

No. 235, A.]

[Published October 14, 1961.

### CHAPTER 561

AN ACT to repeal 957.20; to renumber 955.41; to amend 954.02 (3) and (5), 954.06, 954.09, 954.13, 955.01, 955.04, 955.05, 955.09 (6) and (7), 955.14, 955.15, 955.18 (1), 955.20, 955.37, 955.39, 956.03 (1), 957.01 (1), 957.25, 958.13 (section title), 958.14, 960.01, as repealed and re-created by chapter 315, laws of 1959, and 960.36 (1st form, Complaint); and to create 954.005, 954.015, 954.02 (8), 954.036, 954.038, 955.075, 955.41 (2), 956.10, 957.052, 957.053, 957.054, 957.055, 957.056, 957.255, 958.075 and 959.055 (2) (f) of the statutes, relating to a uniform misdemeanor procedure.

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

SECTION 1. 954.005 of the statutes is created to read:

954.005 APPLICATION TO COUNTY COURT. Wherever in this title an act is related to a term of court, term shall be construed, for county courts, to mean the first Monday in April, or the first Monday in October, whichever is more appropriate in context.

SECTION 2. 954.015 of the statutes is created to read:

954.015 MULTI-BRANCH COURTS. Wherever in this chapter, except s. 954.09, a magisterial power or duty is conferred, any judge of a county court may act as the magistrate, even though another judge of that court is specifically named as magistrate in the warrant or summons.

SECTION 3. 954.02 (3) and (5) of the statutes are amended to read:

954.02 (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 \* \* \* *a named judge of the county court*. The district attorney shall forthwith deliver the complaint to the \* \* \* *clerk of court for that county*.

(5) (a) The warrant shall be signed by the magistrate, *judge* 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, *or it shall command that he be brought before a named judge of the county court*. *In counties having a population of 500,000 or more the clerk or one of his deputies may issue all processes under his hand and the seal of the court and attest it in the name of a judge of said county court, signing it by his title of office, and said clerk or one of his deputies may issue warrants upon complaints duly filed in writing and upon oath. The complaints, warrants, recognizance, commitments, attachments, venires, subpoenas and all other writs and papers in said county court and pertaining to criminal matters shall be in substance in the form hitherto used in the district and municipal courts of the city and county of Milwaukee, except as otherwise provided by law or by rule of court.*

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

SECTION 3a. 954.02 (8) of the statutes is created to read:

954.02 (8) In counties having a population of 500,000 or more the words "A named judge of the county court" as used in this section shall in the case of misdemeanor, except for traffic violations, refer to the judge of Branch 4 of the county court and in the case of traffic violations shall refer to the judge of Branch 3 of said court.

SECTION 4. 954.036 of the statutes is created to read:

954.036 INITIAL APPEARANCE OF DEFENDANT CHARGED WITH MISDEMEANOR. (1) If a defendant charged with a misdemeanor is brought, according to the warrant, before a magistrate or judge who does not preside over a court with jurisdiction to try the crime, he shall be committed to jail to await trial in county court, or be bailed.

(2) If the magistrate presides over a court with jurisdiction to try the crime, the magistrate shall commit him to await trial later, or shall bail him, or, if the defendant asks for or does not object to immediate trial, the court may proceed with the trial.

SECTION 5. 954.038 of the statutes is created to read:

954.038 NO PRELIMINARY EXAMINATION ON MISDEMEANOR CHARGE. There shall be no preliminary examination on a charge of a misdemeanor.

SECTION 6. 954.06 of the statutes is amended to read:

954.06 If the defendant does not appear \* \* \* *for his preliminary examination* 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 or county 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 *capias* or issue another warrant for the arrest of the defendant.

