

CHAPTER 800

MUNICIPAL COURT PROCEDURE

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800.001 Definitions. In this chapter:

(1) “Judicial administrative district” means the judicial administrative district having the largest portion of the population in the jurisdiction served by the municipal court.

(2) “Municipality” means the city, village, or town that governs the municipal court, or if more than one city, village, or town has agreed jointly to establish a municipal court under s. 755.01, “municipality” means the city, village, or town where the violation occurred.

History: 1987 a. 389; 2009 a. 402.

800.01 Commencement of action. (1) In municipal court, ordinance violation cases are commenced when the complaint or citation is filed with or transmitted to the court.

(2) The municipal court has jurisdiction over a defendant when any of the following conditions is met:

(a) The defendant is served with a citation or a summons and complaint as provided under s. 801.11 (1) (a) to (c), (5), and (6).

(b) The defendant is arrested and brought before the court personally or through interactive video and audio transmission conducted in accordance with the rules of the supreme court.

(c) The defendant voluntarily appears before the court.

(d) The court finds that the defendant has acknowledged receipt of the citation or summons and complaint.

(e) The summons and complaint or citation are sent to the defendant by 1st class mail.

(2m) The law enforcement officer or municipal employee who serves the summons shall indicate the method of service on the copy of the documents filed or transmitted to the court.

(3) If the action is commenced by a citation under s. 800.02 (2) (a), a deposit may be taken from the defendant. The defendant may be released on his or her own recognizance. A nonresident defendant who does not make a deposit may be detained in jail to be brought before the court at the earliest opportunity.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.01; 1987 a. 389; 1989 a. 170, 261; 1993 a. 437; 1995 a. 27; 1999 a. 9; 2009 a. 402.

Due process does not require commencing a municipal ordinance action by a summons. *Haas v. Wisconsin*, 241 F. Supp. 2d 922 (2003).

Uniformity in Municipal Courts. *Gramling*. Wis. Law. Aug. 2010.

800.02 Form of citation, complaint, summons and warrant in municipal ordinance violation cases.

(1) **ACTION.** An action in municipal court for violation of a municipal ordinance is a civil action, and the forfeiture or penalty imposed by any ordinance of the municipality may be collected in an action in the name of the municipality.

(2) **FORM OF CITATION OR COMPLAINT.** (a) The citation or complaint shall be signed by a law enforcement officer, attorney representing the municipality, or, if applicable, a conservation warden. In addition, the governing body of a municipality authorized to adopt the use of citations may designate by ordinance or resolu-

tion other municipal officials who may sign and issue citations with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to sign and issue citations may delegate, with the approval of the governing body, the authority to employees. Authority delegated to an official or employee may be revoked only in the same manner by which it is conferred.

(ag) The citation or complaint shall contain substantially the following information:

1. The name, address and date of birth of the defendant.

1m. The identification of any permit issued to the defendant, or license number of the defendant, if applicable.

2. The name and department of the issuing officer.

3. The violation alleged, the time and place of the occurrence of the violation, a statement that the defendant committed the violation, the ordinance violated, and a description of the violation in language that can be readily understood.

4. A notice to appear at a date, time and place for the court appearance, and a statement as to whether the appearance is mandated by the judge.

5. Provisions for amount of deposit and stipulation in lieu of a court appearance, if applicable.

6. Notice that the defendant may make a deposit and thereby obtain release if an arrest has been made.

7. Notice that the defendant may, in writing, prior to the court appearance, enter a plea of not guilty.

8. Notice that, if the defendant makes a deposit and fails to appear in court at the time fixed in the citation, the defendant is deemed to have tendered a plea of no contest and submits to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit. The notice shall also state that the court may decide to summon the defendant rather than accept the deposit and plea.

9. Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or a warrant for the defendant’s arrest or may enter a default judgment against the defendant.

9m. In an action against a corporation organized under ch. 180 or 181, or against a limited liability company organized under ch. 183, a statement of the corporate or company existence and whether the corporation or company is a domestic or foreign corporation or limited liability company.

10. Any other pertinent information.

(am) In 1st class cities, all of the written information required under par. (a), except the information under par. (ag) 1. to 4., 9m., and 10., shall be printed in Spanish on a separate sheet attached to the citation or provided in Spanish on the citation.

(b) Except for parking violations, in traffic regulation actions in municipal court, the uniform traffic citation specified in s.

345.11 shall be used in lieu of the citation form specified in par. (ag). In actions for violations of local ordinances enacted in accordance with s. 23.33 (11) (am) or 30.77, the citation form specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

(4) **SUMMONS FORM.** (a) The summons shall be signed by a municipal judge or by the attorney who is prosecuting the case in municipal court and shall contain the following information:

1. The title of the cause, specifying the name of the court and county in which the action is brought and the names of all parties to the action.

2. A direction summoning and requiring the defendant to appear in a specified court on a particular date not less than 10 days following service of the summons to answer the accompanying citation or complaint.

3. A notice that in case of failure to appear, judgment may be rendered against the defendant according to the demand of the citation or complaint, or the court may issue a warrant for the defendant's arrest.

(b) In 1st class cities, all of the written information required under par. (a) shall be printed in Spanish on a separate sheet attached to the summons or provided in Spanish on the summons.

(5) **WARRANT FORM.** The warrant shall be in the name of the state of Wisconsin, shall be directed to all law enforcement officers in the state, may be addressed to any law enforcement officer in the state, may specify geographical limits for enforcement of the warrant, and shall be signed by the municipal judge who authorizes its issuance or contain a computer-generated facsimile of the judge's signature. A municipal judge may authorize the issuance of a warrant under this chapter by using a computer or other electronic media. The municipal judge shall make the authorization so that it is accessible to the attorney for the municipality and law enforcement officers. A law enforcement officer shall convert the municipal judge's authorization to a paper copy of the warrant before serving the warrant. The warrant shall contain or have attached to it the following information:

(a) The name of the defendant.

