

## CHAPTER 360.

## PROCEEDINGS IN CRIMINAL CASES IN JUSTICE COURTS.

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**360.01 Justice's jurisdiction.** Justices of the peace shall have power and jurisdiction throughout their respective counties as follows:

- (1) To cause to be kept all laws made for the preservation of the peace;
- (2) To cause to come before them, or any of them, persons who shall break the peace, and commit them to jail or bail them, as the case may require;
- (3) To arrest and cause to come before them persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior and keep the peace;
- (4) To cause to come before them persons who are charged with committing any criminal offense, and commit them to jail or bail them, as the case may require;
- (5) To hold a court, subject to the provisions hereinafter contained, to hear, try and determine all charges for offenses arising within their respective counties the punishment whereof does not exceed six months' imprisonment in the county jail or a fine of one hundred dollars, or both such fine and imprisonment, except as otherwise provided.

**Note:** Justices of the peace of towns and villages have jurisdiction with respect to offenses committed in a city of the fourth class; hence in a prosecution for assault and for murder, a plea in abatement on the ground that the defendant had had no legal preliminary examination because the examination had been conducted by a justice of the peace of a town whereas the offenses charged had been committed in a city of the fourth class, was properly overruled. *State v. Galle*, 214 W 46, 252 NW 277.

The clause "except as otherwise provided" in (5) does not operate to extend, but only to limit, the jurisdiction of justices of the peace. *Miller v. State*, 226 W 149, 275 NW 894.

The municipal judge did not have jurisdiction to try the case where the criminal complaint charged a violation of 351.33, and also charged a previous conviction and sentence to state prison, since under the complaint the defendant could be imprisoned in the state prison. *Miller v. State*, 226 W 149, 275 NW 894.

Section 56.08 is applicable to justice court. Unless justice provides otherwise, said section operates as commitment to hard labor as matter of course. 28 Atty. Gen. 71.

Word "punishment" as used in (5) refers only to penalty imposed by court, not to incidental results automatically following from conviction. 30 Atty. Gen. 269.

**360.02 Warrant, when to issue.** (1) Upon complaint made to any justice of the peace by any constable or other person that any such offense has been committed within the county he shall examine the complainant on oath and the witness produced by him, and shall reduce the complaint to writing and cause the same to be subscribed by the complainant; and if it shall appear that such offense had been committed the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein to appear and give evidence at the trial.

(2) Upon like complaint made to any district attorney, he may in his discretion reduce the complaint to writing and cause it to be subscribed and sworn to by the complainant, and may issue a like warrant returnable before some justice of the county. For this purpose the district attorney is authorized to administer an oath to the complainant. [1945 c. 558]

**360.03 Form of complaint.** The complaint mentioned in section 360.02 may be in the following form:

STATE OF WISCONSIN, }  
 .... County. } ss.

The State of Wisconsin, }  
 against }  
 (Name of accused.) }

A. B., being duly sworn, says that on the .... day of ....., in the year 19.., at said county (name of the accused or alias), did (state the crime), against the peace and dignity of the state of Wisconsin.

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

C. D.

**360.04 Other statutes to apply.** Any statute relating to the form, substance or amendment of indictments and informations, the statement of the offense therein and the evidence thereunder, so far as applicable, shall apply to complaints, amendments, proceedings and trials in criminal cases before justices of the peace.

**Note:** A defendant, in a court wherein procedure was the same as in justice courts, waived any objection to its sufficiency, in view of 355.09, made applicable by 360.04 to complaints and trials in criminal cases before justices of the peace. *Kushman v. State ex rel. Panzer*, 240 W 134, 2 NW (2d) 862.

**360.05 Docket entries.** The justice shall enter an action in his docket in which the state of Wisconsin shall be plaintiff and the accused defendant, and he shall keep all such other entries as are required in civil cases.

**360.06 Trial; change of venue.** On the return of the warrant with the accused the said justice shall proceed to hear, try and determine the cause within one day unless continued for cause; and if the defendant shall, before he pleads to said complaint, make oath that, from prejudice or other cause, he believes the justice will not decide impartially in the matter then said justice shall immediately transmit all the papers in the case to the nearest justice of the same county qualified by law to try a cause between the state and the defendant, and who is not unable to try the same by reason of sickness or absence, who shall proceed to hear, try and determine the same in the same manner as it would have been lawful for the justice before whom the warrant was returnable to have done.