SECTION 7. 954.09 of the statutes is amended to read:

954.09 If a defendant \* \* \* *files an affidavit* 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 \* \* \*, *except that if the magistrate is a judge of a multi-branch court, then the matter shall be referred to the clerk of said court who shall, in accordance with the rules of court, assign said matter to another branch of that court to attend and conduct the examination in said matter. If the crime is bailable, and sufficient bail is given, the removing magistrate shall bail the defendant for his later appearance before the magistrate to whom the case is transmitted.* No case shall be removed after a second adjournment, and only one removal shall be allowed. *No such affidavit shall name more than one county judge. \* \* \* If there are 2 or more defendants and less than all join in the affidavit of prejudice then the place of trial shall be changed as to all the defendants.*

SECTION 8. 954.13 of the statutes is amended to read:

954.13 (1) If it appears probable that a \* \* \* *felony* has been committed \* \* \* and that the defendant is probably guilty, he shall be committed to await trial *in either county court or circuit court at the discretion of the magistrate, except in counties having a population of 500,000 or more he shall be committed to await trial in the circuit court.* If the \* \* \* *felony* is bailable by the magistrate and a sufficient bail is offered he shall be released.

(2) \* \* \* *If it appears \* \* \* probable that \* \* \* a misdemeanor has been committed and that it is within the trial jurisdiction of \* \* \* the court*

over which the magistrate presides, he shall amend the complaint and warrant to conform to the evidence; and the court shall thereupon proceed to try the defendant as though the \* \* \* proceedings had originated before \* \* \* it. But if the \* \* \* court over which the magistrate presides has no jurisdiction to proceed with the trial, \* \* \* the magistrate shall amend the warrant and complaint, commit to jail, or bail the defendant, and transmit all the papers and a copy of his docket to the \* \* \* county court of \* \* \* that county \* \* \*, and the defendant \* \* \* shall be tried as though the proceeding had originated before \* \* \* the county court. If the county court does not have jurisdiction over the matter then it shall be transferred to the circuit court of said county.

SECTION 9. 955.01 of the statutes is amended to read:

955.01 \* \* \* An imprisoned defendant charged with having committed a \* \* \* felony shall be \* \* \* bailed without sureties if \* \* \* no indictment or information is filed against him before the end of 6 months after he is \* \* \* committed to \* \* \* await trial.

SECTION 10. 955.04 of the statutes is amended to read:

955.04 SUBPOENA. \* \* \* Any defendant shall have compulsory process to compel the attendance of witnesses in his behalf.

SECTION 11. 955.05 of the statutes is amended to read:

955.05 Every person indicted or informed against for a \* \* \* felony shall be entitled to a copy of the indictment or information and of all in-dorsements thereon without charge.

SECTION 12. 955.075 of the statutes is created to read:

955.075 ARRAIGNMENT. A defendant charged with a misdemeanor may be arraigned on the complaint described in s. 954.02 and set forth in s. 960.36.

SECTION 13. 955.09 (6) and (7) of the statutes are amended to read:

955.09 (6) If the court grants a motion to dismiss based on a defect in the indictment \* \* \*, information or complaint, 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 \* \* \*, information or complaint.

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

SECTION 14. 955.14 of the statutes is amended to read:

955.14 (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 \* \* \*, indictment or complaint.

(2) The information \* \* \*, indictment or complaint shall state the crime or charge in plain, concise language, without unnecessary repetition and 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 \* \* \*, information or complaint 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 \* \* \* , information *or complaint* is sufficient after verdict if it describes the crime in the words of the statute, but other words conveying the same meaning may be used.

SECTION 15. 955.15 of the statutes is amended to read:

955.15 All provisions of law applying to prosecutions upon indictments, to writs and process therein, and the 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 complaints* and all prosecutions and proceedings thereon.

SECTION 16. 955.18 (1) of the statutes is amended to read:

955.18 (1) No information *in a felony case* 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 17. 955.20 of the statutes is amended to read:

955.20 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 \* \* \* *further proceedings* shall be had.

SECTION 18. 955.37 of the statutes is amended to read:

955.37 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. *If the defendant has been charged or arraigned on a complaint, the complaint may be amended.*

SECTION 19. 955.39 of the statutes is amended to read:

955.39 In an indictment \* \* \* , information *or complaint* 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 20. 955.41 of the statutes is renumbered 955.41 (1).