(b) The offense alleged.

(c) A copy of the citation or complaint.

(d) A finding of probable cause that the defendant committed the offense.

(e) A command to arrest the defendant and bring him or her before the municipal judge or other municipal judge or judge of the county.

(f) The date of issuance.

(6) **AUTHORITY TO ARREST WITHOUT A WARRANT.** A person may be arrested without a warrant for the violation of a municipal ordinance if the arresting officer has reasonable grounds to believe that the person is violating or has violated the ordinance.

History: 1977 c. 305; 1979 c. 22; 1979 c. 32 s. 68; 1979 c. 266; Stats. 1979 s. 800.02; 1981 c. 317; 1983 a. 535; 1987 a. 27; 1987 a. 200 s. 4; 1987 a. 389; 1989 a. 170; 1991 a. 39, 40; 1993 a. 16, 112, 320, 437; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139; 2009 a. 402.

800.025 Amended citation and complaint. A citation or complaint under s. 800.02 may be amended by the municipality prior to the initial appearance of the defendant. A copy of the amended citation or complaint shall be served personally on the defendant or sent to the defendant by 1st class mail. Otherwise, the citation or complaint may be amended, upon notice and an opportunity to be heard, at the discretion of the court. At trial, the court may amend a citation or complaint to conform to the evidence. If the court amends the citation or complaint to conform to the evidence, the court shall allow both parties an opportunity to present evidence with respect to the amended citation or complaint.

History: 1981 c. 225; 2009 a. 402.

800.035 Initial appearance. (1) A defendant may make an initial appearance in person or by submitting a written response to

the citation or complaint except when the judge has required an appearance under s. 800.02 (2) (ag) 4.

(2) If a defendant appears in person, all of the following shall occur:

(a) The court shall, either orally or in writing, do all of the following:

1. Inform the defendant of each charge and explain the range of penalties for each charge.

2. Inform the defendant that he or she may plead guilty, not guilty, or no contest or may request a continuance.

3. Inform the defendant of the right to a jury trial on charges filed under an ordinance in conformity with s. 346.63 (1) or (5).

4. Inform the defendant that if he or she is unable to pay the forfeiture, costs, fees, or surcharges due to poverty, he or she may request an installment payment, community service, or a stay of the judgment.

(b) The defendant shall enter a plea or request a continuance.

(c) If the defendant refuses to enter a plea or request a continuance, the court shall enter a plea of not guilty on the defendant's behalf.

(d) If the defendant pleads guilty or no contest, the court may find the defendant guilty of the offense to which the plea is entered and render judgment as provided under s. 800.09, and then determine if the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d).

(e) If the defendant pleads not guilty and a trial is not held immediately, the court shall schedule the case for a pretrial conference under s. 800.045, further proceedings, or trial, at the discretion of the court.

(2m) A municipal court shall appoint a guardian ad litem or social worker certified or licensed under ch. 457 for any defendant that the court has reason to believe lacks substantial mental capacity to understand the proceedings or assist in his or her defense. The person appointed under this paragraph shall assist the court in making a determination concerning the defendant's mental capacity. If the court determines that the defendant lacks the mental capacity to understand the proceedings or assist in his or her defense, the court shall suspend the proceedings. The cost of the guardian ad litem or social worker shall be paid by the municipality or municipalities that established the court. The governing body may by ordinance or bylaw authorize the appointment of a guardian ad litem by the municipal judge in any other matter within the jurisdiction of the municipal court.

(3) If the defendant submits a written response to the citation or complaint and enters a plea of guilty or no contest, the court shall proceed under sub. (2) (d).

(4) If the defendant submits a written response to the citation or complaint and enters a plea of not guilty, the court shall proceed under sub. (2) (e).

(5) (a) If a defendant is charged with a violation of an ordinance in conformity with s. 346.63 (1) or (5), the municipality may, by ordinance, require the defendant to appear in person before the court.

(b) If a person fails to make a required personal appearance under this subsection and the judge issues an arrest warrant, the law enforcement agency that filed or transmitted the uniform traffic citation shall file a detailed description of the warrant with the department of justice.

(c) If a defendant charged with a violation of an ordinance that is in conformity with s. 346.63 (1) or (5) pleads not guilty and within 10 days after entry of the plea requests a jury trial and pays the required fees, the municipal judge shall promptly transmit all papers and fees in the cause to the clerk of the circuit court of the county where the violation occurred for a jury trial under s. 345.43. The plea of not guilty and request for jury trial may be made in writing. If the person refused to take a test under s. 343.305 (3) and requested a hearing under s. 343.305 (9) to determine if the person's refusal was proper, the papers and fees

involved in that action shall be transferred to the same circuit court, which shall conduct the refusal hearing. Upon receipt of the request, the circuit court shall set a time for trial. Any deposit made personally or in writing is forfeited upon nonappearance at the time set for trial. The required fee for a jury is prescribed in s. 814.61 (4).

(6) In all cases, a defendant may enter a plea of no contest and provide a deposit at any time before the initial appearance.

(7) (a) A municipal judge may release a defendant without a deposit.