**Note:** State is not authorized to obtain change of venue in justice court by filing affidavit of prejudice. 26 Atty. Gen. 429.

**360.07 Bail; commitment.** From the time of the return of the warrant until the conclusion of the trial or proceedings the accused may give bail, provided the offense for which he is under arrest is bailable, in such sum as the court or magistrate shall direct, with one or more sufficient sureties, for his appearance at the time fixed for the trial or examination and from time to time thereafter until discharged by law; or in the event of failure so to do he may be committed to jail for safe-keeping by order of said court or magistrate or left in the custody of an officer.

**360.08 Form of recognizance.** The following form of recognizance or bail bond may be used in all courts not of record and in all examinations held under chapter 361, upon the adjournment of any action, proceeding or examination:

We, A. B. and C. D. and E. F., hereby give bail in the sum of .... dollars, for the appearance of the said A. B. upon the .... day of ....., A. D. 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 offense), and from time to time thereafter until discharged by law.

Dated ....

A. B.  
 C. D.  
 E. F.

which said recognizance or bail bond given or entered in the above form or a form of substantially the same import shall be as valid, binding and effectual and as much a charge as those given in the form heretofore in use, and shall bind the principal and sureties jointly and severally as follows: For the appearance of the accused and his attendance upon the specified court or magistrate at any and all times to which any such trial or examination may be adjourned until discharged by law.

**360.09 Accused to plead.** The charge made against the accused, as stated in the warrant of arrest, shall be distinctly read to him and he shall be required to plead thereto, which plea the court shall enter in its minutes; if the accused refuse to plead the court shall enter the fact, with a plea of not guilty in behalf of such accused, in its minutes.

**360.10 When justice to try issue.** If the plea of the accused be not guilty and no jury be demanded by him the court shall proceed to try such issue, and to determine the same according to the evidence which may be produced against and in behalf of such accused.

**Note:** If a jury is demanded a jury must be granted. *State v. Slowe*, 230 W 406, 284 NW 4.

**360.11 Judgment on plea of guilty.** If the accused shall plead guilty to such charge the court shall thereupon convict him of the offense charged and render judgment thereon.

**360.12 Jury, how obtained.** After the joining of issue and before the court shall proceed to an investigation of the merits of the cause if a jury be demanded the court shall direct the sheriff or any constable of the county to make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in the courts of record of this state, from which list the complainant and accused may each strike out six names.

**360.13 Names, who to strike.** In case the complainant or the accused shall neglect to strike out such names the court shall direct some suitable disinterested person to strike out the names for either or both the parties so neglecting; and upon such names being struck out the justice shall issue a venire directed to the sheriff or any constable of the county requiring him to summon the six persons whose names shall remain upon such list to appear before such court, at the time and place to be named therein, to make a jury for the trial of such offense.

**360.14 Service of venire.** The officer to whom such venire shall be delivered shall summon such jurors personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same with such venire to the court within the time therein specified.

**360.15 Talesmen.** If any of the jurors named in such venire shall fail to attend in pursuance thereof or if there shall be any legal objection to any that shall appear the court shall supply the deficiency by directing the sheriff or any constable who may be present and disinterested to summon any of the bystanders or others who may be competent and against whom no cause of challenge shall appear, to act as jurors in the cause.

**360.16 New jury.** If the officer to whom the venire shall have been delivered shall fail to return the same as thereby required or if the jury shall fail to agree and shall be discharged by the court a new jury shall be selected and summoned in the same manner, and the same proceedings shall thereupon be had as hereinbefore prescribed in respect to the first jury unless the accused shall consent to be tried by the court, in which case the court shall proceed to the trial of the issue as if no jury had been demanded.

**360.17 Challenges.** In all trials for criminal offenses before a justice of the peace either party may challenge any juror for cause as in civil cases.

**360.18** [*Repealed by Supreme Court Order, effective Jan. 1, 1937*]

**360.19 Jury, how to discharge duty.** After the jury shall have been sworn they shall sit together and hear the proofs and allegations in the case, which shall be delivered in public and in the presence of the accused; and after hearing such proofs and allegations the jury shall be kept together in some convenient place until they agree on a verdict or are discharged by the court, and a sheriff or constable shall be sworn to take charge of the jury in like manner as upon trials in justices' courts in civil proceedings.

