

1987 Senate Bill 273

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## 1987 Wisconsin Act 151

AN ACT to amend 48.06 (1) (a) 2, 48.065 (1), 48.067 (6), 48.29 (1), 48.30 (2), 756.04 (3), 757.68 (1) (a), 799.205 (2), 800.05 (3), 968.04 (3) (a) 6 and 970.02 (5); and to create 48.29 (1m), 345.315 (1m), 800.06 (3) and 806.10 (1m) of the statutes, relating to drawing names for jury panels; filling permanent municipal judge vacancies; chief judges of judicial administrative districts; review of judge substitution requests; and clerk's fees for docketing judgments (requested as remedial legislation by the director of state courts).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the director of state courts, and introduced by the law revision committee under s. 13.83 (1) (c) 4, stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 48.06 (1) (a) 2 of the statutes is amended to read:

48.06 (1) (a) 2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for juvenile matters and the director shall be charged with executing the judicial policy. The chief judge ~~or a designee~~

shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court. The chief judge may delegate his or her supervisory functions under s. 48.065 (1).

SECTION 2. 48.065 (1) of the statutes is amended to read:

48.065 (1) The board of supervisors of any county may authorize the chief judge of the judicial administrative district to appoint one or more part-time or full-time juvenile court commissioners who shall serve at the discretion of the chief judge. A juvenile court commissioner shall be licensed to practice law in this state and shall have been so licensed for at least 2 years immediately prior to appointment and shall have a demonstrated interest in the welfare of children. ~~Law~~

The chief judge may assign law clerks, bailiffs and deputies shall be assigned to the court commissioner at the discretion of the chief judge. The chief judge shall supervise juvenile court commissioners, law clerks, bailiffs and deputies, except that the chief judge may delegate any of those duties.

NOTE: Under current law, the chief judge of an administrative district has supervisory authority over all court personnel for courts exercising jurisdiction under ch. 48, stats., the children's code. SECTIONS 1 and 2 clarify that the chief judge may delegate supervisory duties over juvenile court commissioners and law clerks, bailiffs and deputies assigned to such commissioners. Often, it is impractical for chief judges to give such persons direct supervision. These changes conform the statutes to current practice.

SECTION 3. 48.067 (6) of the statutes is amended to read:

48.067 (6) Receive referral information, conduct intake inquiries, make recommendations as to whether a petition should be filed, and enter into informal dispositions under such policies as the chief judge of the judicial administrative district promulgates promulgated under s. 48.06 (1) or (2);

SECTION 4. 48.29 (1) of the statutes is amended to read:

48.29 (1) The child, or the child's parent, guardian or legal custodian, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named therein. In a proceeding under s. 48.12 or 48.13 (12), only the child may request a substitution of the judge. Whenever any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. ~~Except as provided in sub. (2), after a request has been filed, the judge shall be disqualified to act in relation to the matter and shall promptly request assignment of another judge under s. 751.03.~~ Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section shall not apply to proceedings under s. 48.21.

SECTION 5. 48.29 (1m) of the statutes is created to read:

48.29 (1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. Except as provided in sub. (2), if the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made

timely and in proper form and reassignment as necessary.

NOTE: Requires the judge whose substitution has been requested in a juvenile proceeding to determine whether the request was timely and in proper form before assignment of another judge may occur. If no determination is made within 7 days, the clerk is required to refer the matter to the chief judge of the judicial administrative district to make the determination.

The revision conforms the statute to provisions that generally apply to civil, small claims and criminal proceedings. In doing so, it corrects an oversight.

SECTION 6. 48.30 (2) of the statutes is amended to read:

48.30 (2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or be waived, except where the child is before the court on a uniform municipal citation, issued under ch. 800 in which case the court shall inform the child that a request for a jury trial may be made at any time prior to the fact-finding hearing and within 20 days after the plea hearing. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

SECTION 7. 345.315 (1m) of the statutes is created to read:

345.315 (1m) When the clerk of court receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

NOTE: Requires the judge whose substitution has been requested in a traffic regulation or nonmoving traffic violation case to determine whether the request was timely and in proper form before assignment of another judge may occur. If no determination is made within 7 days, the clerk is required to refer the matter to the chief judge of the judicial administrative district to make the determination.