(b) If the municipal judge determines that the defendant should not be released under par. (a), the municipal judge shall release the defendant on a deposit in the amount established for the violation. If the judge in a 1st class city determines that a defendant appearing before the judge through interactive video and audio transmission should not be released under par. (a), the judge shall inform the defendant that he or she has the right to appear personally before a judge for a determination, not prejudiced by the first appearance, as to whether he or she should be released without a deposit. On failure of the defendant to make a deposit under this paragraph, he or she may be committed to jail, for not more than 48 hours, only if the judge finds that there is a reasonable basis to believe the person will not appear in court.

(8) If the defendant does not appear, but has made a deposit in the amount set for the violation, he or she is deemed to have tendered a plea of no contest and submits to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not exceeding the amount of the deposit. The court may impose any other penalties allowed by law. The court may either accept the plea of no contest and enter judgment accordingly, or reject the plea and issue a summons. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the defendant fails to appear in response to the summons, the court may issue a warrant under s. 968.09. If the defendant has made a deposit but does appear, the court shall allow the defendant to withdraw the plea of no contest.

(9) If a defendant does not appear at the initial appearance and has not made a deposit in the amount set for the violation, upon proof of jurisdiction under s. 800.01 (2), the court may either enter a default judgment under s. 800.09 or issue a warrant or summons to bring the defendant before the court. If a warrant is issued for a defendant under this subsection, the defendant may be detained in jail, for not more than 48 hours, prior to the initial appearance.

History: 2009 a. 402 ss. 19, 72, 76, 79 to 82; 2011 a. 260 s. 80.

800.037 Deposit amount and schedule. The deposit in traffic cases shall be made as provided in s. 345.26. In boating cases, the deposit shall be made as provided in s. 23.66 and 23.67. The municipal court, with the approval of the governing body of the municipality, shall set the deposit schedule for all other cases. The deposit amount in the schedule may not exceed the maximum penalty established by the municipality for the offense, plus costs, fees, and surcharges imposed under ch. 814.

History: 2009 a. 402.

800.045 Pretrial conferences. (1) The municipal judge may schedule a pretrial conference. Upon agreement of the parties, the parties may waive a pretrial conference.

(2) If the defendant does not appear at the pretrial conference, the court may proceed under s. 800.035 (8) or (9).

(3) If the parties reach an agreement, the agreement shall be submitted to the court for the court's approval. If an agreement is not reached, or if the court does not approve an agreement, the court shall schedule the action for further proceedings.

History: 2009 a. 402.

800.05 Substitution or disqualification of municipal judge. (1) A defendant may file a written request for a substitution of a new judge for the municipal judge assigned to the trial of

that case. The written request shall be filed not later than 7 days after the initial appearance in person or by an attorney. The municipal judge against whom a request has been filed may set initial bail and accept a plea of not guilty.

(3) Upon receipt of the written request under sub. (1), 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. Upon such a determination, or if no determination is made within 7 days, the court shall transfer the matter to the chief judge of the judicial administrative district 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 immediately transmit to the appropriate court all the records in the action. Upon receipt of the records, the new judge shall specify the court's location in which the case will be heard. In all such cases, the parties shall remain the same, the prosecutor of the transferring court shall be responsible for prosecution in the new court, and the judgment, if any, shall be payable to the transferring court.

(4) (a) If a new judge is assigned to the trial of the action, and the defendant has not exercised the right to substitute an assigned judge, a written request for the substitution of the new judge may be filed within 7 days after the giving of actual notice or sending of the notice of assignment to the defendant or the defendant's attorney. If the notice occurs within 48 hours of the trial, or if there has been no notification, the defendant may make an oral or written request for substitution prior to the commencement of the proceedings.

(b) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order in a manner such that further proceedings in the municipal court are necessary, the person charged with a violation may file a request under sub. (1) within 20 days after the entry of the judgment or decision of the appellate court whether or not another request was filed prior to the time the appeal or writ of error was taken.

(5) If the municipal judge disqualifies himself or herself under s. 757.19 or SCR 60.04, the case shall be transferred under sub. (3).

History: 1977 c. 305, 447; 1977 c. 449 s. 496; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.05; 1987 a. 151; 2009 a. 402.

800.06 Illness, absence or vacancy; pending actions triable by court which receives papers; continuance on vacancy and notice of trial. (1) If any municipal judge is to be temporarily absent or is sick or disabled, the municipal judge may, by written request, subject to the order of the chief judge of the judicial administrative district, designate another municipal judge from any municipality within the state to perform his or her duties for a period not to exceed 30 days.

(2) If any municipal judge is incompetent, unable or fails to act, s. 751.03 (2) applies. The parties and their attorneys shall be notified of the transfer to another judge.

(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 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). The municipal judge designated under this subsection may exercise all of the authority of the municipal court to which he or she is assigned.

History: 1977 c. 305; 1977 c. 449 s. 497; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.06; 1985 a. 304; 1987 a. 151; 1993 a. 384; 1995 a. 224; 2009 a. 402.

800.065 Reserve municipal judges. (1) DEFINITIONS. In this section, "reserve municipal judge" means a former municipal judge who has complied with s. 755.03 and is appointed by the chief judge of the former municipal judge's judicial administra-

tive district to perform such specified duties on a day-by-day basis as the chief judge may direct.

(2) ELIGIBILITY. Any of the following persons may serve as a temporary reserve judge:

(a) A person who has served a total of 8 or more years as a municipal judge.

(b) A person who has served 4 or more years as a municipal judge and who was not defeated at the most recent time he or she sought election to judicial office.

(3) COMPENSATION. Notwithstanding s. 755.04, reserve municipal judges under this section shall receive compensation in an amount agreed to by contract between the municipality and the reserve municipal judge.

(4) TRAINING. All persons serving as reserve municipal judges under this section are subject to s. 755.18.

History: 1987 a. 389; 2009 a. 402.

