herself * * **. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful. *Substantial failure by said person to provide for such support or maintenance prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder.*

SECTION 2. 52.055 of the statutes is renumbered 52.055 (1).

SECTION 3. 52.055 (2) and (3) of the statutes are created to read:

52.055 (2) Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty in sub. (1) or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by the court from time to time as circumstances require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances permit, for a period not exceeding 2 years, to the wife or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee, and may also release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof in vacation orders and approves. The condition of the recognizance shall be such that if the defendant makes personal appearance in court whenever so ordered and further complies with the terms of such order of support, or of any subsequent modification thereof, then such recognizance is void, otherwise of full force and effect.

(3) If the court is satisfied by information and due proof under oath, that any time during said period of 2 years the defendant has violated the term of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, or may punish for violation of such order as for contempt and sentence the person to confinement in the county jail under s. 56.08, as the case may be. In case of the forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part, to the wife, or to the guardian, curator, custodian, trustee of the said minor child or children or to the county welfare department.

Approved December 30, 1963.