The revision conforms the statute to provisions that generally apply to civil, small claims and criminal proceedings. In doing so, it corrects an oversight.

SECTION 8. 756.04 (3) of the statutes is amended to read:

756.04 (3) ~~At least 15 and not more than 30 days before the sitting of any court at which a jury is required to attend once each year or more often if the clerk of circuit court so requests or the chief judge of the judicial administrative district so directs,~~ the clerk

~~of circuit court shall~~, in the presence of at least 2 of the commissioners, shall draw a sufficient number of names from the tumbler. ~~Before The clerk shall rotate the tumbler before each name is drawn, the tumbler shall be rotated.~~ The commissioners shall write the person's name, occupation and address in the order in which it was drawn, upon a panel list provided for that purpose, at the bottom of which the commissioners shall certify that the drawing was in accordance with law. In like manner, the clerk shall then draw a sufficient number of names of additional persons, to be recorded upon a reserve-panel list. ~~They~~ Persons shall be summoned in the order in which their names appear on the reserve-panel list in the event and to the extent that the regular panel is inadequate. When summoned, ~~they shall~~ those persons become a part of the regular panel. ~~The commissioners shall keep the regular and reserve-panel lists shall be kept by the commissioners; and furnish the clerk with a signed duplicate thereof shall be furnished the clerk of circuit court of those lists.~~

NOTE: This SECTION provides that names for the jury panel be drawn at least once a year or more often if the clerk of circuit court so requests or the chief judge so directs. The SECTION removes the outdated reference to "sittings of court". The revisions conform the statutes to present jury selection practice.

SECTION 9. 757.68 (1) (a) of the statutes is amended to read:

757.68 (1) (a) Except as provided in par. (b), ~~in~~ counties having a population of 100,000 or more, ~~there may be created~~ create the office of full-time court commissioner. The county board shall establish the number of positions and set the salary for the office. Any person qualified and acting as a judicial court commissioner on August 1, 1978, shall be deemed a full-time court commissioner and shall continue in the classified county civil service but any new appointee shall be in the unclassified (exempt) civil service. The chief judge shall be the appointing and supervising authority and may terminate the employment of any such commissioner if cause is proven. ~~Such~~ The chief judge may delegate any such supervising authority. ~~The full-time court commissioners shall be attorneys licensed to practice in this state. Each court commissioner shall take and file the official oath in the office of the clerk of the circuit court of the county for which appointed before performing any duty of the office.~~

NOTE: Counties having a population of 100,000 or more may create the office of full-time court commissioner. Milwaukee county is required to establish at least one full-time court commissioner to assist in the administration of small claims actions. The chief judge of an administrative district has appointing and supervising authority over a full-time court commissioner.

This SECTION permits the chief judge of the administrative district to delegate any supervising authority the judge has over a full-time court commissioner. It is often impractical for a chief judge to maintain direct supervision over a full-time court commissioner. The revision conforms the statutes to current practice.

SECTION 10. 799.205 (2) of the statutes is amended to read:

799.205 (2) After the written request has been filed, the original judge shall have no further jurisdiction in the action or proceeding except to determine if the request is correct as to form and timely filed. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is correct as to form and timely filed, the named judge shall be disqualified and shall promptly request assignment of another judge under s. 751.03.

SECTION 11. 800.05 (3) of the statutes is amended to read:

800.05 (3) In municipal court, upon receipt of the written request, the original judge shall have no further jurisdiction in the case except as provided in sub. (1) and except to determine if the request was made timely and in proper form. If no determination is made within 7 days, the court shall refer the matter to the chief judge for the determination and reassignment of the action as necessary. If the request is determined to be proper, the case shall be transferred as provided in s. 751.03 (2). Upon transfer, the municipal judge shall transmit to the appropriate court all the papers in the action and the action shall proceed as if it had been commenced in that court.