800.07 Discovery in municipal court. Neither party is entitled to pretrial discovery in any action in municipal court, including refusal hearings held by a municipal court under s. 343.305 (9), except that if the defendant moves for pretrial discovery within 30 days after the initial appearance in person or by an attorney, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed. The defendant may move for pretrial discovery at any other time upon a showing of cause for that discovery.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.07; 1987 a. 389; 2003 a. 199; 2009 a. 402.

800.08 Procedure at trial. (1) At trial the plaintiff shall provide a prosecutor who is an attorney authorized or licensed to practice law in this state. The plaintiff shall first offer evidence in support of the citation or complaint. The defendant may offer evidence after the plaintiff has rested. If the plaintiff and the defendant have offered evidence upon the citation or complaint, the parties may then respectively offer rebuttal testimony only, unless the court permits them to offer evidence upon their original case. Both parties shall have the opportunity to question all witnesses.

(2) (a) Before testifying, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken his or her conscience and impress the witness with the duty to testify truthfully.

(b) The oath may be administered by the judge or his or her designee substantially in the following form: Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth, so help you God.

(c) Every person who declares that he or she has conscientious scruples against taking the oath, or swearing in the usual form, shall make a solemn declaration or affirmation, which may be in the following form: Do you solemnly, sincerely and truly declare and affirm that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth; and this you do under the pains and penalties of perjury.

(d) The assent to the oath or affirmation by the person making it may be manifested by the uplifted hand.

(3) The standard of proof for conviction of any person charged with violation of any municipal ordinance shall be evidence that is clear, is satisfactory, and convinces the judge to a reasonable certainty.

(4) Except as provided in s. 938.17 (2) (h) 3., the court shall be bound by the rules of evidence specified in chs. 901 to 911.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.08; 1997 a. 205; 2009 a. 402.

800.085 Telephone and audiovisual proceedings. At any proceeding under this chapter, a party, witness, or interpreter

may appear by telephone or by audiovisual means if any of the following apply:

(1) The parties so stipulate and the court approves.

(2) The court finds good cause after considering the factors under s. 807.13 (2) (c).

History: 2009 a. 402.

800.09 Judgment. (1b) If the court finds a defendant guilty, the court may render judgment by ordering any of the following:

(a) A forfeiture, plus costs, fees, and surcharges imposed under ch. 814.

(b) Community service work.

(c) An operating privilege suspension or revocation if authorized by law.

(d) Other dispositions authorized by law.

(e) For juveniles, dispositions authorized under s. 938.17 (2).

(1d) The court shall apply any payment received on a judgment that includes restitution to first satisfy any payment of restitution ordered, then to pay the forfeiture, costs, fees, and surcharges.

(1g) The court may defer payment of any judgment or provide for installment payments. At the time that the judgment is rendered, the court shall inform the defendant, orally and in writing, of the date by which restitution and the payment of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, must be made, and of the possible consequences of failure to do so in timely fashion, including imprisonment, as provided in s. 800.095, or suspension of the defendant's motor vehicle operating privilege, as provided in sub. (1b) (c), if applicable. In addition, the court shall inform the defendant, orally and in writing, that the defendant should notify the court if he or she is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), and that he or she may request community service in lieu of payment of the judgment. If the defendant is not present, the court shall ensure that the information is sent to the defendant by mail. If the defendant is present and the court, using the criteria in s. 814.29 (1) (d), determines that the defendant is unable to pay the judgment because of poverty, the court shall provide the defendant with an opportunity to pay the judgment in installments, taking into account the defendant's income, or to perform community service in lieu of payment of the judgment. In 1st class cities, all of the written information required by this subsection shall be printed in English and Spanish and provided to each defendant.

(1j) If the court orders the defendant to perform community service work in lieu of making restitution or of paying the forfeiture, surcharges, fees and costs, or both, the court may order that the defendant perform community service work for a public agency or a nonprofit charitable organization that is approved by the court and agreed to by the public agency or nonprofit charitable organization. Community service work may be in lieu of restitution only if also agreed to by the person to whom restitution is owed. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the forfeiture by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored.

(3) (a) If the operating privilege of a defendant is suspended under this section or s. 800.095, the court may terminate that suspension and substitute an installment payment plan for paying the amount of the judgment that takes into account the defendant's income.

(b) If the operating privilege of a defendant is suspended under this section or s. 800.095, the court shall terminate that suspension and substitute an installment payment plan for the payment of the amount of the judgment that takes into account the defendant's income if all of the following conditions apply:

1. The defendant is unable to pay the judgment in full because of poverty, as that term is used in s. 814.29 (1) (d).

2. The defendant has not previously failed to comply with an installment payment plan ordered under this section that takes into account the defendant's income.

(c) If the defendant fails to comply with an installment payment plan ordered under this subsection, the court shall reinstate the suspension of the defendant's operating privilege.

History: 1977 c. 305; 1979 c. 32 s. 68; Stats. 1979 s. 800.09; 1981 c. 317; 1985 a. 179; 1987 a. 27, 389; 1987 a. 399 s. 494u; 1989 a. 107; 1991 a. 39, 40, 189; 1993 a. 16; 1997 a. 27, 84; 1999 a. 9, 185; 2001 a. 16; 2003 a. 139; 2009 a. 17, 103, 402; 2011 a. 257.

Section 343.30 (5) does not preclude the suspension of operating privileges under s. 800.09 or 800.095. Suspension of operating privileges for failure to pay non-traffic forfeitures is not an unconstitutional exercise of the police power or an unconstitutionally excessive fine. *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

An award of costs of prosecution does not include actual attorney fees. *Town of Wayne v. Bishop*, 210 Wis. 2d 218, 565 N.W.2d 201 (Ct. App. 1997), 95-2387.