**360.20 Verdict.** When the jurors have agreed on their verdict they shall deliver the same to the court, publicly, who shall enter it in his docket.

**360.21 Judgment and sentence.** Whenever the accused shall be tried under the preceding provisions of this chapter and found guilty, either by the court or by the jury, or shall be convicted of the charge made against him upon a plea of guilty, the court shall render judgment thereon and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such punishment shall in no case exceed the limit fixed by law for the offense charged.

**Note:** Justice of peace cannot stay jail sentence, but sentence is stayed when appeal is taken. He cannot accept note in payment of fine and costs; nor can he suspend payment of fine and release defendant, except

minor under 57.05. 24 Atty. Gen. 440.  
Justice of peace or other court of record has no authority to suspend execution of sentence except in case of minors covered by 57.05. 29 Atty. Gen. 371.

**360.22 Discharge of accused; costs.** (1) Whenever the accused, tried under the provisions of this chapter, either by the court or by a jury, shall be acquitted he shall be immediately discharged; and if the court before whom the trial is had shall certify in his docket that the complaint was wilful and malicious and without probable cause it shall enter a judgment against the complainant to pay all the costs that shall have accrued to the court and sheriff or constable and jury, and the fees of witnesses in the proceedings had upon such complaint.

(2) The complainant may stay such judgment for thirty days by giving satisfactory security by bond to the state, with one or more sureties, conditioned for the payment of such judgment at the expiration of thirty days; but if the complainant shall neglect to give said security or shall neglect to pay such costs then, in such case, the court before whom the cause is tried may, in case the complainant shall have given security for costs in the manner provided in section 360.33, issue execution on said judgment against both the complainant and the surety, and if the complainant do not satisfy the execution and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the surety; and in case the complainant has not given such security for costs

the court before whom the case is tried may issue execution on said judgment against the person of the complainant in the same manner and to the like effect as is now provided by law in cases when execution may issue against a defendant in actions founded in tort; but the defendant in such judgment shall have the right of appeal therefrom as in civil cases tried before a justice of the peace, and the case shall be tried and determined by the court on such appeal upon the records and evidence in the case duly certified and returned by the magistrate.

**360.23 Justice court criminal actions; five days for appeal.** Any person desiring to appeal from any sentence or judgment of conviction against him shall give said justice notice thereof in writing, within five days and thereupon the defendant shall be committed or enter into recognizance, and further proceedings shall be had upon such appeal as provided in chapter 358; and the complainant and witnesses may also be required to enter into recognizances, with or without sureties, in the discretion of the court, to appear at said circuit court at the time last aforesaid and to abide the order of the court therein.

**360.24 Execution of judgment.** The judgment of every such court shall be executed by the sheriff or any constable of the county where the conviction shall be had, by virtue of a warrant of commitment or of execution, or both, as the case may be, under the hand of the justice who held the court, to be directed to such officers and specifying the particulars of such judgment.

**360.25 Nonattendance of jurors and witnesses.** In case any person summoned to appear before any court held by a justice of the peace, pursuant to the provisions of this chapter, as a juror or witness shall fail to appear or if any witness appearing shall refuse to be sworn or to testify he shall be liable to the same penalties and may be proceeded against in the same manner as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

**360.26 Certificate of conviction.** Whenever any conviction shall be had before a court held by a justice of the peace the justice by whom such court shall have been held shall make a certificate of such conviction under his hand, in which it shall be sufficient briefly to state the offense charged, and the conviction and judgment thereon, and if any fine has been collected the amount thereof.

**360.27 Filing of.** Within twenty days after such conviction the said justice shall cause such certificate to be filed in the office of the clerk of the circuit court of the county in which the conviction shall have been had, and in counties having a court other than the circuit court vested with exclusive appellate criminal jurisdiction such certificate shall be filed with the clerk of such court who shall make a short alphabetical record thereof.

**Note:** Judgment for violation of county circuit court by justice of peace nor should traffic ordinance, not being criminal in nature, should not be filed in office of clerk of circuit court by justice of peace nor should clerk record same as certificate of conviction if it is so filed. 26 Atty. Gen. 600.