SECTION 21. 955.41 (2) of the statutes is created to read:

955.41 (2) The clerk of court shall keep a case file for all cases and matters brought in county court and he or one of his deputies, shall be present during the sessions of said court and shall make, keep and have care and custody of all records, books and papers of the court, perform all ministerial acts required of him by and under the direction of a county judge and when the court is not in session shall have power to take bail for the appearance of any person under arrest, subject to the revision of the court; and said clerk or one of his deputies may administer all necessary oaths, enter the orders and judgments of the court, and issue commitments and executions to enforce the same.

SECTION 22. 956.03 (1) of the statutes is amended to read:

956.03 (1) If the presiding judge has acted as attorney for \* \* \* a defendant or for the state in the pending action, or if \* \* \* a defendant moves \* \* \* , 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 \* \* \* *in civil actions* to try the action, *except that in multi-branch county courts the case shall be referred to the clerk who shall in accordance with the rules of said court assign the case to another branch of that court for trial or other proceedings.* The time of making such motion may be extended for cause but not more than 10 days. *In felony cases the motion shall be made within 20 days after his arraignment and before the case is called for trial. In misdemeanor, ordinance and traffic forfeiture cases the time for such motion shall be at arraignment or at the time the defendant demands a jury trial if one is demanded. In either case only one such motion shall be allowed and the affidavit of prejudice in any such misdemeanor or ordinance case shall not name more than one county judge.*

SECTION 23. 956.10 of the statutes is created to read:

956.10 APPLICABILITY OF CHAPTER IN COUNTY COURT. This chapter applies to all criminal proceedings and trials in courts of record.

SECTION 24. 957.01 (1) of the statutes is amended to read:

957.01 (1) Except as otherwise provided in this \* \* \* *chapter*, criminal cases in courts of record shall be tried by a jury of 12 \* \* \* , drawn \* \* \* as prescribed in ch. 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. *A defendant charged with a misdemeanor in county court waives trial by a jury of 12 if he elects to be tried by a jury of 6.*

SECTION 25. 957.052 of the statutes is created to read:

957.052 JURORS. The method of selecting jurors for the county court shall be the same as the method used for circuit court and shall be governed by ss. 255.04 to 255.095, except that the jurors on jury lists shall serve as provided by rule of court under s. 255.04 (b).

SECTION 26. 957.053 of the statutes is created to read:

957.053 12-MAN JURY TRIAL. The procedure used for a 12-man jury trial in county court shall be the same as that used in circuit court and shall be governed by this chapter.

SECTION 27. 957.054 of the statutes is created to read:

957.054 SELECTING A 6-MAN JURY. (1) If a 6-man jury is demanded by the defendant before the trial begins, the judge shall direct the clerk of the county court to select by lot from the current jury panel the names of 18 residents of the county qualified to serve as jurors in courts of record, from which lists the defendant and the state may each strike 6 names. If either party neglects to strike out names, the clerk shall strike out names for him. Except in counties having a population of 500,000 or more, no voir dire examination or challenge for cause shall be permitted. The clerk 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.

(2) Jurors may all be residents of a municipality in which the court is held unless the defendant demands a county-wide jury. For this purpose

a municipal jury list may be established, known as the "-----  
 ----- jury list", which shall be constituted as follows: the jury  
 (name of  
 municipality)  
 commissioners appointed by the circuit court of the county in which the  
 municipality is located shall, immediately when this section becomes effective,  
 and thereafter from time to time as required by the county court,  
 provide and furnish a list containing the names of 200 jurors selected by  
 them from citizens residing within the municipality involved. Except as  
 herein provided, the provisions of s. 255.04, relating to the preparation of  
 jury lists for the circuit court, so far as applicable, shall apply to and govern  
 the preparation of such list, but the slips containing the names of  
 jurors so selected shall be deposited in a box designated the "-----  
 ----- jury list".  
 (name of  
 municipality)

(3) Subsection (2) and s. 957.053 shall not apply in counties having  
 a population of 500,000 or more. In such counties all county court juries  
 shall be supplied from the circuit court jury venire.

SECTION 28. 957.055 of the statutes is created to read:

957.055 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 clerk within the time  
 therein specified.

SECTION 29. 957.056 of the statutes is created to read:

957.056 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 with respect  
 to the first jury, unless jury trial is waived as in s. 957.01, in which  
 case the court shall proceed as if no jury had been demanded.

SECTION 30. 957.20 of the statutes is repealed.