A municipal court is not authorized to subpoena persons outside of the state; thus the court cannot order an out of state defendant to appear in person. There is no inherent authority in the court authorizing such an order. *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 595 N.W.2d 635 (1999), 97-1651.

800.093 Restitution. (1) The court, in addition to ordering any payment authorized by law, may order a defendant to make full or partial restitution under this section to any victim or, if the victim is deceased, to his or her estate if the court finds all of the following:

(a) The defendant is guilty of violating a nontraffic ordinance or an ordinance authorizing restitution under s. 346.65 (2r).

(b) The violation resulted in damage to the property of or physical injury to a person other than the defendant.

(2) Restitution ordered under this section is enforceable in a civil action by the victim named in the order to receive restitution. A court may not order a defendant to pay more than the amount specified in s. 799.01 (1) (d) in restitution under this section.

(3) If the violation resulted in damage to or loss or destruction of property, the restitution order may require that the defendant do one of the following:

(a) Return the property to the owner or owner's designee.

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee, subject to the limit in sub. (2), the reasonable repair or replacement cost or the greater of the following:

1. The value of the property on the date of its damage, loss or destruction.

2. The value of the property on the date judgment is rendered, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.

(4) If the violation resulted in physical injury, the restitution order may require that the defendant do one or more of the following, subject to the limit in sub. (2):

(a) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric or psychological care and treatment.

(b) Reimburse the injured person for income lost as a result of the violation.

(c) If the injured person's sole employment at the time of the injury was performing the duties of a homemaker, pay an amount sufficient to reimburse the person for any payments made to another to perform those duties from the date of the injury and to ensure that the duties are continued until the person is able to resume performance of the duties.

(5) The restitution order may require that the defendant do one or more of the following, subject to the limit in sub. (2):

(a) Pay all special damages, but not general damages, including, but without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses, substantiated by evidence in the record, that could

be recovered in a civil action against the defendant for his or her conduct in the commission of the violation.

(b) Pay an amount equal to the income lost, and reasonable out-of-pocket expenses incurred, by the person against whom the violation was committed as a result of the commencement of the action or of cooperating in the investigation and prosecution of the violation.

(c) If justice so requires, reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.

(6) If the court orders that restitution be paid to more than one person, the court may direct the sequence in which payments are to be made. The court shall order that all restitution to victims be made before restitution to other persons. If more than one defendant is ordered to make payments to the same person, the court may apportion liability between the defendants or specify joint and several liability. If the court specifies that 2 or more defendants are jointly and severally liable, the court shall distribute any overpayments so that each defendant, as closely as possible, pays the same proportion of the ordered restitution.

(7) Restitution ordered under this section does not limit or impair the right of a victim to sue and recover damages from the defendant in a civil action. The fact that restitution was required or made is not admissible as evidence in that civil action and has no legal effect on the merits of the civil action. Any restitution made by payment or community service shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events that were the basis for the restitution. The court trying that civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(8) (a) The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

1. The amount of loss suffered by any victim as a result of the violation.

2. The financial resources of the defendant.

3. The present and future earning ability of the defendant.

4. The needs and earning ability of the defendant's dependents.

5. Any other factors which the court deems appropriate.

(b) If the court finds that the conditions in sub. (1) are met, the court may hold the restitution hearing at the time of any appearance by the defendant before the court or may summon the defendant to appear to determine if restitution shall be ordered. The court shall give the victim an opportunity to present evidence and arguments pertaining to the factor specified in par. (a) 1. The court shall give the defendant the opportunity to present evidence and arguments on the factors specified in par. (a). The victim has the burden of demonstrating by the preponderance of the evidence the amount of loss sustained as a result of the violation. The defendant has the burden of demonstrating by the preponderance of the evidence the factors specified in par. (a) 2. to 5. When hearing evidence as to the factors specified in par. (a), the court may waive the rules of practice, procedure, pleading and evidence, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person.

History: 1991 a. 40; 1995 a. 156; 2009 a. 402.

800.095 Nonpayment of monetary judgment. (1) If the defendant fails to pay a monetary judgment ordered by the court, the court may order any one of the following, or any combination of the following, except as provided in sub. (3):

(a) Suspension of the defendant's operating privilege until the defendant pays the judgment, but not to exceed 2 years. If the court orders suspension under this paragraph, all of the following apply:

1. The court shall notify the department of transportation of the suspension for failure to pay the judgment. If the defendant pays the judgment, the court shall notify the department of trans-

portation of the payment within 7 days in the form and manner prescribed by the department.

2. The court may order the suspension concurrent or consecutive to any other suspensions or revocations. If the court fails to specify whether the suspension is consecutive or concurrent, the department of transportation shall implement the suspension concurrent with any other suspensions or revocations.

3. If the judgment remains unpaid at the end of the 2-year suspension, the court may not order a further suspension of operating privileges in relation to the outstanding judgment.

3m. If the court terminates the defendant's suspension as the result of the defendant's agreement to a payment plan or community service and the defendant is later suspended because he or she defaults on that plan or service, the new suspension shall be reduced by the amount of time that the suspension was served before being terminated by the court.

4. Serving the complete 2-year suspension of the defendant's operating privilege does not relieve the defendant of the responsibility to pay the judgment.

5. During the period of operating privilege suspension under this paragraph, the defendant may request the court to reconsider the order of suspension based on an inability to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d). The court shall consider the defendant's request. If the court determines that the inability to pay the judgment is because of poverty, the court shall withdraw the suspension and grant the defendant further time to pay or withdraw the suspension and order one or more other sanctions set forth in this subsection, including community service.