**360.28 Certificate as evidence.** Every certificate of conviction, made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

**360.29 Breach of recognizance.** In case of the breach of any recognizance entered into in a criminal case the same shall be certified and returned to the circuit court, to be proceeded upon according to law; and a rearrest may be had as provided in section 361.10.

**360.30 Proceedings if justice no jurisdiction.** If in the progress of any trial before a justice of the peace under the provisions of this chapter it shall appear to the justice from the evidence in the case before him that there is probable cause to believe the defendant guilty of an offense of which the justice has not final jurisdiction and that the defendant ought to be put upon his trial for an offense cognizable before the court which has jurisdiction to hear and try the same the justice shall, immediately, stop all further proceedings in the trial before him and bind the defendant over or commit him to jail to answer to said court having proper jurisdiction in the same manner as he would have done had the defendant been brought before him for an examination for the offense of which the justice shall find there is probable cause to believe him guilty.

**Note:** A justifiable finding of reasonable probability of the defendant's guilt of unlawful operation of his car on the highway, in violation of 85.40 (1) would not alone warrant binding the defendant over to the circuit court for trial and committing him to the custody of the sheriff, under 360.30, since the penalty for such offense was such, under 85.91 (3), that the offense was a misdemeanor punishable, under 360.01, by a justice of the peace. State ex rel. Shields v. Portman, 242 W 5, 6 NW (2d) 713.

A court, sitting as a justice court, trying a criminal case of which a justice of the peace has jurisdiction, is bound to follow the practice prescribed by this section, and hence, if it appears from the evidence that there is probable cause to believe the defendant guilty of an offense of which a justice has not jurisdiction to impose the penalty, it must stop the trial and bind the defendant over for trial to a court that has jurisdiction. State ex rel. Maloney v. Proctor, 249 W 377, 25 NW (2d) 698.

**360.31 Who to be summoned; notice to district attorney.** In all cases arising under this chapter it shall be the duty of the justice of the peace acting to summon the injured

party and all others whose testimony may be deemed material as witnesses at the trial and to enforce their attendance by attachment if necessary. And in any case for any violation of a law of the state relating to the sale of intoxicating liquors and drinks to give notice thereof to the district attorney of the county and to delay the proceeding a reasonable time for him, or for some attorney in his behalf and upon his written request to appear and conduct the same on behalf of the state.

360.32 Notice to witness. When a trial under the provisions of this chapter shall be continued by the justice it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witness, as either party may require, to attend before him to testify in the cause on the day set for trial, which verbal notice shall be as valid as a summons.

360.33 Security for costs. The justice may require of the complainant to give security for costs as in civil cases security may be required of the plaintiff, and if he refuse the justice may dismiss the complaint.

360.34 Record and payment of fines. (1) All fines imposed by any such court, any police justice, municipal judge or other magistrate, if paid before the accused is committed, shall be received by the magistrate before whom the accused was convicted, the amount thereof, the date when, and the title of the case in which received, shall be entered upon the docket or other record required by law to be kept by such magistrate and be by him paid over to the county treasurer within thirty days after the receipt thereof, to be disposed of according to law. And such magistrate shall, at the same time, report in writing to the said treasurer the date of conviction, the title of the case and the offense for which such fine was imposed.

(2) Any magistrate who shall fail or neglect to make the entries, report or payment herein required or who shall refuse to submit his docket or other record for inspection as required by law shall be punished by a fine of not less than \$10 nor more than \$200 or by imprisonment for not less than 10 days and not to exceed 60 days or both for each offense. The county boards may direct the proper district attorney to prosecute any magistrate who shall fail to comply with the provisions of this or any other section relating to the payment of such fines to the county treasurer or the inspection of his docket or other record. [1943 c. 356]

Note: Magistrate who unlawfully remits bond for amount of said fine as well as be fine paid by convicted defendant and for that ing subject to criminal prosecution under reason fails to pay said fine to county treasurer as required by (1) is liable on his (2). 29 Atty. Gen. 371.

360.35 Payment to sheriff. If the accused be committed payment of any fine imposed on him shall be made to the sheriff of the county who shall, within thirty days after the receipt thereof, pay over the same to the county treasurer for the purposes aforesaid.

360.36 Forms. The following forms may be used under this chapter:

WARRANT.  
.... County, }  
Town of .... } ss.

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

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

Given under my hand the .... day of ....., A. D. 19...