NOTE: Requires the judge whose substitution has been requested in a municipal court action to determine whether the request was timely and in proper form before assignment of another judge may occur. If no determination is made within 7 days, the clerk is required to refer the matter to the chief judge of the judicial administrative district to make the determination.

The revision conforms the statute to provisions that generally apply to civil, small claims and criminal proceedings. In doing so, it corrects an oversight.

SECTION 12. 800.06 (3) of the statutes is created to read:

800.06 (3) Notwithstanding s. 751.03 (2), if there is a permanent vacancy in the office of municipal judge, the chief judge of the judicial administrative district may, upon request by the municipal governing body, designate another municipal judge to perform the duties of the office until the municipal governing body fills the vacancy by temporary appointment under s. 8.50 (4) (fm), but not for a period exceeding 30 days. The municipal judge designated under this subsection may exercise all of the authority of the municipal court to which he or she is assigned.

NOTE: Permits the chief judge of a judicial administrative district to designate, at the request of a municipal governing body, a municipal judge to serve a municipal court where a permanent vacancy exists, until the municipal governing body fills the vacancy by temporary appointment, but not for a period exceeding 30 days.

Under current law, there is no authority for the chief judge to make such a designation; only the governing body of the municipality may appoint someone to fill the vacancy until the vacancy is filled by election. Situations have occurred where the municipal governing body does wish to temporarily fill the vacancy but is unable to immediately secure an individ-

ual for appointment. In such cases, the body has asked the chief judge of the judicial administrative district to designate a municipal judge to perform the duties of the office until a temporary appointment is made. Because of lack of statutory authority, the chief judges have declined to do so.

The revision to this section, by granting the chief judge express authority to designate a municipal judge, allows for the timely disposition of existing municipal court caseload while a municipality makes a temporary appointment to fill a vacancy.

SECTION 13. 806.10 (1m) of the statutes is created to read:

806.10 (1m) The clerk's fee for making the entry upon a judgment docket, as prescribed in s. 814.61 (5) (b), shall be paid to the clerk at the time the judgment is docketed.

NOTE: Under present s. 814.61 (5) (b), a clerk of court is authorized to collect a fee of \$3 for filing and docketing judgments. The statute setting forth the procedure for filing and docketing judgments, s. 806.10, does not reference the filing and docketing fee. Failure to so reference the fee has apparently resulted in confusion and questioning of the clerk's authority to collect the fee.

To prevent future confusion, this bill expressly cross-references in s. 806.10 the fee requirement prescribed in s. 814.61 (5) (b).

SECTION 14. 968.04 (3) (a) 6 of the statutes is amended to read:

968.04 (3) (a) 6. Command that the person against whom the complaint was made be arrested and

brought before the judge issuing the warrant, or, if the judge is absent or unable to act, before some other judge in the same county. ~~In judicial circuits having more than one judge the chief judge of the administrative district shall determine the judge before whom the initial appearance shall be made.~~

NOTE: Under current law, in judicial circuits with more than one judge, the chief judge of an administrative district determines the judge before whom an initial appearance is made in a criminal case. This SECTION eliminates the provision as unnecessary because the chief judge's order for caseload distribution contains provisions handling the assignment of initial appearances. This change conforms the statutes to current practice.

SECTION 15. 970.02 (5) of the statutes is amended to read:

970.02 (5) If the defendant does not waive preliminary examination, the judge shall forthwith ~~transfer set~~ the action to the circuit court for a preliminary examination under s. 970.03. ~~The chief judge of each judicial administrative district may adopt rules to facilitate the transfers.~~

NOTE: Under current law, the chief judge of an administrative district may adopt rules to facilitate setting a criminal action for preliminary examination following the initial appearance. This SECTION eliminates the provision as unnecessary because the chief judge's order for caseload distribution contains provisions handling the setting of cases for preliminary hearings. This change conforms the statutes to current practice.