6. This paragraph does not apply if the judgment was entered solely for a violation of an ordinance unrelated to the violator's operation of a motor vehicle unless the judgment is ordered under ch. 938. Nonmoving traffic offenses, as defined in s. 345.28 (1) (c), are related to the violator's operation of a motor vehicle.

(b) 1. That the defendant be imprisoned until the forfeiture, assessments, surcharge, and costs are paid. If the court orders imprisonment under this subdivision, all of the following apply:

a. The maximum period of imprisonment shall be 90 days for any one judgment, and the defendant shall receive credit against the amount owed at the rate of at least \$50 for each day of imprisonment, including imprisonment following an arrest but prior to the court making a finding under subd. 2.

b. The court may impose a term of imprisonment under this subdivision that is either concurrent with or consecutive to any other term of imprisonment imposed at the same time or any term of imprisonment imposed by any court.

2. No defendant may be imprisoned under subd. 1. unless the court makes one of the following findings:

a. Either at sentencing or thereafter, that the defendant has the ability to pay the judgment within a reasonable time. If a defendant meets the criteria in s. 814.29 (1) (d), the defendant shall be presumed unable to pay under this subsection and the court shall either suspend or extend payment of the judgment or order community service.

b. The defendant has failed, without good cause, to perform the community service authorized under this subsection or s. 800.09.

c. The defendant has failed to attend an indigency hearing offered by the court to provide the defendant with an opportunity to determine whether he or she has the ability to pay the judgment.

d. The defendant has failed, without good cause, to complete an assessment or treatment program related to alcohol or drugs that was ordered in lieu of a monetary forfeiture.

3. The defendant shall be committed to a jail or a house of correction in the county in which the cause of action arose. The defendant shall be eligible for privileges under s. 303.08. The municipality shall pay the expenses incurred by the county to imprison the defendant.

(c) 1. In this paragraph, "employer" includes the state and the political subdivisions of the state.

2. Assignment to the municipal court of not more than 25 percent of the defendant's commissions, earnings, salaries, wages, pension benefits unless otherwise exempt, benefits under ch. 102, and other money due or to be due to the defendant, including lottery prizes, for payment of the unpaid forfeiture, costs, surcharge, fees, or restitution.

3. Upon entry of the assignment under subd. 2., unless the court finds that income withholding is likely to cause the defendant irreparable harm, the court shall provide notice of the assignment by regular mail to the last-known address of the person from whom the defendant receives or will receive money. If the municipal court does not receive the money from the person notified, the court shall provide notice of the assignment to any other person from whom the defendant receives or will receive money. Notice of an assignment under subd. 2. shall inform the intended recipient that, if a prior assignment under subd. 2. or s. 778.30 (1) or 973.05 (4) has been received relating to the same defendant, the recipient is required to notify the municipal court that sent the subsequent notice of assignment that another assignment has already been received. A notice of assignment shall include a form permitting the recipient to designate on the form that another assignment has already been received.

4. If, after receiving the annual list under s. 565.30 (5r) (a), the municipal court determines that a person identified in the list may be subject to an assignment under subd. 2., the court shall send the notice of that order to the administrator of the lottery division of the department of revenue, including a statement of the amount owed under the judgment and the name and address of the person owing the judgment. The municipal court shall notify the administrator of the lottery division of the department of revenue when the judgment that is the basis of the assignment has been paid in full.

5. Notice under this paragraph may be a notice of the court, a copy of the executed assignment or a copy of that part of the court order that directs payment.

6. For each payment made under the assignment under subd. 2., the person from whom the defendant under the order receives money shall receive an amount equal to the person's necessary disbursements, not to exceed \$3, which shall be deducted from the money to be paid to the defendant.

7. A person who receives notice of the assignment under this paragraph shall withhold the amount specified in the notice from any money that person pays to the defendant later than one week after receipt of the notice of assignment. Within 5 days after the day on which the person pays money to the defendant, the person shall send the amount withheld to the municipal court of the jurisdiction providing notice. If the person has already received a notice of an assignment under this paragraph or s. 778.30 (2) or 973.05 (5), the person shall retain the later assignment and withhold the amount specified in that assignment after the last of any prior assignments is paid in full. Within 10 days of receipt of the later notice, the person shall notify the municipal court that sent the notice that the person has received a prior notice of an assignment under subd. 2. Section 241.09 does not apply to assignments under this section.

8. If after receipt of notice of assignment under this paragraph the person from whom the defendant receives money fails to withhold the money or send the money to the municipal court as provided in this paragraph, the person may be proceeded against under the principal action under s. 800.12 for contempt of court or may be proceeded against under ch. 778 and be required to forfeit not less than \$50 nor more than an amount, if the amount exceeds \$50, that is equal to 1 percent of the amount not withheld or sent.

9. If an employer who receives notice of an assignment under this paragraph fails to notify the municipal court within 10 days after an employee is terminated or otherwise temporarily or per-

manently leaves the employer's employment, the employer may be proceeded against under the principal action under s. 800.12 for contempt of court.

10. Compliance by the person from whom the defendant receives money with the order operates as a discharge of the person's liability to the defendant as to that portion of the defendant's commission, earnings, salaries, wages, benefits, or other money so affected.

11. No employer may use an assignment under subd. 2. as a basis for the denial of employment to a defendant, the discharge of an employee, or any disciplinary action against an employee. An employer who denies employment or discharges or disciplines an employee in violation of this subdivision may be fined not more than \$500 and may be required to make full restitution to the aggrieved person, including reinstatement and back pay. Restitution shall be in accordance with s. 973.20. An aggrieved person may apply to the district attorney or to the department of workforce development for enforcement of this subdivision.