SECTION 31. 957.25 of the statutes is amended to read:

957.25 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. \* \* \* *If the defendant is arraigned on a charge of misdemeanor, the plea may be to the complaint.* The court may in its discretion refuse to accept a plea of nolo contendere.

SECTION 31a. 957.255 of the statutes is created to read:

957.255 NEW TRIAL; SERVICE OF AFFIDAVITS; APPEAL. (1)  
 Within one year after judgment has been rendered and on motion in writing  
 of the defendant the court may grant a new trial for any cause for  
 which a new trial may be granted in the circuit court or when it appears  
 to the court that justice has not been done, and on such terms and conditions  
 as the court directs. The motion shall be signed by the defendant or  
 his attorney and shall set forth the grounds upon which the defendant relies  
 for a new trial. The motion together with any affidavits intended to be  
 used in connection therewith shall be served on the district attorney and  
 filed with the clerk of the court at least 20 days before the argument on

said 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 a new trial is denied an appeal may be taken therefrom to the circuit court within 15 days of the date of such denial, and said circuit court may review the order refusing a new trial and if reversed and the crime involved is a felony then the circuit court may order a new trial to be had in said circuit court, and if the crime involved is a misdemeanor then the case shall be remanded to the county court for trial, or said circuit court may render such other order or 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 complaint or other pleading 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 32. 958.075 of the statutes is created to read:

958.075 MISDEMEANOR APPEALS FROM COUNTY COURT. (1) Appeals in misdemeanor cases are to the circuit court for the county and the defendant is entitled to a stay of execution upon furnishing bail in such reasonable sum as the county or circuit court may fix.

(2) Appeals by the state are subject to the limitations of s. 958.12.

(3) Within 15 days after judgment, appeal may be taken to circuit court by filing notice of appeal with the clerk of the trial court and by serving notice of appeal on the opposing party or his attorney.

(4) Within 10 days after the notice of appeal is filed with the clerk, he shall return the case file, together with the entire record and including all transcripts, exhibits and other matters therein to the circuit court, and shall notify the parties of such filing in said circuit court.

(5) On appeal to the circuit court there shall be a trial de novo and the parties therein may submit the matter upon a stipulated statement of facts, and an appeal may be taken although the sentence has been served or the fine paid.

SECTION 33. 958.13 (section title) of the statutes is amended to read:

958.13 (section title) FELONY APPEALS.

SECTION 34. 958.14 of the statutes is amended to read:

958.14 If a defendant appeals or procures a writ of error, the trial court may in its discretion, by order, stay execution of the judgment before the record is filed in the \* \* \* *appellate* court if a substantial question of law, other than the sufficiency of evidence, is presented by the record. After the record is filed in the \* \* \* *appellate* court, *the circuit court judge or a justice of \* \* \* the supreme* court may, by order, stay execution if upon the record there is a reasonable possibility that the judgment might be reversed. 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, *circuit court judge* or the justice *of the supreme court* ordering the stay requires, with sufficient sureties for his appearance in the \* \* \* *appellate* court at the current or next term thereof to prosecute his appeal or writ of error and to abide the sentence thereon.

SECTION 35. 959.055 (2) (f) of the statutes is created to read:

959.055 (2) (f) A \$12 fee for a 6-man jury in county court.

SECTION 35m. 960.01 of the statutes, as repealed and recreated by chapter 315, laws of 1959, is amended to read:

960.01 Except as otherwise provided in this chapter, justices of the peace shall have jurisdiction throughout their respective counties to hold court to try and determine all charges under ss. 940.20 and 947.01. *Neither justices of the peace nor municipal justices of the peace shall have jurisdiction to hold preliminary examinations in felony cases.*

SECTION 36. 960.36 (1st form, Complaint) of the statutes is amended to read:

960.36 (1st form, Complaint) The following forms may be used:

COMPLAINT

STATE OF WISCONSIN, }  
----- County, } In \* \* \* ----- Court  
----- } Before -----, \* \* \* Magistrate  
\* \* \*

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--.  
-----, \* \* \*

SECTION 37. This act shall take effect on the first Monday in January, 1962.

Approved October 2, 1961.