J. P., Justice of the Peace.

CERTIFICATE OF CONVICTION.  
.... County, }  
Town of .... } ss.

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

Given under my hand the .... day of ....., A. D. 19...

J. P., Justice of the Peace.

EXECUTION.  
.... County, }  
Town of .... } ss.

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

Whereas, at a justice's court held at my office in said town for the trial of . . . . . for the offense hereinafter stated the said . . . . ., of, etc., was convicted of having, on the . . . . day of . . . ., A. D. 19 . . ., at the town of . . . ., in said county (here state the offense as in the warrant), and upon conviction the said court did adjudge and determine that the said . . . . . should pay a fine of . . . . dollars and costs; and whereas, said fine and costs have not been paid by the said . . . . ., these are therefore to command you to levy distress on the goods and chattels, etc. (as in an execution against the goods or body in civil cases).

COMMITMENT UPON SENTENCE.

. . . . County, }  
Town of . . . . } ss.

THE STATE OF WISCONSIN, to any constable and to the keeper of the common jail of said county:

Whereas, at a justice's court held at my office in said town for the trial of . . . . ., for the offense hereinafter stated, the said . . . . ., etc., was convicted of having, on the . . . . day of . . . ., A. D. 19 . . ., at the town of . . . ., in said county (here state the offense as in the warrant), and upon conviction the said court did adjudge and determine that the said . . . . . should be imprisoned in the common jail of said county for . . . . days, therefore you, the said constable, are commanded forthwith to convey and deliver the said . . . . . to the said keeper; and you, the said keeper, are hereby commanded to receive the said . . . . . into your custody in said jail and him there safely keep until the expiration of said . . . . days or until he shall be thence discharged by due course of law.

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

J. P., Justice of the Peace.

COMMITMENT AFTER ARREST AND BEFORE TRIAL.

. . . . County, }  
Town of . . . . } ss.

THE STATE OF WISCONSIN, to any constable and to the keeper of the common jail of said county:

Whereas, . . . . . has been this day brought before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of . . . . ., with having on the . . . . day of . . . ., A. D. 19 . . ., at the town of . . . ., in said county (here state the offense as in the warrant), and the said . . . . . not having given bail to appear and answer for the said offense, therefore you, the said constable, are commanded forthwith to convey and deliver into the custody of the said keeper the body of the said . . . . .; and you, the said keeper, are hereby commanded to receive the said . . . . . into your custody in said jail, and him there safely keep until he shall be required to be brought before the court to be tried or shall be otherwise discharged by due course of law.

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

J. P., Justice of the Peace.

ORDER TO BRING UP PRISONER.

. . . . County, }  
Town of . . . . } ss.

THE STATE OF WISCONSIN, to the keeper of the common jail of said county:

The undersigned, one of the justices of the peace in and for said county, sitting as a court for the trial of . . . . ., now in your custody in the common jail of said county, do hereby order and direct you to bring the said . . . . . forthwith before me at my office in said town together with the warrant by which he was committed to your custody in order that he may be tried.

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

J. P., Justice of the Peace.

COMMITMENT WHERE JUSTICE HAS NOT JURISDICTION.

. . . . County, }  
Town of . . . . } ss.

THE STATE OF WISCONSIN, to any constable of said county:

Whereas, . . . . ., of, etc., has been brought this day before the undersigned, one of the justices of the peace of said county, charged, on the oath of . . . . ., with having, on the . . . . day of . . . ., A. D. 19 . . ., at the town of . . . ., in said county, committed the offense of (here state the offense charged in the warrant), and in the progress of the trial on said charge it appearing to said justice that there is probable cause to believe that the said . . . . . had been guilty of the offense of (here state the new offense found on trial), committed at the time and place aforesaid, of which offense the said justice has not final jurisdiction; and whereas, after an examination had in due form of law, touching the said charge and offense last aforesaid, the said justice did adjudge that the said offense had been com-

mitted and that there was probable cause to believe the said . . . . . to be guilty thereof; now, whereas the said . . . . . has not offered sufficient bail for his appearance to answer for said offense, you are therefore commanded forthwith to take the said . . . . . and him convey to the county jail of said county, the keeper whereof is required to detain him in custody in said jail until he shall be thence discharged according to law.

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

J. P., Justice of the Peace.