12. a. In this subdivision, "payroll period" has the meaning given in s. 71.63 (5).

b. If after an assignment is in effect the defendant's employer changes its payroll period, or the defendant changes employers and the new employer's payroll period is different from the former employer's payroll period, the municipal court may amend the withholding assignment or order so that the withholding frequency corresponds to the new payroll period and the amounts to be withheld reflect the adjustment to the withholding frequency.

13. The municipal court shall provide notice of the amended withholding assignment or order under subd. 12. by regular mail to the defendant's employer and to the defendant.

(d) That the defendant perform community service work for a public agency or nonprofit charitable organization approved by the court and agreed to by the agency or nonprofit charitable organization. If the community service work is in lieu of restitution, then the person to whom restitution is owed must agree; the defendant shall be given credit at the rate of not less than the minimum wage established under ch. 104 for adults in nonagriculture, non-tipped employment for each one hour of community service completed. The defendant shall be given a written statement of the community service order. Nothing in this paragraph makes the defendant an employee or agent of the court or the municipality. The defendant shall be responsible for providing the court with proof that the community service hours have been completed.

(2) At any time prior to imprisonment under sub. (1) (b), the defendant may request a review of any findings made under sub. (1) (b) 2.

(3) Subsection (1) (a) and (b) does not apply to orders for restitution under s. 800.093 or in cases where service of the summons and complaint or citation is made by mail as authorized in s. 800.01 (2) (e).

(4) The court may, at any time, authorize payment of the monetary judgment by installment payments, or may modify, suspend, or permanently stay the monetary judgment, or order that the judgment be satisfied by community service.

(5) The court may employ a collection company to collect the judgment under s. 755.21.

(6) The court or collection company may obtain payment through a setoff against the defendant's tax refund under s. 71.935.

(7) In addition to the procedures under this section, a municipality may enforce the judgment in the same manner as for a judgment in an ordinary civil action.

(8) In addition to the procedures under this section, a municipal court may order the transfer of any of the defendant's money or property that the municipality is holding and that is unclaimed by the defendant for more than one year to pay any forfeitures, fees, costs, or surcharges that the defendant failed to pay the municipality.

History: 1987 a. 389; 1987 a. 399 s. 494u; 1989 a. 31; 1991 a. 40; 1995 a. 27; 1997 a. 84, 250; 1999 a. 9 ss. 3083m, 3263; 1999 a. 185; 2005 a. 192; 2009 a. 17, 402.

Section 343.30 (5) does not preclude the suspension of operating privileges under s. 800.09 or 800.095. Suspension of operating privileges for failure to pay non-traffic forfeitures is not an unconstitutional exercise of the police power or an unconstitutionally excessive fine. *City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 532 N.W.2d 690 (1995).

This section authorizes incarceration of defendants for noncompliance with with default judgments entered by the municipal court. The power is not restricted to ordinance violations with statutory counterparts. Incarceration under this section is not imprisonment for debt or involuntary servitude. *Haas v. Wisconsin*, 241 F. Supp. 2d 922 (2003).

800.10 Fees and costs in municipal court. (1) Fees and costs in municipal court are prescribed in ch. 814.

(2) All forfeitures, fees, surcharges, and costs paid to a municipal court under a judgment before a municipal judge shall be reported and paid to the municipal treasurer within 30 days after receipt of the money by the municipal court. The treasurer shall disburse the fees as provided in ch. 814.

History: 1981 c. 317; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1999 a. 9; 2001 a. 16; 2003 a. 139; 2009 a. 402.

800.11 Municipal court record and transcript entries.

(1) Every municipal court shall keep a court record in which the court shall enter, in actions to which they relate:

(a) The title of every action commenced before the municipal court, including the name and address of the defendant;

(b) The process issued, date and place where it issued, when returnable and the return of the officer;

(c) A brief statement of the charges, including the nature and time of the offense and the section of law violated;

(d) Every adjournment, stating at whose request and to what time;

(e) The date and time trial was held;

(f) The names of witnesses sworn, stating at whose request;

(g) The judgment rendered by the municipal court, including the penalties imposed, the date of rendering judgment and the costs assessed in the action;

(h) The record of contempt convictions under s. 800.12;

(i) The amount of bail and names and addresses of sureties, if any;

(j) The time of ordering any stay of execution;

(k) The time of issuing execution and the name of the officer to whom delivered;

(m) The return of every execution and when made and every renewal of an execution, with the date thereof;

(n) The date and reason of removal of the action to another court;

(o) The date of giving transcript of judgment;

(p) The date of an appeal made from judgment; and

(q) All motions made in the action, the decision thereon and all other proceedings in the action which the municipal court may think useful.

(2) Failure of the municipal court to keep a court record properly shall not affect the jurisdiction of the municipal court or render the judgment void.

(3) The transcript of judgment shall contain the following:

(a) The name and location of the court.

(b) The title of action.

(c) The name and address of the defendant.

(d) The date of judgment.

(e) The amount of judgment, costs and fees.

(f) The certification that it is a true copy of the judgment.

(4) If the municipal judge is elected under s. 755.01 (4), the court shall keep separate court records for each municipality.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.11; 1985 a. 89; 1995 a. 224; 2009 a. 402.

800.115 Relief from judgment. (1) A defendant may within 6 months after the judgment is entered move for relief from the judgment because of mistake, inadvertence, surprise, or excusable neglect.

(2) Any party, including the court on its own motion, may at any time move to reopen the judgment under s. 806.07 (1) (c), (d), (g), or (h).

(3) Nothing in this section shall prevent the parties from stipulating and the court approving the reopening of a judgment for any other reason justifying relief from operation of the judgment.

(4) The court may impose costs on the motion as allowed under s. 814.07.

(5) Upon receiving or making a motion under this section, the court shall provide notice to all parties and schedule a hearing on the motion.

History: 1987 a. 389; 2009 a. 402.

Only a defendant may seek relief under this section. However a municipal court has the inherent authority to vacate a void judgment irrespective of the statute's requirements for reopening a judgment. *City of Kenosha v. Jensen*, 184 Wis. 2d 91, 516 N.W.2d 4 (Ct. App. 1994).

800.12 Municipal court contempt procedure. (1) In this section, “contempt of court” means any of the following intentional acts:

(a) Misconduct in the presence of the court that interferes with the court proceeding or with the administration of justice, or that impairs the respect due the court.

(b) Refusal of a witness to appear without reasonable excuse.

(2) A judge may impose a forfeiture in an amount not to exceed \$200 for a contempt of court.

(3) For a contempt of court described in sub. (1) (a), the judge may impose imprisonment in the county jail for not more than 7 days and impose a forfeiture. These penalties shall be imposed immediately after the contempt of court has occurred and only under the following conditions:

(a) For the purpose of preserving order in the court and protecting the authority and dignity of the court.

(b) After allowing the person who committed the contempt of court an opportunity to address the court.

(4) For a contempt of court described in sub. (1) (b), the judge may do any of the following:

(a) Issue a warrant to bring the witness before the court for the contempt and to testify.

(b) In addition to ordering the witness to pay a forfeiture under sub. (2), the judge may order the witness to pay all costs of the witness's apprehension.

History: 1977 c. 305; 1979 c. 32 s. 68; 1979 c. 257; Stats. 1979 s. 800.12; 1987 a. 27; 1989 a. 107; 1991 a. 39; 1993 a. 16; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139; 2009 a. 402.

800.13 Recording in municipal court. (1) Every proceeding in which testimony is taken under oath or affirmation in a municipal court shall be recorded by electronic means for purposes of appeal.

(2) Notwithstanding sub. (1), a municipal court is not a court of record.

History: 1977 c. 305; 1979 c. 32 s. 68; 1979 c. 237; Stats. 1979 s. 800.13; 2009 a. 402.

800.14 Appeal from municipal court decision.

(1) Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defend-

ant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), may be taken by either party to the circuit court of the county where the offense occurred. The appellant shall appeal by giving the municipal judge and other party written notice of appeal within 20 days after the judgment or decision. No appeals may be taken from default judgments.

(2) On appeal by the defendant, the defendant shall execute a bond, at the discretion of the municipal judge, to the municipal court with or without surety, approved by the municipal judge, that if the judgment is affirmed in whole or in part the defendant shall pay the judgment and all costs awarded on appeal.

(3) On meeting the requirements for appeal, execution on the judgment of the municipal court or enforcement of the order of the municipal court shall be stayed until the final disposition of the appeal.

(4) An appeal from a judgment where a trial has been held shall be on the record unless, within 20 days after notice of appeal has been filed with the municipal court under sub. (1), either party requests that a new trial be held in circuit court. The new trial shall be conducted by the court without a jury unless either party requests a 6–person jury trial and posts the jury fee under s. 814.61 (4) within 10 days after the order for a new trial.

(5) If there is no request or motion under sub. (4), or if the appeal is from a judgment or decision in which a trial has not been held, the appeal shall be based upon a review of the proceedings in the municipal court. The municipal court shall transmit to the circuit court a copy of the entire record, including any electronic recording created under s. 800.13 (1). When testimony has been recorded in the municipal court, the municipal court shall order the preparation of a transcript of the proceedings, at the cost of the appellant, from the electronic recording and shall certify the transcript and transmit it with the record. An appellant shall, within 20 days after notice of appeal, submit payment of the estimated cost of the transcript, as determined by the municipal court, but shall be responsible for the actual cost of preparing the transcript. A defendant claiming an inability to pay with regard to the bond or the transcript fee may petition the municipal court for a waiver. A defendant claiming an inability to pay with regard to the appeal fee or jury fee may petition the circuit court for a waiver.

(6) The disposition of the appeal shall be certified to the municipal court by the circuit court within 30 days of the judgment of the circuit court. If the disposition requires payment of a forfeiture by the defendant, the forfeiture and all costs, fees, and surcharges shall be payable to the municipality.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); 1979 c. 237; Stats. 1979 s. 800.14; 1981 c. 317 s. 2202; 1987 a. 389; 2005 a. 191; 2009 a. 402.

Review under sub. (5) is analogous to appellate review of a trial to the court under s. 805.17 (2). *Village of Williams Bay v. Metz*, 124 Wis. 2d 356, 369 N.W.2d 186 (Ct. App. 1985).

When a municipal court found the defendant guilty of OWI and dismissed a blood alcohol count charge without finding guilt, the defendant's appeal of the OWI conviction did not give the circuit court jurisdiction to hear the BAC charge absent an appeal of the dismissal. *Town of Menasha v. Bastian*, 178 Wis. 2d 191, 503 N.W.2d 382 (Ct. App. 1993).

There is no statutory or constitutional requirement that a circuit court must hold a hearing or request briefs when conducting a transcript review under sub. (5). This section, when considered as a whole, affords municipal court appellants a meaningful right to be heard. *City of Middleton v. Hennen*, 206 Wis. 2d 347, 557 N.W.2d 818 (Ct. App. 1996), 95–3054.

Appealing Municipal Court Judgments to Circuit Court. *Andregg*. Wis. Law. March 2006.